

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

Director of Personnel.

Title 5 M.R.S.A. § 753, subsection 5 provides as follows:

“5. Appeal to Director of Personnel. If the classified employee is dissatisfied with the decision, following a meeting with the department head, he shall appeal to the Director of Personnel who shall, within 6 working days, reply in writing, to the aggrieved employee and the department head involved in his decision, based on the state’s personnel law and rules.”

QUESTION:

Is the decision of the Director of Personnel that is provided for in 5 M.R.S.A. § 753, subsection 5, binding on State departments?

ANSWER:

Yes.

REASON:

The decision of the Director of Personnel must be based upon the State’s personnel law and rules (5 M.R.S.A. § 753, subsection 5). The rules in question are established by the personnel board and administered by the director (5 M.R.S.A. § 672).

The newly enacted State Employees Appeals Board law (5 M.R.S.A., Ch. 63), of which the aforementioned subsection 5 is a part, essentially provides for an appeal by an employee from a decision that is made *against* his interests. Indeed, the very title of the chapter bears out this theory. The intent of the chapter does not include the proposition that the State departments have a right to appeal.

Inasmuch as the Director of Personnel, acting under the overall direction of the personnel board, administers the personnel law and rules, his decisions are binding upon departments when personnel questions are involved. Of course, pure questions of law must be submitted to the Attorney General’s Department.

It is consequently my opinion that the decision of the Director of Personnel under 5 M.R.S.A. § 753, subsection 5, is binding on State departments unless and until appealed from under subsection 6 by the aggrieved employee.

HARRY N. STARBRANCH
Assistant Attorney General

October 15, 1969
Inland Fisheries & Game

Ronald T. Speers, Commissioner

Status of Commissioner as a Fish & Game Warden

SYLLABUS:

The Commissioner of Inland Fisheries and Game, who is appointed by the Governor and receives a salary set by statute, cannot be considered to be a Fish and Game Warden, who is appointed by the Commissioner under the Personnel Law, whose compensation is

under the Personnel Law, and who by statute can hold no other state office from which he receives compensation.

FACTS:

The Commissioner of Inland Fisheries and Game has general supervision of the administration and enforcement of the inland fish and game laws, which includes supervision and inspection of the warden service, and appointment of Wardens.

QUESTION:

May the Commissioner be considered to be a Warden?

ANSWER:

No.

OPINION:

Although under 12 M.R.S.A. § 1952, the Commissioner has “general supervision of the administration and enforcement of the inland fish and game laws,” including supervision of Wardens and inspection of the warden service, other provisions of these laws lead to the conclusion that he cannot be considered to be a Warden.

12 M.R.S.A. § 2001, provides that “the Commissioner shall appoint persons as fish and game wardens who shall have qualified under the written code prepared by the commissioner and approved by the Personnel Board. The compensation of the wardens shall be determined under the Personnel Law and shall not be more than one pay grade below that of the Maine State Police.”

Section 1951 provides for appointment of a Commissioner by the Governor with the advice and consent of the Council, who shall hold office for 3 years or until his successor is appointed and qualified, and further provides that he shall receive a stated annual salary and all necessary travel expenses.

It is also provided in § 2003 that Wardens appointed under the fish and game laws “shall hold no other state . . . office from which they receive compensation.”

The disparity between the provisions for appointment and compensation of wardens, and those pertaining to the Commissioner, together with the provision of § 2003 that a Warden cannot hold the position of Commissioner, force a conclusion that the Commissioner cannot be considered to be a Warden.

In your letter of October 1, 1969, you indicate that the duties and powers of Wardens devolve upon you through the office of the Commissioner. While the Commissioner has general supervision of the administration and enforcement of the fish and game laws, including Wardens and the Warden service, the actual enforcement of these laws is given to the Wardens by § 2001, and does not become a duty and power of the Commissioner by virtue of his office.

LEON V. WALKER, JR.
Assistant Attorney General