

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**For The Calendar Years**

**1963 - 1964**

Question No. 1:

When the Legislature, through a special act, authorizes the formation of a school administrative district, does the State Board of Education have the authority to refuse to permit the formation of such a district?

Answer:

Yes.

Reason:

The reason for the enactment of the legislation is stated in the preamble of each Act as follows:

"Whereas, the Maine School District Commission cannot approve the formation of this proposed district under the criteria set out in the Revised Statutes of 1954, chapter 41, section 111-E;"

Note that each Act, authorized the Maine School District Commission (now State Board of Education; *R. S., c. 41, § 111-B*) to ". . . proceed pursuant to said chapter 41, section 111-E-1 to 111-U-1. . . ." Thus, the special legislation incorporated the applicable general law by a reference thereto. According to the general law, the State Board of Education may disapprove the applications submitted by local school committees. *R. S., c. 41, § 111-D, V; § 111-F, II.*

Question No. 2:

Does the 1963 Act render the 1961 Act obsolete and useless?

Answer:

No.

Reason:

Neither Act contains a statutory reference of limitation on municipal action. The two Acts are not repugnant, one to the other in their provisions.

Presently, the provisions of both Acts remain effective by reason of the fact that no district has been created pursuant to either measure.

JOHN W. BENOIT

Assistant Attorney General

July 2, 1964

To: C. Wilder Smith, Deputy Commissioner, Labor and Industry

Re: Commissions as Wages

Facts:

A question has arisen concerning the proper interpretation of the word "wages" as used in Revised Statutes 1954, chapter 30, section 50. Some employees are paid on a "commission" basis as opposed to an hourly, daily, weekly or annual salary basis. The question concerns the person, usually a salesman, who receives "commissions" on his sales.

Question:

Does the word "wages" include "commissions"?

Answer:

See opinion for answer.

Opinion:

A portion of R. S. 1954, chapter 30, section 50, provides,

“Every corporation, person or partnership engaged in . . . (here follows enumerated classifications of businesses) shall pay weekly each employee engaged in his or its business the wages earned by him to within 8 days of the date of such payment;”

This section further provides for county and municipalities to pay wages weekly unless requested otherwise by the employee. True records must be kept by the employer showing earnings and date of payments. Certain exceptions to the provisions concerning weekly payment of wages are also provided. Vacation pay is accorded the same status as wages earned. A violation of the section “shall be punished by a fine of not less than \$25 nor more than \$50.”

The failure to obey any provision of section 50 is punishable by a fine. So this section must be construed as a part of the criminal law. A basic tenet of statutory construction is that criminal statutes shall be strictly construed.

In many fields “commissions” have been held to be “wages.” See Words and Phrases, volume 44-A “Wages.” These include cases involving bankruptcy, unemployment compensation, Federal Insurance Contributions Act, receiverships; and in some instances “commissions” are held to be “wages” subject to garnishment. In some states “commissions” are not subject to garnishment as “wages.”

Because this statute is a criminal statute and must be strictly construed, it cannot be categorically stated that all “commissions” are “wages.” To do so would place an employer in a position of being subjected to a criminal penalty in situations where it would be impossible for him to comply with the statute.

The statute requires that an employer of a specified nature “shall pay weekly each employee . . . the wages earned by him . . . .” To say that in every instance “commissions” are “wages” would require an employer to pay weekly when an employee has not earned anything. This the statute does not contemplate. This would be the case of salesmen working on straight commission and selling large and expensive items. In such cases the number of sales are small and irregular, hence cannot be fitted into a weekly payment schedule.

However, when an employee is working in a business specified in the statute where sales or services are regular, recurring, and the employee is making daily or weekly sales, then the employer does come within the purview of the statute. Each case must be judged on its facts. Whenever an employee is earning on a weekly basis, payments must be made on a weekly basis.

In your memo you included section 50-A. I have not covered this section in my answer above. This section is also a criminal statute, to be strictly construed. However, no reference is made to “wages” in that section. The section provides,

“Any employee, leaving his or her employment, shall be paid in full within a reasonable time after demand at the office of the employer where payrolls are kept and wages are paid.”

In short, section 50-A provides that an employee upon termination of employment shall be paid in full. This would appear to cover any and all forms of compensation due the employee at the end of his employment.

GEORGE C. WEST

Deputy Attorney General

July 13, 1964

To: Joseph T. Edgar, Deputy Secretary of State

Re: Voting Registration by a Minor

Facts:

A resident of the State who is now 20 years of age will become 21 before the November election. He is a college student and will be out of State at the time he becomes 21. He wishes to register now so he can vote in the November election.

Question:

May a minor who will be 21 years of age on or before election register while still a minor?

Answer:

Yes.

Opinion:

The above question is not clearly and positively answered in our statutes. The nearest to a direct answer appears to be chapter 3-A, section 80 III. This provision relates to office hours of the registrar of voters on election day. In part it provides:

"He shall accept the registration of a person who becomes 21 years of age on election day or after the close of registrations prior to it, in any municipality."

This provides for the registration of voters who become of age on election day or in the few days prior thereto when the office of the registrar is not open. It can be reasoned that by such a provision the legislature intended that no person can register until he actually becomes 21 years of age. However, section 10 must be considered.

"A person may register as a voter by appearing before the registrar, proving that he is *qualified as provided in section 24, subsections I to IV, and filing an application provided by the registrar containing the information required by section 23.*

"II. . . . The register shall place the name of the applicant on the voting list *as soon as he has qualified.*" (Emphasis supplied). Section 24, referred to above, states:

"A person who meets the following requirements *may vote in any election in the municipality in which his residence is established.*" (Emphasis supplied).

There follows five requirements: (1) Citizenship; (2) Ability to read; (3) Age — "He must be at least 21 years of age." (4) Residence; (5) "Must be registered to vote in the municipality." Thus, a voter must be 21 years of age on or before election day to vote. By section 10, to register he must be qualified by section 24 to vote on election day.