

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

Title 9 M.R.S.A. Chapter 371, entitled "Disclosure of Interest in Finance Charges in Retail Sales" becomes effective on January 1, 1968.

Section 3856 of said Chapter provides in part that the Commissioner "shall prescribe such rules and regulations as may be necessary or proper in carrying out this chapter."

*QUESTION:*

Do the limitations contained in the provisions of 9 M.R.S.A. § 6.4 apply to regulations promulgated under the authority of the aforementioned 9 M.R.S.A. § 3856?

*ANSWER:*

No.

*OPINION:*

The aforementioned 9 M.R.S.A. § 3856 specifically provides that the State Bank Commissioner shall prescribe such rules and regulations that may be necessary or proper in carrying out the provisions of Chapter 371, which, it must be observed, relates to "installment sellers" of goods or services. Title 9 M.R.S.A. § 6.4, however, is general in nature and pertains to the regulation of financial institutions. The term "financial institution" is defined in 9 M.R.S.A. § 222.4 as meaning ". . . a trust company, savings bank, trust and banking company, institution for savings, loan and building association, savings and loan association or industrial bank organized under the laws of this State." Accordingly, the term "financial institution" does not, in our opinion, include an "installment seller" as it is used in the aforementioned Chapter 371.

It is consequently felt that the specific authority to issue regulations contained in 9 M.R.S.A. § 3856 constitutes an exception to the procedures required by 9 M.R.S.A. § 6.4. Accordingly, it is our opinion that the State Bank Commissioner is not required to follow the procedures outlined in 9 M.R.S.A. § 6.4 when issuing regulations under the authority of 9 M.R.S.A. § 3856.

HARRY N. STARBRANCH  
Assistant Attorney General

October 13, 1967  
Mental Health and Corrections

Walter F. Ulmer, Commissioner

Functions of Probation and Parole Board Member

*FACTS:*

In your memorandum of September 27, 1967 it is stated that the Commissioner of the Department of Mental Health and Corrections has appointed the Director of the Bureau of Corrections to serve on the State Probation and Parole Board. As a result of this appointment you have asked in essence the following question:

*QUESTION:*

Is the Director of the Bureau of Corrections, as a member of the State Probation and Parole Board, permitted to authorize the Director of Probation and Parole to issue a warrant for the arrest of a parole violator?

*ANSWER:*

Yes; but only when the Commissioner is absent due to illness or other appropriate absence from office.

*OPINION:*

The authority by which the Commissioner of Mental Health and Corrections has appointed the Director of the Bureau of Corrections to the State Probation and Parole Board is set forth in 34 M.R.S.A. § 1551 which establishes the membership of said Board.

34 M.R.S.A. § 1551 reads in part as follows:

“A State Probation and Parole Board, as heretofore created within the Department of Mental Health and Corrections and in this chapter called the “board” shall consist of 3 members who are citizens and residents of the State. Two of the members shall be appointed by the Governor, with the advice and consent of the Council, from persons with special training or experience in law, sociology, psychology or related branches of social science. The Commissioner of Mental Health and Corrections shall be ex officio a member of the board, except that he may appoint any suitable person from his department to serve during his pleasure, *in his absence*, as a member of the board, but in no case longer than, his term of office as Commissioner . . .” (Emphasis supplied)

An opinion of this office dated October 10, 1963 held that the Commissioner may not appoint as ex officio member of the Board to serve in his place either the Director of the Division of Probation and Parole or any other employee of such division. The opinion properly held that the Director of the Division of Probation and Parole could not serve as a member of the Board and thus be “simultaneously principal and agent, but must remain in all aspects of his work, subordinate to the Board.” The opinion further stated that no employee of the Division of Probation and Parole could be appointed to the Board because of the fact that such an employee could not, by statute, be subordinate to the Director of the Division of Probation and Parole and at the same time serve as a member of the Board and “thus prescribe the duties, supervise the activities of, and delegate authority to his superior, the Director.”

The Bureau of Corrections and the duties of its Director are defined in P. L. 1967, Chapter 20, now 34 M.R.S.A. § 525 and 526.

“§526. Establishment; purposes

“The Bureau of Corrections, as heretofore established within the department, shall be responsible for the direction and general administrative supervision of the correctional programs within the Maine State Prison, the Reformatories for Men and Women and the Juvenile Training Centers.

“§526. Director; duties

“The Commissioner shall appoint, subject to the Personnel Law, a Director of Corrections who shall be a person with training; experience, administrative and organizational ability in criminal corrections and correctional administration. It shall be the duty of the director to carry out the purposes of the bureau. In the event of vacancy in both the office of the commissioner and the office of the

Director of Mental Health, or during the absence or disability of both of said officials, the director shall perform such duties and have the same powers as provided by law for the commissioner.”

The Director of Corrections is in no manner subordinate to or subject to the supervision of the Director of Probation and Parole in the performance of his duties. He is clearly qualified to be appointed for membership on the board and as a member could direct and delegate certain duties to the Director of Probation and Parole in the same manner as the Commissioner could were the latter to exercise his duties as a Board member.

34 M.R.S.A. § 1675 provides that when a parolee violates a condition of his parole or violates the law a member of the State Probation and Parole Board may authorize the Director of Probation and Parole to issue a warrant for the arrest of said parolee. We see no reason why the Director of Corrections, acting in his capacity as a member of the Probation and Parole Board, could not perform this particular function.

PHILLIP M. KILMISTER  
Assistant Attorney General

October 18, 1967  
Maine State Retirement System

E. L. Walter, Exec. Secretary

Executive Council Service Credit for Members of the Maine State Retirement System.

**FACTS:**

The 103rd Legislature enacted Chapter 57 of the Public Laws. This Chapter reads as follows:

“Sec. 1. R.S., T. 5, § 1001, sub- § 10, amended. The first sentence of sub-section 10 of section 1001 of Title 5 of the Revised Statutes, as amended by section 1 of chapter 339 and by section 7 of chapter 513 both of the public laws of 1965, is further amended to read as follows:

‘ “Employee” shall mean any regular classified or unclassified officer or employee in a department, including teachers in the state colleges and for the purposes of this chapter, teachers in the public schools, but shall not include any member of the Council or any Justice of the Superior Court or Supreme Judicial Court who is now or may be later entitled to retirement benefits under Title 4, section 5, and Title 4, section 103, nor shall it include any Judge of the District Court who is now or may be later entitled to retirement benefits under Title 4, Chapter 5, nor shall it include any member of the State Police who is now entitled to retirement benefits under Title 25, chapter 195.

“Sec. 2, R.S., T. 5, § 1094, sub- § 3, amended. The last paragraph of subsection 3 of section 1094 of Title 5 of the Revised Statutes, as enacted by section 2 of chapter 339 of the public laws of 1965, is amended to read as follows:

‘Any member who has served as a member of either the House of Representatives or the Senate, *or as a member of the Executive Council* of the State of Maine, shall be entitled to receive the appropriate creditable service for such legislative *or Executive Council* service. Any member of the retirement system who does serve as a member of the House of Representatives or the