

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

Canadian Government by the terms of Title 18, Section 953, U.S.C.A. (Logan Act). This Section reads as follows:

“§ 953. *Private correspondence with foreign governments*

Any citizen of the United States, wherever he may be, who, without authority of the United States, directly or indirectly commences or carries on any correspondence or intercourse with any foreign government or any officer or agent thereof, with intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the United States, shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

“This section shall not abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sustained from such government or any of its agents or subjects.”

After an analysis of the terms of the above Statute, we are of the opinion that it in no way prohibits the Governor of Maine from negotiating directly with Canadian officials, providing the subject of negotiations is not a dispute or controversy between the United States and Canada, and is not aimed at defeating the measures of the United States.

It should be noted that if a final determination by the Justice Department of the United States is required, request for such a determination should be directed to the United States Attorney in Portland. His office will be glad to forward the request to the Justice Department in Washington for final determination.

THOMAS W. TAVENNER

Assistant Attorney General

August 15, 1962

To: John H. Reed, Governor of Maine

Re: Vacancy in Office of President of Senate

We have your request for an opinion with regard to the following question:

“In the event a vacancy occurs in the office of the President of the Senate, is it mandatory for the Governor to convene the Legislature for the purpose of filling the vacancy?”

The procedure to be followed in the event of a vacancy in the office of Governor is set forth in Article V, Part First, Section 14, of the Constitution of the State of Maine. This section reads as follows:

“Whenever the office of governor shall become vacant by death, resignation, removal from office or otherwise, the president of the senate shall assume the office of governor until another governor shall be duly qualified; in the event such vacancy occurs not less than 90 days immediately preceding the date of the primaries for nominating candidates to be voted for at the biennial election next succeeding, the president of the senate shall exercise the office of governor until the first Wednesday of January following such biennial election. At such biennial election, a

governor shall be elected to fill the unexpired term created by such vacancy, unless the vacancy shall have occurred less than 90 days immediately preceding the date of, or after, such primaries, in which case the then president of the senate shall fill the unexpired term; and in case of the death, resignation, removal from office or other disqualification of the president of the senate, so exercising the office of governor, the speaker of the house of representatives shall exercise the office, until a president of the senate shall have been chosen; and when the office of governor, president of the senate, and speaker of the house shall become vacant, in the recess of the senate, the person, acting as secretary of state for the time being, shall by proclamation convene the senate, that a president may be chosen to exercise the office of governor. And whenever either the president of the senate, or speaker of the house shall so exercise said office, he shall receive only the compensation of governor, but his duties as president or speaker shall be suspended; and the senate or house, shall fill the vacancy, until his duties as governor shall cease.”

The specific problem involved in any discussion of whether or not it is mandatory upon the Governor to take the steps necessary to assure that the office of President of the Senate does not remain vacant hinges upon whether or not the Speaker of the House of Representatives can become Governor if the Governor resigns or becomes incapacitated at a time when there is no President of the Senate. Unfortunately, the constitutional debates make no reference whatever to section 14. We must, therefore, turn for guidance to the general provisions of constitutional and statutory construction. The constitution must be construed so as to guarantee the orderly conduct of government by the people. — *Opinion of the Justices*, 70 Me. 598. It must further be construed so as to permit the purpose expressed therein to be carried out. — *Wakem v. Van Buren*, 137 Me. 134. The constitution must be construed as if it were made yesterday with full knowledge of all present demands and necessities. *Baxter v. Sewerage District*, 146 Me. 215. With regard to both statutory and constitutional construction, our court has held that general intent must prevail and that each statute or constitutional provision must be construed as a whole, harmonizing repugnancies whenever possible. See *Opinion of the Justices*, 6 Me. 437.

With regard to statutory construction see — *Dominion Fertilizer Co. v. White*, 115 Me. 4; *Comstock's Case*, 129 Me. 471; *State v. Koliche*, 143 Me. 283.

The aforementioned section 14 has, as its only purpose, the guarantee of the continuance of civil government in the State of Maine. It was designed to prevent the office of Governor ever becoming vacant and must be construed so that this purpose is effectuated. Any interpretation of the provisions of this section must be made with this purpose in mind.

If the Governor of the State of Maine were to die or become incapacitated when the office of President of the Senate was vacant, the Speaker of the House of Representatives must become acting Governor. Any other interpretation of this section would lead to the interpretation that in the above circumstance the Speaker of the House could not become Governor and that, therefore, the office of Governor would remain unfilled. Such an interpretation would be repugnant to the intent of section 14. We, therefore, conclude that this must be construed to mean that the line of succession runs from the Governor to the President of the Senate to the Speaker of the House of Representatives. If, under any cir-

cumstances, the Governor and the President of the Senate both become unavailable to exercise the office of Governor, then that office devolves upon the Speaker of the House of Representatives, until a President of the Senate shall be chosen. For this reason we are of the opinion that it is not mandatory for the Governor to convene the Legislature for the purpose of filling the vacancy caused by a resignation in the office of President of the Senate.

As a matter of interest, in August, 1953, the President of the Senate resigned and that office remained vacant until September, 1954.

FRANK E. HANCOCK

Attorney General

August 17, 1962

To: R. W. Macdonald, Chief Engineer, Water Improvement Commission

Re: Classification of Tidal Waters

We have your request of August 14th for an opinion with regard to the extent of the authority of the Water Improvement Commission over tidal waters in the State of Maine.

It is our opinion that the authority of the Water Improvement Commission extends out to the territorial limits of this State. As the authority of the State of Maine extends out three miles to sea from the shore line, the authority of the Commission would extend out a like distance. Specifically, water between an island and the mainland, which water is within three miles of the coastline of the State of Maine, would fall within the jurisdiction of the Water Improvement Commission.

THOMAS W. TAVENNER

Assistant Attorney General

August 17, 1962

Honorable Ralph D. Brooks, Jr.
142 High Street
Portland 3, Maine

Dear Senator Brooks:

The Attorney General has asked me to reply to your letter of August 3rd in which you request an opinion with regard to the propriety of State insurance being placed with a firm which is owned wholly or in part by a member of the State Legislature.

We have examined this problem and have discovered that the same question has been decided by this office several times in the past. On February 18, 1944, Abraham Breitbard, the then Deputy Attorney General, issued an opinion that there was nothing illegal in the members of the State Legislature contracting with the State of Maine. This opinion was based upon a letter received in 1931 from the Chief Justice of the Supreme Judicial Court. As the law in question has not