

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

Finally, because a charter suspended under § 2406 may be revived by payment of all franchise taxes and expenses of advertising, and because a corporation continues to be liable for annual franchise taxes even though its charter has been suspended, it follows that the corporation continues to be liable for the reference assessment. The Court in *West Park Realty Co. v. Porth*, supra, at page 652 stated:

“Subdivision 7 of § 180.08 authorizes the secretary of state to rescind the forfeiture on the payment of a penalty of \$25 and the filing of the affidavit required by said section. This in itself indicates that it was the legislative intent, not that the corporation had forfeited its franchises and charter, but that it might still be recognized as a valid operating legal entity upon compliance with certain conditions.”

WENDELL R. DAVIDSON  
Assistant Attorney General

January 10, 1969  
Soil and Water

Charles L. Boothby, Executive Secretary

Delegation of vote by Supervisors of Soil and Water Conservation District to private persons.

*SYLLABUS:*

A Supervisor of a Soil and Water Conservation District cannot delegate his authority to vote.

*FACTS:*

In your memorandum under date of December 18, 1968 submitted to this Office it is stated that several Soil and Water Conservation Districts have asked individuals to sit in on the deliberations of the Boards of Supervisors. These are usually individuals with special interests in some phase of the soil and water conservation program. Occasionally, to complete a quorum for a meeting, these individuals are allowed to vote on official District business.

*QUESTION:*

Can elected or appointed public officials such as Supervisors of Soil and Water Conservation Districts delegate their official voting powers to private individuals on a temporary basis?

*ANSWER:*

No.

*REASONING:*

It is a basic rule of the law of agency that an officer, particularly a public officer, may delegate the performance of ministerial duties to others but that said officials may

not delegate the performance of acts of discretion.

“An officer, to whom a power of discretion is entrusted, cannot delegate the exercise thereof except as prescribed by statute. He may, however, delegate the performance of a ministerial act, as where, after the exercise of discretion, he delegates to another the performance of a ministerial act to evidence the result of his own act of discretion.” 67 C.J.S. (Officers) § 104, pp. 373-374.

12 M.R.S.A. § 152 (as amended by P. L. 1965, c. 190, § 11, 12) provides that “the supervisors may delegate to one or more supervisors, or to any agents or employees, such powers and duties as they may deem proper”. This is indeed a broad delegation of authority vested in supervisors, but said statutory language cannot be interpreted to embody the authority to delegate the right to vote to private citizens.

Duly elected or appointed “supervisors” as defined in 12 M.R.S.A. § 3 (5) are solely empowered to act as the governing body of “districts” and do not possess the authority to delegate such governing power to private individuals.

PHILLIP M. KILMISTER  
Assistant Attorney General

January 13, 1969  
Mental Health and Corrections

William E. Schumacher, M.D., Acting Commissioner

Status of State Employees Walking Off Job

*SYLLABUS:*

The State of Maine has no collective bargaining or any other type of Labor Relations Contract with any Labor Union. Any State employees, members of a Union, walking off their jobs may be regarded as individuals who have absented themselves from their work without leave under Personnel Rule 11.4, and disciplinary action may be taken against them.

*FACTS:*

The Personnel Department of one of the institutions under the control of the Department of Mental Health and Corrections in anticipation of the possibility that employees of that institution, members of a Labor Union, may strike that institution, has requested the Opinion of this office relative to the authority of an institution to deal with such move on the part of the Union Members.

*QUESTION:*

Has a State institution authority to regard employees, members of a Labor Union, who walk off their jobs, as employees who have absented themselves from work without leave?

*ANSWER:*

Yes.