

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

campaign deficits and to assist in assuring a (national political party) victory in Maine in 1970". It appears that any funds raised in excess of those needed to defray campaign deficits will be donated to the state political party committee.

QUESTION:

Is the committee a "political committee" required to register, under 21 M.R.S.A. § 1393 (1964), with the Secretary of State?

ANSWER:

Yes.

OPINION:

A "political committee" is defined in 21 M.R.S.A. § 1 (24) (1964) as:

" . . . 2 or more persons associated for the purpose of promoting or defeating a candidate, party or principle."

The proposed purposes of the committee, insofar as they relate to raising money to pay off campaign debts, are not purposes of "promoting or defeating a candidate, party or principle". However the stated purpose of "assuring a (party) victory in Maine in 1970" is clearly such a purpose. Therefore, the fund-raising committee must register.

ROBERT G. FULLER, JR.
Assistant Attorney General

March 24, 1969
Augusta State Hospital

John C. Patterson, M.D., Superintendent

Clarification of Overtime Status Under Federal Fair Labor Standards Act –
Amendments 1966

SYLLABUS:

Overtime compensation payable under the Fair Labor Standards Act to covered employees of the Augusta State Hospital is computed on the basis of a 40 hour workweek, i.e., hours worked over 40 hours are compensable at time and one-half. A workweek within the contemplation of the Fair Labor Standards Act is any period consisting of 7 consecutive 24 hour days and need not be computed as a calendar week.

FACTS:

Employees of the Augusta State Hospital have inquired into whether overtime is payable for any hours worked over 8 in any one day, or whether overtime is payable for only hours worked beyond 40 hours in a workweek. The Augusta State Hospital has a fixed workweek running from midnight Saturday to midnight the following Saturday.

QUESTION:

Is overtime payable to covered employees of the Augusta State Hospital under the Fair Labor Standards Act for only those hours worked beyond 40 in any workweek, and is the fixed workweek of the Augusta State Hospital appropriate under the Act?

ANSWER:

Yes, to both parts of the question.

REASON:

The Code of Federal Regulations bearing upon the overtime provisions of the Fair Labor Standards Act provides answers to the issues raised here and are considered by this office to be controlling; the provisions are quoted below:

29 c.f.r. "778.102 Application of overtime provisions generally

Since there is no absolute limitation in the Act on the number of hours that an employee may work in any workweek, he may work as many hours a week as he and his employer see fit, so long as the required overtime compensation is paid him for hours worked in excess of the maximum workweek prescribed by section 7(a). The Act does not require, however, that an employee be paid overtime compensation for hours in excess of eight per day, or for work on Saturdays, Sundays, holidays or regular days of rest. If no more than the maximum number of hours prescribed in the Act are actually worked in the workweek, overtime compensation pursuant to section 7(a) need not be paid. Nothing in the Act, however, will relieve an employer of any obligation he may have assumed by contract or of any obligation imposed by other Federal or State law to limit overtime hours of work or to pay premium rates for work in excess of a daily standard or for work on Saturdays, Sundays, holidays, or other periods outside of or in excess of the normal or regular workweek or workday....."

29 c.f.r. "778.103 The workweek as the basis for applying section 7(a)

If in any workweek an employee is covered by the Act and is not exempt from its overtime pay requirements, the employer must total all the hours worked by the employee for him in that workweek (even though two or more unrelated job assignments may have been performed) and pay overtime compensation for each hour worked in excess of the maximum hours applicable under section 7(a) of the Act....."

The maximum hours applicable to covered State Hospital Employees under section 7(a) of the Act (29 USC, section 207(a), subsection 2) are 40 hours in a single workweek. This is applicable to the Augusta State Hospital, since it has not elected to go under the special provision of 29 USC, § 207 (j), permitting payment on the basis of 14 days and 80 work hours.

29 c.f.r. "778.104 Each workweek stands alone.

The Act takes a single workweek as its standard and does not permit averaging of hours over 2 or more weeks. Thus, if an employee works 30 hours one week and 50 hours the next, he must receive overtime compensation for the overtime hours worked beyond the applicable maximum in the second week, even though the average number of hours worked in the 2 weeks is 40. This is true regardless of whether the employee works on a standard or swing-shift schedule and regardless of whether he is paid on a daily, weekly, biweekly, monthly or other basis....."

29 c.f.r. "778. 105 Determining the workweek.

An employee's workweek is a fixed and regularly recurring period of 168 hours – seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. For purposes of computing pay due under the Fair Labor Standards Act, a single workweek may be established for a plant or other establishment as a whole or different work weeks may be established for different employees or groups of employees. Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of hours worked by him. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act....."

COURTLAND D. PERRY
Assistant Attorney General

April 1, 1969
Bureau of Taxation

To: Ernest H. Johnson, State Tax Assessor

Subject: Ammex Warehouse, Inc. – Property Taxes

SYLLABUS:

BONDED LIQUOR LOCATED IN WAREHOUSES IN MAINE, UNDER U. S. CUSTOMS CONTROL IS NOT SUBJECT TO PROPERTY TAXATION.

FACTS:

Ammex Warehouse, Inc., a non-resident corporation, operates a store in Van Buren for the purpose of selling tax-free liquor for export. It is assumed for the purposes of this opinion that the operation in Van Buren is similar to that in Calais: A customer enters the store, orders and pays for the liquor, receives a receipt, returns to his car, drives twenty-five feet or so and receives merchandise from store clerk who has carried package to the motor vehicle.

The operation of Ammex is subject to the Internal Revenue Code and the Customs Duties Laws of the United States. Some of the applicable statutory provisions will be quoted as follows:

"Distilled spirits on which the Internal Revenue Tax has not been paid or determined as authorized by law may, under such regulations as the Secretary or his delegate may prescribe, be transferred in bond between bonded premises in any approved container. For the purposes of this chapter, the removal of distilled spirits for transfer in bond between bonded premises shall not be construed to be a withdrawal from bonded premises." *26 U.S.C.A. § 5212.*

"All articles manufactured in whole or in part . . . materials subject to Internal-Revenue Tax, and intended for exportation without being charged with duty, and without having an Internal-Revenue Stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses