

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

“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.

“We do not perceive any reason why the term ‘office’ should receive a construction in one section different from that which seems proper and natural in another.”

Another quote from the same *Opinion of the Justices* indicates the meaning of “office” as that word is used in the constitution.

“We apprehend that the term ‘office’ implies a delegation of a portion of the sovereign power to, and possession of it by the person filling the office; and the exercise of such power within legal limits, constitutes the correct discharge of the duties of such office. The power thus delegated and possessed, may be a portion belonging sometimes to one of the three great departments, and sometimes to another; still it is a legal power, which may be rightfully exercised, and in its effects it will bind the rights of others, and be subject to revision and correction only according to the standing laws of the State. An employment merely has none of these distinguishing features. A public agent acts only on behalf of his principal, the public, whose sanction is generally considered as necessary to give the acts performed the authority and power of a public act or law. And if the act be such as not to require such subsequent sanction, still it is only a species of service performed under the public authority and for the public good, but not in the execution of any standing laws, which are considered as the rules of action and the guardians of rights. By giving this construction to the term ‘office,’ the meaning of the first section of the ninth article and fourth part of the constitution appears plain, and the word office therein contained becomes intelligible as to the extent of its import.

“An office being a grant and possession of a portion of the sovereign power, it is highly proper that it should be guarded from abuse as far as possible; and to this end, that every person holding an office should be under the obligation of the oath in that section specified. It appears then, that every ‘office,’ in the constitutional meaning of the term, implies an authority to exercise some portion of the sovereign power, either in making, executing or administering the laws.”

We do not perceive that a Trustee of the University of Maine is clothed with the power to “exercise some portion of the sovereign power” of the State. He is no different from a director or trustee of any nonstock corporation receiving public funds. See P. & S.L. 1967 c. 154 “Charitable Institutions.”

We must bear in mind that the University of Maine is only a legislative chartered nonstock corporation. 20 M.R.S.A. § 2252 (enacted 1945) which, in substance, states that the University of Maine is an agency of the State for the purpose for which it was established does not change the status of the University.

The case of *Orono v. Sigma Alpha Epsilon Society* 105 Me. 214 (1909) has not been overruled. 20 M.R.S.A. § 2252 was not enacted to change that decision. The legislature would not wait 35 years to do that. Had it wished to change the decision it would have done so at the next session in 1911. (See opinion dated April 30, 1945, attached hereto, giving purpose of enactment of the statute. Also note the difference between Trustees of the University of Maine and members of the State Board of Education.)

We conclude that a Trustee of the University of Maine does not hold an “office under this State” and consequently is not required to take the oath set out in Article IX, Section 1, of the Constitution.

GEORGE C. WEST
Deputy Attorney General