

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

FACTS:

The state legislature has recently reclassified upward several bodies of water (e.g., C to B-2) and in connection with the reclassification has provided that no discharge to the reclassified waters shall be deemed in violation of the new classification if such discharger takes certain steps by certain dates so that the discharge will meet the new classification. See, for example, 38 M.R.S.A. § 451 (1) (Supp. 1967). In connection with these legislative timetables you ask two questions:

QUESTION NO. 1:

If a discharger fails to fully perform its timetable obligations on the date required by statute, what is the procedure for enforcing compliance?

QUESTION NO. 2:

Does the Commission have the power to extend or modify timetable schedules?

ANSWERS:

1. See Reason.
2. No.

REASON:

The Commission must first give notice to and hold a hearing with the parties affected by the reclassifications, and issue to them special orders requiring such operating results as are necessary to achieve the interim goals of the timetable. See 38 M.R.S.A. § 451 (1) (Supp. 1967). If the goals are not achieved, then the Commission must take administrative action under 38 M.R.S.A. § 451 (2) (Supp. 1967). The procedure under this section, briefly, involves notifying the discharger of the alleged violation, summoning him in, hearing evidence, and, if the violation is found to exist, issuing an administrative order compelling compliance. If the order is not complied with within the time specified, the Commission must notify this department which must then seek judicial relief.

The Commission has no statutory authority to extend the dates of compliance with existing timetables. However, it does have the authority, after notice and hearing, to compel a discharger to meet an accelerated compliance schedule. See 38 M.R.S.A. § 451 (1) (Supp. 1967).

ROBERT G. FULLER, JR.
Assistant Attorney General

October 7, 1968
Water and Air Environmental
Improvement Commission

Henry Mann, Chemist

Sections 414 and 451 of Title 38 of the Revised Statutes.

SYLLABI:

A timetable for classification standards applicable to waters classified on or after January 1, 1967 operates prospectively and does not amend or retroactively affect other previously existing timetables applicable to bodies of water classified prior to January 1, 1967.

Municipal and quasi-municipal corporations which discharge sewage from outfalls existing on September 1, 1959 into unclassified bodies of water need not obtain a license as a condition precedent to the discharge of said sewage.

FACTS:

The 103rd Legislature enacted legislation (P.L. 1967, c. 475) which set forth a timetable applicable to polluters located on bodies of water classified or reclassified on or after January 1, 1967. Prior to the enactment of P.L. 1967, c. 475 the Legislature had established timetables applicable to several classified bodies of water. You ask in essence whether the timetable set forth in P.L. 1967, c. 475 repeals or changes the terms of previously existing timetables.

Your second major question concerns the interpretation of the statutory language contained in 38 M.R.S.A. § 414 (2) entitled "Unclassified waters". The phrasing of your question sufficiently sets forth the factual situation upon which your question is based.

QUESTIONS:

1. Does the legislative timetable established by the terms of P. L. 1967, c. 475 repeal the terms of previously established legislative timetables?
2. Does the exception clause contained in 38 M.R.S.A. § 414 (2) apply only to municipalities and quasi-municipal corporations?

ANSWERS:

1. No.
2. Yes.

REASON:

The legislative timetable set forth in 38 M.R.S.A. § 451 as amended by P. L. 1967, c. 475 applies to those who contribute pollution to bodies of water classified or reclassified on or after January 1, 1967 by the Legislature. Other statutory time schedules imposed by the Legislature upon designated bodies of water classified prior to January 1, 1967 are not affected by the terms of section 451 as amended.

There is no implied repeal of the terms of previously established timetables brought about by the enactment of P. L. 1967, c. 475. It is perfectly logical for the Legislature to establish certain time schedules for pollution abatement applicable to waters classified or reclassified post January 1, 1967, and to leave intact by express statutory language, timetables applicable to bodies of water classified or reclassified prior to January 1, 1967.

The language of section 414 of Title 38 governing licensure of waste discharge into heretofore unclassified bodies of water is clear both as to general license provisions and exceptions thereto. Words used in statutory language should be given their plain, ordinary meaning.

The exception clause of Section 414, subsection 2, reads as follows:

“No license from the Commission shall be required of any municipality, sewer district or other quasi-municipal corporation to dispose of any sewage from outfalls or facilities existing on the first day of September, 1959.”

This exception clause applies only to municipalities and quasi-municipal corporations.

The above-designated language “to dispose of any sewage from outfalls or facilities existing . . . ” cannot be narrowly construed to mean only domestic sewage. Industrial waste carried through sewers operated by municipal and quasi-municipal corporations on September 1, 1959 would likewise fall within the broad umbrella of the exception clause.

PHILLIP M. KILMISTER
Assistant Attorney General

October 21, 1968
Dedimus Justice

Samuel S. Silsby, Jr.

Nonresident Taking Oath as Trustee of the University of Maine

SYLLABUS:

A Trustee of the University of Maine is not required to take the oath of office set forth in Article IX, Section 1, of the Constitution of the State of Maine.

FACTS:

A nonresident of Maine was commissioned as a trustee of the University of Maine by the Governor and Council on May 15, 1968 under P. & S. 1967, c. 229. In taking the oath prescribed under the Constitution of the State of Maine, Article IX, Section 1, the question was raised whether said oath applied in his case, declaring that he was a citizen of the United States, but not of the State of Maine. The terms of P. & S., 1967, c. 229 do not provide that trustees must be residents of the State of Maine.

QUESTION:

Is a Trustee of the University of Maine appointed to any judicial, executive, military or other office under this State?

ANSWER:

No.

REASON:

Certainly we can eliminate the areas of judicial, executive and military offices without great discussion. A trustee of the University holds no judicial or military office. Executive must relate to one of the three departments of state set forth in Article III.

This leaves “other office under this State” as the only basis for requiring an oath. What is an “office” as the word is used in the Constitution of the State? As stated in *Opinion of the Justices*, 3 Me. @ 483.