

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

"This act, at the time of its enactment, could have resulted, and as we recall, did result, in increases to members in retirement, because the effect of the act was to give to a retired member not $\frac{1}{2}$ the pay he received at the time of retirement, but $\frac{1}{2}$ the pay that would be paid to *a member of the same grade* if he were to retire during the period which chapter 214 (P. & S. Laws 1951) would be in effect." (Emphasis supplied).

The underlined words "a member of their respective grades," in the law, and "a member of the same grade" in the opinion, are the key words. In other words, a Sergeant upon retirement under chapter 15, section 22, would receive $\frac{1}{2}$ of the pay per year that is paid to all Sergeants. After retirement, if the pay of a Sergeant's *grade* was increased, the retired Sergeant would be entitled to a corresponding increase in pension.

In 1963, the legislature enacted chapter 202 of the Private and Special Laws.

"It is the purpose of this act to place into effect, as of applicable pay checks dated on or after January 1, 1964, longevity provisions for state employees.

"Said longevity provisions shall amount to a 5%, or a one-step increase as provided in the State Personnel Board's Compensation Plan for Classified Positions, after completion of 8 years of service with the State, . . . and an additional 5%, or one-step increase as provided in the State Personnel Board's Compensation Plan for Classified Positions, after 15 years of service with the State, . . ."

This act is based solely on the length of service of an individual state employee. It has no relation to the position or grade which an employee holds. It applies equally to the highest or lowest paid state employee. In your organization one Sergeant (to continue use of the same example) may get no longevity, another may get a "5%, or a one-step increase" and a third may get the same as the second plus "an additional 5%, or one-step increase." In other words, you may have Sergeants with less than 8 years service, Sergeants with 8 to 15 years, and Sergeants with over 15 years service.

Longevity is, therefore, a recognition personal to an individual for his personal length of service. It, therefore, follows that it does not increase the salary of a specific position or grade. Hence, it cannot be considered for the purpose of increasing a retired state police officer's pension.

GEORGE C. WEST,
Deputy Attorney General

December 19, 1963

To: Joseph T. Edgar, Deputy Secretary of State

Re: Definition of "Consumer Goods" as Contained in the Uniform Commercial Code

Facts:

The 101st legislature passed the Uniform Commercial Code. Conditional sales contracts covering consumer goods are to be recorded with the Clerk

of the municipality in which the debtor resides unless he is not a resident of the state or resides in an unorganized place.

You wish to know your responsibility for recording contracts for sales of motor vehicles. You have asked two questions in one. We will divide the question into two parts.

Question No. 1:

Does the term "consumer goods" as used in section 9-401, (1) (b) of the Uniform Commercial Code include motor vehicles when such vehicles are purchased primarily for personal or family purposes?

Answer:

Yes.

Reason:

Section 9-109 (1) defines consumer goods as: "Goods are (1) 'Consumer goods,' if they are used or bought for use primarily for personal, family or household purposes;"

Section 9-105 (1) (f) defines "goods" as follows:

"Goods includes all things which are movable at the time the security interest attaches or which are fixtures (section 9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action."

Motor vehicles are "things which are movable at the time the security interest attaches." Hence, it follows that motor vehicles are "goods" within the above definition.

From this premise the logical conclusion is that motor vehicles "used or bought for use primarily for personal, (or) family . . . purposes" are consumer goods.

In *Atlas Credit Corp. v. Dolbow* 165 A (2d) 704 (Penna Super Ct) the court said of a motor boat:

"That the boat was consumer goods may be inferred from the uncontradicted testimony as to their (purchaser's) occupation, etc."

A motor vehicle purchased by a business firm would appear not to come within the definition of consumer goods. Normally, a motor truck would not, but under some circumstances it could be.

Question No. 2:

If the answer to Question No. 1 is in the affirmative, should the records of conditional sales involving such motor vehicles be filed with the Clerk of the municipality in which the debtor resides, rather than in the office of the Secretary of State, subject to the two exceptions as quoted in section 9-401 (1) (b)?

Answer:

Yes.

Reason:

The best reason for the answer is to quote from section 9-401. Under this section the proper place to file in order to perfect a security interest is as follows:

“(b) When the collateral is consumer goods, then in the office of the clerk of the municipality in which the debtor resides, or if the debtor (I) is not a resident of the State, or (II) resides in an unorganized place, then in the office of the Secretary of State;”

The Secretary of State is under no obligation to determine whether a recording is proper. In acting as a recorder the Secretary of State performs a mere ministerial act. He accepts and records what is presented to him. He does not question or advise on the validity of any recording made in his office.

GEORGE C. WEST

Deputy Attorney General

December 23, 1963

To: Steven D. Shaw, Administrative Assistant, Executive

Re: Conflict of Interests — Aeronautics Commission

Facts:

Chapter 24, section 4, provides that the aeronautics commission shall consist of 5 members. “. . . one member shall be regularly employed in the aviation trades.” Appointment is by governor with the advice and consent of the council.

A candidate holds a sales franchise for a well-known airplane. Two questions may arise if he is appointed.

Question No. 1:

Can a member of the aeronautics commission, holding an airplane sales franchise, sell his product to the commission?

Question No. 2:

Can a member of the aeronautics commission, holding an airplane sales franchise, sell his product to other branches of the state government?

Answer To Both Questions:

No.

Reason:

R. S. 1954, chapter 135, section 17, provides, “No trustee, superintendent, treasurer or *other person holding a place of trust in any state office* or public institution of the state, . . . shall be pecuniarily interested directly or indirectly in any contracts made in behalf of the state or of the institution . . . in which he holds such place of trust, and any contract made in violation hereof is void;” (Emphasis supplied).

The above is the sole statute relating to this subject. The important phrase is that italicized. It is sufficient to bring the situation outlined in the facts and questions within its purview.

Certainly a member of the aeronautics commission is a “person holding a place of trust in any state office.” The members of this commission are appointed by the governor with the advice and consent of the council. They are qualified to their office by an oath required and set forth in Article IX, section 1, of our Constitution. Each is appointed to an executive office and as such becomes a public officer.