

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

*QUESTION NO. 1*

Is there a state statute which prohibits selling a state publication at a discount rate?

*ANSWER:*

No, see opinion.

*QUESTION NO. 2:*

Is there a limitation on the amount of a discount which may be allowed to a retailer of state publications

*ANSWER:*

No, see opinion.

*OPINION:*

The answers to the above-stated questions are rendered moot by the answering of a question not asked in your memorandum, and that is: "May the Department of Economic Development print and distribute for sale to the general public a publication, absent express statutory authority to do so?" We answer said question in the negative.

The Commissioner of the Department of Economic Development is authorized to establish a price for publications of the Maine Geological Survey which may be sold and delivered and also for certain United States Government Publications, 10 M.R.S.A. § 651. There is no statutory authority which provides that the Commissioner may authorize the sale of any other publications prepared by the Department, however. This being the case, we fail to see how the "Maine Statistical Abstract" can be offered for sale by the Department.

It is true that certain state departments do offer publications for sale. For example, P. L. 1965, c. 101 (12 M.R.S.A. § 1965) gave the Commissioner of Inland Fisheries and Game the authority to affix price tags to certain publications of that Department. However, absent the statutory authority set forth in P. L. 1965, c. 101, the Commissioner of Inland Fisheries and Game would not possess the implied authority to offer departmental publications for sale.

PHILLIP M. KILMISTER  
Assistant Attorney General

July 25, 1968  
Personnel

Willard R. Harris, Director

Effect of Me. Public Laws 1967, ch. 542 upon the operation of the Personnel Law.

*SYLLABUS:*

Me. Public Laws 1967, ch. 542, giving the Governor and Council authority to adjust

the salaries of certain classified positions above the maximum presently set by the Personnel Board, does not remove such positions from the classified service; but the grant of such authority to the Governor and Council supersedes the Board's authority granted under 5 M.R.S.A. § 634 (Supp. 1967) to fix maximum salaries for the subject positions.

*FACTS:*

The posts of Director of State Parks and Recreation, and Manager of the Maine State Ferry Service were created as positions within the classified service of the State. The Personnel Board is by law directed to adopt compensation plans for classified positions. 5 M.R.S.A. § 634 (Supp. 1967). The law further provides (with certain exceptions not here pertinent) that no classified position shall be assigned a salary greater than the maximum rate so fixed by the Board, and that salaries which do not conform to the adopted compensation plan shall not be approved by paying authorities. *Ibid.*

1967 Me. Public Laws, ch. 542, however, provides that, notwithstanding any other provision of law, the Governor, with the advice and consent of the Council, is authorized to adjust the salary of the Director of State Parks and Recreation to no more than \$16,500. and the salary of the Manager of the Maine State Ferry Service to no more than \$12,000.

*QUESTION:*

Does Me. Public Laws 1967, ch. 542 remove the positions of Director of State Parks and Recreation and Manager of the Maine Ferry Service, from the classified service?

*ANSWER:*

No. However, in the event that the salaries of such positions are adjusted by the Governor and Council above the maximum presently set by the Personnel Board, such adjustment prevails.

*OPINION:*

The provisions of Me. Public Laws 1967, ch. 542, giving the Governor and Council power to adjust the salaries of the Director of State Parks and Recreation, and the Manager of the Maine State Ferry Service, above the maximum set by the Personnel Board, are in outright conflict with the pre-existing provisions of 5 M.R.S.A. § 634 (Supp. 1967) which purport to lodge complete authority over salaries of classified personnel in the Board.

The rule to be followed in such a circumstance has been stated by the text writers as follows:

“When a subsequent enactment covering a field of operation coterminous with a prior statute cannot by any reasonable construction be given effect while the prior law remains in operative existence because of irreconcilable conflict between the two acts, the latest legislative expression prevails, and the prior law yields to the extent of the conflict.” (Citations omitted.) 1 Sutherland, *Statutory Construction* (3d ed. 1943) § 2012.

See also 82 C.J.S. *Statutes* § 291 (1953):

“Where two legislative acts are repugnant to, or in conflict with, each other,

the last one passed will, although it contains no repealing clause, govern, . . . so as to supersede and impliedly repeal the earlier act to the extent of the repugnancy.”

Our Supreme Judicial Court has adhered to these views in a long line of cases, the latest being *State v. London*, 156 Me. 123, 162 A.2d 150 (1960) where the Court said:

“Where a later statute does not cover the entire field of the earlier statute but is inconsistent or repugnant to some of its provisions, a repeal by implication takes place to the extent of the conflict.” 156 Me. 123, 128 162 A.2d 150, 153.

The 1967 law does not conflict with the entire Personnel Law, so-called [5 M.R.S.A. § § 551-741 (1964)], but only with the provisions of 5 M.R.S.A. § 634 (Supp. 1967). To the extent of such conflict, the later law governs. The classified status of the positions is not otherwise affected. The Legislature appears to have been aware of possible conflicts with prior law when it enacted ch. 542, for it is expressly provided that ch. 542 shall govern “[n]otwithstanding any other provision of law . . .”.

ROBERT G. FULLER, JR.  
Assistant Attorney General

July 25, 1968  
Education

Kermit S. Nickerson, Deputy Comm'r

Authority of Education Department to Administer P. L. 90-302

*SYLLABUS:*

Absent legislative acceptance of the benefits and provisions of a 1968 amendment to the previously accepted National School Lunch Act, the Department of Education is devoid of authority to administer the programs thereby created.

*FACTS:*

In 1946 the Congress passed the so-called National School Lunch Act. 60 Stat. 230. The following year the Maine Legislature accepted the provisions and benefits of this Act. Me. Public Laws 1947, ch. 127 [now codified as 20 M.R.S.A. § 1051 (1964)]. The accepting statute in its entirety reads:

“The State having accepted the provisions and benefits of the Act of Congress entitled ‘An Act to Provide Assistance to the States in the Establishment, Maintenance, Operation and Expansion of School-Lunch Programs and for Other Purposes’ approved June 4, 1946, will observe and comply with said Act.”

In 1968, the President signed into Law an amendment to the National School Lunch Act which authorized Federal assistance to food services provided during the summer months to children at playgrounds and recreation centers, and to food services provided year-round to day-care centers and settlement houses. 82 Stat. 117.

The Department of Education administers the National School Lunch Act in Maine.

*QUESTION:*

May the Department of Education, as the state agency for the administration of the National School Lunch Act in Maine, also administer the provisions of the 1968 amendment to that Act?