

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

has the authority to purchase all supplies, materials and equipment required by the State Government. Me. Rev. Stat. Ann., Tit. 5, § 1811 (1964). The State Purchasing Agent is directed by statute to purchase or contract for all supplies, materials and equipment needed by the State Government, with certain exceptions not here pertinent. Me. Rev. Stat. Ann., Title 5, § 1812 (1964). The State Purchasing Agent, with the approval of the Commissioner of Finance and Administration, may, within limitations, adopt rules authorizing any state department or agency to purchase certain specified supplies, materials or equipment directly. Me. Rev. Stat. Ann., tit. 5, § 1813, par. 1, (1964). Otherwise, such supplies must be purchased by, or furnished to, the State Government only upon requisition to the State Purchasing Agent. Me. Rev. Stat. Ann., tit. 5, § 1815 (1964).

Me. Rev. Stat. Ann., tit. 3, § 42 (1964) dealing with the duties of the Clerk of the House, in pertinent part provides:

“He shall when the Legislature is not in session be the chief executive officer of the Legislature, and unless the Legislature otherwise orders, . . . arrange for necessary supplies and equipment through the State Bureau of Purchases. . .”

The language “. . . unless the Legislature otherwise orders. . .” cannot reasonably be interpreted to mean that the Legislature can, by order, give the Clerk of the House authority to circumvent the clear intent of Me. Rev. Stat. Ann., tit. 5, §§ 1811-1820 (1964) to channel all state buying through the Bureau of Purchases. We interpret this language to mean that the Legislature may by order assign the duty of arranging for necessary supplies and equipment through the Bureau of Purchases to someone other than the Clerk.

We conclude that the House Order of January 4, 1967 was a nullity insofar as it purported to confer authority upon the Clerk of the House to contract for or purchase supplies and materials independently of the Bureau of Purchases and the State Purchasing Agent.

ROBERT G. FULLER, JR.
Assistant Attorney General

August 17, 1967
Parks and Recreation Comm.

Fred M. Bartlett

Election of Municipal Park and Conservation Commissioners.

FACTS:

30 M.R.S.A. § 3851 was amended by the Public Laws of 1965, c. 203, § 2 to read in part as follows:

“Cities and towns *Municipalities* may establish park and conservation commissions and choose by ballot 3 5 park and conservation commissioners, * * * and after the first year choose annually a commissioner for 3 5 years * * *.”

QUESTION:

What body of a municipality may “choose by ballot” and “choose annually” these park and conservation commissioners?

ANSWER:

Towns – by qualified voters at a town meeting.
Cities – by the city council.

OPINION:

30 M.R.S.A. § 3801 relates to devises and gifts for open areas, public parks and playgrounds and was amended by the 1965 Public Laws, c. 203, § 1, to read as follows:

“Any town *municipality*, as such, may receive, hold and manage devises, bequests or gifts for the establishment, increase or maintenance of public parks and playgrounds *and open areas, including marsh lands, swamps and other wet lands*, in such town *municipality*, and may accept by vote of the legal voters *legislative body* thereof any land in such town *municipality* to be used as a public park or playground or both combined, *or maintained as an open area and as marsh land, swamp or wet land as defined in section 3851*. When any plantation is incorporated into a town, such gifts and the proceeds thereof fully vest in such town.”

It is to be noted that in the above section that the term “legal voters” was replaced by the term “legislative body” and the term “town” was replaced by the term “municipality”. It is to be further noted that 30 M.R.S.A. § 3851, as amended (the section being interpreted here) replaces the term “cities and towns” by the term “municipality”. We interpret the words “choose by ballot” to mean choose by ballot of a legislative body of a municipality as in 30 M.R.S.A. § 3801, as amended.

A legislative body is defined as any body of persons authorized to make laws or rules for the community represented by them. It is one capable of or pertaining to the enactment of laws. *Burke v. Wood*, 162 F. 533 at 536. The legislative body of a town is the qualified voters of a town voting at a town meeting. 30 M.R.S.A. § 2054 (1) provides that:

“1. Qualified voter. Each person qualified to vote for Governor in the town in which he resides may vote in the election of all town officials *and in all town affairs*.” (Emphasis supplied.)

The legislative body of a city is usually its city council. The Maine Housing Authority Act defines a governing body as follows:

“Governing body. ‘Governing body’ shall mean the city council or other legislative body charged with governing a city.” 30 M.R.S.A. § 4552 (6).

Hence, it is our opinion that it is the legislative body of a municipality that chooses by ballot the park and conservation commissioners and chooses an annual replacement each year. It is also our opinion that the legislative body of a town is the qualified voters voting at a town meeting, and the legislative body of a city is its city council.

JEROME S. MATUS
Assistant Attorney General

August 31, 1967
Maine State Retirement System

E. L. Walter, Executive Secretary

Acceptance of funds by Maine State Retirement System from estate of deceased member or from third person for credit to decedent’s account; Me. Rev. Stat. Ann., Tit. 5, ch. 101 (1964).