

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
ATTORNEY GENERAL

for the calender years

1961 - 1962

I hope that I have been of some assistance to you in this matter.  
Thank you for your attention.

Yours very truly,

JOHN W. BENOIT

Assistant Attorney General

October 12, 1962

To: Roland M. Berry, State Budget Officer

Re: Use of Budget Estimates

You have asked for an opinion from this office as to the use of budget estimates submitted by department heads to the state budget officer under the provisions of Chapter 15-A. In particular you are concerned with whether your office must make such requests available to (1) the general public and (2) candidates for the general election.

Section 8 of Chapter 15-A, Revised Statutes of 1954, provides in part that:

"On or before September 1st of the even-numbered years, all departments and other agencies of the state government and corporations and associations receiving or desiring to receive state funds under the provisions of law shall prepare, in the manner prescribed by and on blanks furnished them by the state budget officer, and submit to said officer, estimates of their expenditure requirements for each fiscal year of the ensuing biennium contrasted with the corresponding figures of the last completed fiscal year and the estimated figures for the current fiscal year."

Section 9 provides that the governor-elect or the governor and the state budget officer shall review the budget estimates altering, revising, increasing or decreasing the estimates. The governor or governor-elect shall then direct the state budget officer to prepare a state budget document. The governor shall transmit said budget document to the legislature not later than the close of the second week of the regular legislative session.

Section 5, Subsection I, provides that the bureau of budget shall have the duty and authority:

"To prepare and submit to the governor-elect, or the governor, biennially, a state budget document in accordance with the provisions set forth in this chapter;"

From a reading of these sections of the statutes it is clear that the legislative intent was that the budget estimates would be submitted to the state budget officer. He would then review them, requesting such further information from department heads and other agencies as he deems necessary. When he has his figures together, he then sits down with the governor-elect or governor, as the case may be, and they in turn review the estimates. They may change the figures in any way they feel necessary. When they have arrived at a satisfactory budget estimate, the budget officer then prepares a budget document and submits it to the governor-elect or governor. The governor transmits this document to the legislature within the appointed time.

That is the procedure outlined by the legislature. It may change the procedure at any time. The law does not authorize the release of budget estimates by the budget officer to the general public or to candidates for office.

GEORGE C. WEST

Deputy Attorney General

October 18, 1962

To: Charles G. H. Evans, Economic Development

Re: Copyright on Norman Rockwell Illustrations

In your memorandum of October 8, 1962, you have asked for the procedure which should be followed in obtaining copyrights on certain drawings of Norman Rockwell being purchased by your department. You explained to us that your department has entered into a contract with Ad Media, Inc., through its president, Mr. Jack Havey, whereby Ad Media, Inc. will supply four original drawings by Norman Rockwell dealing with the Maine scene. The artist understands that these will be used by your department to publicize the State. Mr. Jack Havey is in touch with the artist advising him on certain points dealing with the pictures. You mentioned, by way of example, that Rockwell asked whether a scope on a rifle was considered sporting by hunters in this State and whether hunters smoked cigarettes or pipes.

One of the four pictures entitled "Where Friendship Begins" has already been delivered to the State. It is my understanding that prior to the signing of a contract with Ad Media, Inc., the first picture, "Where Friendship Begins", was shown prominently on page 1 of the May, 1962, issue of the Maine Stater, the official paper of the Maine State Employees' Association. The MSEA has advised me that this issue was distributed to both members of the association and to non-members. The circulation of that issue was indicated to be between nine and ten thousand. The issue containing "Where Friendship Begins" carries no notice of copyright.

On September 29, 1962, the Daily Kennebec Journal printed its 7th Annual Hunting Edition featuring on the cover of that supplement a copy of the drawing "Where Friendship Begins." There was no notice of copyright in that supplement.

On October 4, 1962, the Enterprise carried prominently on page 1 a copy of that picture. The printing in the Daily Kennebec Journal and the Enterprise was authorized by your department and occurred after the contract between Ad Media, Inc. and the State had been entered into. The copy of the picture in the Daily Kennebec Journal and in the Maine Stater has no notice of copyright.

In addition, the artist may have commenced work on the second drawing.

Both statutory and common law copyrights in "Where Friendship Begins" were lost by the publication of the picture in the Maine Stater without notice of copyright. Common law copyright by which the artist can prevent the copying of a picture is lost merely by publication. *Wrench v. Universal Pictures Co.* (D.C.S.D.N.Y. 1952) 104 F. Supp. 374. The much more valuable statutory copyright is lost by publication without the required notice. It has been said that publication without the required notice amounts to a dedication of the work