

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

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.

REASON:

The State of Maine has no collective bargaining agreement or any other type of Labor Relations Contract with any Labor Union, with respect to any State employees.

It is, therefore, our Opinion that if employees of a State institution who are members of a Labor Union walk off their jobs in concert or otherwise, such employees act within the contemplation of the Personnel Law and Rules as individuals, and may be regarded by the institution as employees who have absented themselves from their jobs without leave. For authority we cite the provisions of Personnel Rule 11.4, which reads as follows:

“Any absence of an employee from duty that is not authorized by a specific grant of leave of absence under the provisions of these rules or taken as earned vacation leave about to expire, shall be deemed to be on absence without leave. Any such absence shall be without pay and may be made grounds for disciplinary action. In the absence of such disciplinary action any employee who absents himself for three consecutive days without leave shall be deemed to have resigned, but such absence may be covered by a subsequent grant of leave without pay in accordance with Rule 11.14.”

Under this Rule, disciplinary action may be taken against such employees for walking off their jobs.

Under Title 5, § 678, repealed and replaced by P.L. 1968, c. 539, § 2:

“An appointing authority may dismiss, suspend or otherwise discipline an employee for cause. This right is subject to the right of appeal and arbitration of grievances set forth in sections 751 to 753.”

Absence without leave, in our view, would constitute “cause” under the Statute.

In the absence of disciplinary action against any such employee, and in the event that such employee shall continue in absence from work by way of walk-off for a period of three days he may be regarded as having resigned from his employment.

COURTLAND D. PERRY
Assistant Attorney General

January 15, 1969
Water and Air Environmental
Improvement Commission

R. W. Macdonald, Chief Engineer

38 M.R.S.A. § 413 and changes of ownership

SYLLABUS:

The legislative license granted by the last sentence of 38 M.R.S.A. § 413 (1964) accrues only to the owners of the manufacturing, processing and industrial plants and establishments discharging prior to August 8, 1953, and does not pass to successive owners of the facilities from whence the discharge emanates, either as a matter of law or by a purported assignment.

FACTS:

Prior to August 8, 1953 Corporation A operated a manufacturing plant which