

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

into the estuary. We understand that such a course of action would result in a violation of the classification of this tidal estuary. Revised Statutes, chapter 79, section 4, provides that —

“ . . . it shall be unlawful for any person, corporation, municipality or other legal entity to dispose of any sewage, industrial or other waste, either alone or in conjunction with another or others, in such manner as will lower the quality of the said waters, tidal flats, or section thereof, below the minimum requirements of such classification, and notwithstanding any licenses which may have been granted or issued under sections 8, 9, and 10 hereof.”

It is our opinion that any person who is responsible for adding sewage to a classified water, which sewage violates the classification thereof, infringes upon the provisions of section 4. The manner in which the sewage in question is disposed of in no way alters the fact of violation. The owner of the motel in question, if he carries through the plan outlined in your memo, will be guilty of a violation of section 4 and his actions taken in this connection can be enjoined under the provisions of Revised Statutes, chapter 79, section 12.

THOMAS W. TAVENNER

Assistant Attorney General

August 30, 1962

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

Re: Laundry and Laundramat Waste

We have your request of August 14th for an opinion with regard to the following question:

“Should a laundry or laundramat undertaking operation at a site provided with a domestic or sanitary sewer alone acquire a waste discharge license before proceeding?”

Revised Statutes, chapter 79, section 8, provides that no person, firm or corporation shall add any pollution to any natural body of water without first obtaining a license from the Commission. This law covers all sources of pollution whether industrial or domestic and prohibits any person from adding pollution to a natural body of water. It does not, however, affect a polluter whose effluent enters an existing sewer or other disposal system prior to entrance into the body of water.

It is our opinion that no license can be required of any person whose pollution empties into a municipal sewer or other man made water course rather than directly into a natural water course.

THOMAS W. TAVENNER

Assistant Attorney General

September 7, 1962

To: Kermit Nickerson, Deputy Commissioner of Education

Re: Authority to Inspect an Academy

You have inquired whether or not the State Board of Education and the

Commissioner of Education have authority to inspect an academy in this State for the purpose of determining its educational adequacy.

Revised Statutes, chapter 41, section 98, contains ample authority to conduct such an inspection for the purpose of determining whether or not approval to the academy should be granted.

RICHARD A. FOLEY

Assistant Attorney General

September 10, 1962

To: Earle R. Hayes, Executive Secretary, Maine State Retirement System

Re: Disability Benefits with Regard to Retirement

You have asked a question relative to the retirement of a person who retired on disability benefits in 1951, a few months later returned to work after age 55, and now is to retire because of age. The question is whether or not the Board can allow the person to repay to the system the amount of disability benefits she received in 1951 and retire under the general retirement provisions at a larger monthly retirement benefit.

The answer is "No."

Chapter 63-A, section 8, provides in part:

"Should a disability beneficiary be restored to service and should his annual earnable compensation then or at any time thereafter be equal to or greater than his average final compensation at retirement, his retirement allowance shall cease, the beneficiary shall again become a member of the retirement system, and he shall contribute thereafter at the same rate he paid prior to his retirement. Anything in this chapter to the contrary notwithstanding, any prior service certificate on the basis of which his service was computed at the time of his former retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all the service as a member creditable to him at the time of his former retirement; *but should he be restored to membership after attainment of the age of 55, his retirement allowance upon subsequent retirement shall not exceed the sum of the retirement allowance which he was receiving immediately prior to his last restoration to membership and the retirement allowance that may have accrued to him on account of membership service since his last restoration to membership.*" (Emphasis supplied)

This provision of the law is very clear as to the method of determining the amount of retirement benefits available to the person. The law contemplates the possibility of a disability beneficiary being restored to service. Therefore, the Board cannot claim an "error" to be corrected under section 13, subsection VIII or section 19.

GEORGE C. WEST

Deputy Attorney General