

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

FACTS:

The Division of Waterways, Park and Recreation Commission, has established marking systems on several lakes of the State, including Sebago Lake, and has prepared a navigational chart of Sebago as a service to the boating public. The nature of this type of publication, and its overall cost, precludes free distribution. A fee of \$.25 to cover the cost of printing and postage is proposed.

QUESTION:

Is 38 M.R.S.A. § 323 sufficient authority for charging a fee for this service?

ANSWER:

No.

OPINION:

A department of the State Government may not prepare and sell a publication to the public without express statutory authority to do so. See Attorney General Opinion dated July 18, 1968.

38 M.R.S.A. §323, as enacted by P.L., 1963, Ch. 367, provides that the Director of the Park and Recreation Commission may charge reasonable fees for the services provided in connection with boating facilities in the waters of the State. By P.L. 1965, Ch. 173, a new paragraph was added to § 323 providing that the Director may make rules for the uniform marking of the water areas of the State through placement of aids to navigation and regulatory markers.

The authority to make rules for such marking includes the authority to prepare and distribute such rules to the public. Nowhere in the statute, however, does there appear the authority to print and sell any publications, nor can any such authority be inferred. The "services" for which the Director is authorized to charge reasonable fees, as provided in the first paragraph of §323 would include launching ramps, parking sites and access roads as provided in § 321 and the navigational markers provided for in § 321 but not preparation of publications such as the proposed navigational chart.

LEON V. WALKER, JR.
Assistant Attorney General

William A. Garside, Director

August 15, 1969
Legislative Finance

SYLLABUS:

The setting of salaries of Legislative officers is a matter solely for the Legislature. Whether there is a repugnant conflict between a Senate Order and a Joint Order is a question of fact, not of law.

FACTS:

The Legislature has a number of employees. Some are employed by the House and some by the Senate. A Joint Order which reads:

“ORDERED, the House concurring, that there be paid to the officers of the Senate and House of Representatives as advance on account of compensation, amounts included in fortnightly lists, certified to the State Controller by the Secretary of the Senate and the Clerk of the House, respectively, and that the final payrolls of such officers at the end of the session bear the approval of the Joint Standing Committee on Appropriations and Financial Affairs.”

was passed in each house on January 2, 1969.

During the session some members of the Senate became concerned because some employees in that body received less pay than their counterparts in the House of Representatives.

On July 2, 1969, the Senate passed the following Senate Order:

“ORDERED, that the salaries of the officers of the Senate be adjusted to a level comparable to those paid to officers holding comparable positions in the House of Representatives, effective from the beginning of the regular session.”

QUESTIONS:

1. Is the enclosed Senate Order legal under the legislative procedure presently in effect?
2. Does the Appropriation Committee have the right to approve or disapprove retroactive pay for some members of the Senate staff?

ANSWERS:

1. See OPINION.
2. See OPINION.

OPINION:

The Joint Order dated January 2, 1969 expresses the Legislative opinion or will as to the method of payment of the compensation of its officers and employees. It does not state directly or indirectly what the compensation shall be nor how it is determined.

The Senate Order of July 1, 1969 attempts to set a rather vague and uncertain level of salaries, retrospectively, for officers of the Senate. Note the language “a level *comparable* to those paid to officers holding *comparable* positions in the House of Representatives”. (Emphasis supplied.) What is “comparable” is a question of fact. This office cannot provide an answer.

We have no knowledge as to the method used by the Legislature to determine salaries or compensation of officers or employees of the two Houses. We cannot, therefore, answer the first question as to the legality of the Senate Order dated July 1, 1969.

Under the Joint Order dated January 2, 1969 the final payroll must be approved by the Joint Standing Committee on Appropriations and Financial Affairs. As stated above, we have no knowledge as to the method used by the Legislature to determine salaries or compensation of officers or employees of the two Houses. We cannot, therefore, advise as to the authority of the Joint Standing Committee on Appropriations and Financial Affairs to approve or disapprove the final payroll of the Senate staff.

Additionally, the determination of the salary of Legislative officers is a matter solely for the Legislature to decide. We cannot find any legal questions requiring an opinion from this office.

GEORGE C. WEST
Deputy Attorney General