

MAINE STATE LEGISLATURE

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January 27, 1964

Walter F. Ulmer, Commissioner

Mental Health and Corrections

Courtland B. Perry, Asst. Atty. Gen'l.

Essex

Employment of Inmates and Prisoners on Public Works Projects, and other Employment Outside Institutions.

PAGES:

The Department of Mental Health and Corrections may authorize the employment of inmates of the Reformatory for Men and Prisoners of the Maine State Prison, on work projects without the confines of said institutions.

QUESTION:

1. By Statute must the employment of inmates of the Reformatory for Men, outside the institution, be only on Public Works projects taking place on property owned or supervised by the State of Maine?

ANSWER:

1. Yes. (exception: forest fires and civilian disasters)

OPINION:

1. R.S. 1934, c. 27, §3-A is in part as follows:

"The department may authorize the employment of able-bodied prisoners in the State prison or inmates of the Reformatory for Men in the construction and improvement of highways or other public works within the State under such arrangements as may be made with the State Highway Commission or other department or commission of the State having such public works in charge, and said department may prescribe such rules and conditions as it deems expedient to insure the proper care and treatment of the prisoners or inmates while so employed and their safekeeping and return. The department may further authorize the training and use of able-bodied prisoners in the State Prison or inmates in the Reformatory for Men by the State Forestry Department or the Department of Civil Defense and Public Safety to fight fires or provide assistance during or after any civilian disaster."

The employment of reformatory inmates under the Provisions of §3-A, on Public Works projects in charge of Departments of State Government must be on property owned or supervised by the State, since Public Works in charge of State Departments exist only on property owned or supervised by the State.

"The term 'Public Works' means 'all fixed works constructed for public use as railways, docks, canals, water-works, roads, etc.'" 35-A Words and Phrases, Public Work, Page 124.

The employment of Reformatory inmates, outside the institution, is limited to Public Works projects on property owned or supervised by the State, except that, under the provisions of §1-A, such inmates may be used in fighting forest fires and in providing assistance in civilian disasters, which fires and disasters, may take place on property not owned or supervised by the State. No other Statute can be found relating to the employment of inmates of the Reformatory for Men outside the institution.

QUESTION:

2. May prisoners of the Maine State Prison be employed outside the institution in work other than Public Works projects taking place on property owned or supervised by the State of Maine?

ANSWER:

2. Yes.

SECTION:

2. Prisoners of the Maine State Prison may be employed on Public Works projects under §1-A, and may be used in fighting forest fires and in providing assistance in civilian disasters, as in the case of Reformatory inmates.

Furthermore, under R.S. 1954, c. 17, §38, the Warden of the Maine State Prison may contract with others for the letting to hire of prisoners. In letting prisoners to hire under such contracts the Department would not be dealing with State Agencies, and, therefore, such prisoners could not be working on property owned or supervised by the State, unless the hiring contractor happened to be employed on a project for the State.

Although, §1-A, is a later enactment than §38, it is not considered that it supercedes the older Statute, but that each has force and effect. Section 1-A, covers the employment of prisoners on Public Works projects carried on by State Agencies. Section 38 relating to the letting to hire of prisoners to persons and entities other than State Agencies, who must furnish security for the performance of such contracts, and who would compensate the State for the use of such convict labor.

Further provisions relating to the employment of prisoners outside the institution are found in R.S. 1954, c. 17, §19, under which section, prisoners may be employed at the State Prison Farm at South Warren, and may be employed on lands leased by the State for the purposes of farming, and located within Knox County. The Statutes cited herein, are the only Statutes which can be found relating to the employment of State Prison prisoners outside the institution.

See: Opinion-October 23, 1963. "Inmates of State Prison and Reformatory for Men-Employment on Public Works Projects."

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