

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

for the calender years

1965 - 1966

should be based on a wage rate which is paid to 50% plus one of the total number of workers in a particular trade. A reading of all sections of the statutes establishing a fair minimum wage rate for employees on state public improvement contracts militates against such a conclusion however.

There may not be a particular wage rate paid to a majority of workmen. For example, let us assume that the Department of Labor and Industry wishes to establish a minimum hourly wage rate for electricians. Let it further be assumed that there are a total of 200 electricians in the state who receive the following hourly wage rates: 80 electricians receive \$2.50 per hour, 50 receive \$2.70 per hour, 50 receive \$2.40 per hour, 10 receive \$2.20 per hour, and 10 receive \$2.90 per hour. Clearly, there is no specific wage rate which is paid to a majority of electricians, if one interprets majority to mean 50% plus one. However, by taking all of the wage rates into consideration, could not a prevailing or labor market wage rate for electricians be determined?

26 M.R.S.A. § 1308 (1) Determination of Wage Rates.

"The Department of Labor and Industry, from time to time, *shall investigate and determine the prevailing hourly rate of wages in this state.*

"*In determining such prevailing rates*, the Department of Labor and Industry may ascertain and consider the applicable wage rates established by collective bargaining agreements, if any, and such rates as are paid generally in this State where the construction of the public improvement is to be performed." (Emphasis supplied)

The language of section 1308 (1) emphasizes the need for determining the prevailing hourly rate of wages, and not simply discovering that rate which is paid to a majority of workers.

The determination of a prevailing wage rate need not be based on any specific economic formula, provided that all known wage differentials in a trade are taken into consideration. The *wage which prevails* may be a median wage resulting from relatively free competition for services between employers and employees, or the prevailing wage could reflect a monopolistic wage rate established largely by one employer or one labor union. Regardless of what the prevailing wage rate reflects, it alone, forms the basis for the establishment of a fair minimum rate of wages.

PHILLIP M. KILMISTER  
Assistant Attorney General

March 17, 1966  
Water Improvement Commission

R. W. MacDonald

License to Discharge Waste and Compliance with Conditions Pertaining Thereto.

**FACTS:**

An industrial firm applies to the Water Improvement Commission for a license to discharge waste for a limited period of time during the calendar year. The Commission issues a waste discharge license to said applicant subject to certain conditions, one of which is the period of time during which the applicant may discharge waste. (approx. October to February)

*ISSUE:*

May the licensee described above discharge waste at any time other than that which is provided for within the terms of its license?

*ANSWER:*

No.

To hold that a licensee may unilaterally change the terms of his license would be to make licensing laws a nullity. Stated simply, a license is a permit or privilege to do that which would otherwise be unlawful.

The terms or conditions of a license to discharge waste may be changed only with the approval of the licensor, to wit: the Water Improvement Commission.

Licenses issued by the Commission are issued subject to conditions actually imposed by the legislature. In other words, in order to insure that a degradation or defilement of classified waters shall not take place, the legislature has in effect said that the Commission shall issue licenses only to those applicants whose contemplated discharge of waste into receiving waters will not degrade the classification of said waters. 38 M.R.S.A. § 414, (1).

38 M.R.S.A. § 414 (3) specifically provides:

"Any license to so discharge granted by the commission may contain such terms or conditions with respect to the discharge as in the commission's determination will best achieve the standards set forth in section 363."

Clearly, the period of time during which a firm is to discharge waste into a certain body of water is a vital element for the Commission to consider in determining whether or not to grant licensure.

Without further elaboration, it may be concluded that a license to discharge waste on a seasonal or limited time basis must be strictly complied with by the licensee.

It is clearly violative of our water improvement law for an industrial firm, which is a seasonal licensee, to operate its plant and discharge waste during an off season period.

In closing, it should be noted that the question answered in this opinion is based upon facts as set forth in a newspaper report. It is entirely possible that the newspaper report may not be accurate as to all of the facts contained therein.

PHILLIP M. KILMISTER  
Assistant Attorney General

March 23, 1966  
Electricians Examining Board

Theodore E. Edwards, Chairman

Municipal licensing and recording fees for electricians.

*FACTS:*

The Public Laws of 1965, C. 385, § 3 repealed and replaced 32 M.R.S.A. § 1103.

The Public Laws of 1965, C. 385, § 3 (now 32 M.R.S.A. § 1103 as amended) reads:  
'§1103. Municipal licenses not required; municipal permits.

No municipality, provisions in charters to the contrary, shall require electricians to be municipally licensed, but no municipality shall issue a permit for