

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

November 5, 1969  
Forestry

Austin H. Wilkins, Commissioner

Public reserved lots

*SYLLABUS:*

The Forest Commissioner has no power under 30 M.R.S.A. § 4162 to authorize the use of a public reserved lot as a municipal dump.

*FACTS:*

The Selectmen of a municipality wish to make use of a public reserved lot as a municipal dump and have applied to the Forest Commissioner for permission to do so. It appears that such use has heretofore been made by the municipality.

*QUESTION:*

May the Forest Commissioner authorize the use of a public reserved lot as a municipal dump?

*ANSWER:*

No.

*OPINION:*

The powers of the Forest Commissioner with respect to public reserved lots appear at 30 M.R.S.A. § 4162. Under this statute, the Commissioner may under the direction of the Governor and Council sell timber and grass rights; lease campsites, mill privileges, dam sites, flowage rights and the right to set poles and to establish utility service; grant mining rights and the right to build and maintain public roads; and with the permission of certain officials sell timber and grass stumpage, and gravel for certain limited uses. No power is given to the Commissioner to grant a right to maintain a municipal dump on a public reserved lot.

The fact that the municipality has made use of the lot as a municipal dump is of no legal significance. Such use amounts to a trespass on state land; and causes no rights to accrue to the municipality as against the state.

ROBERT G. FULLER, JR.  
Assistant Attorney General

November 11, 1969  
Maine State Retirement System

E. L. Walter, Executive Secretary

*SYLLABUS:*

Only persons who are in fact receiving a retirement allowance that had been computed on the basis of a 5-year average highest compensation are entitled to a recomputation of benefits under the new subparagraph (5) of Section 6 of the Public

Laws of the State of Maine (1969), Chapter 415.

*FACTS:*

The new subparagraph (5) of Section 6 of the Public Laws of the State of Maine (1969), Chapter 415 states in part as follows:

“ . . . each person who is receiving a retirement allowance which had been computed on the basis of a 5-year average highest compensation shall be entitled to a recomputation of benefits based upon a 3-year average highest compensation but not less than an increase of 2% on the basic retirement allowance . . . .”

The Executive Secretary of the Maine State Retirement System in a memorandum dated October 21, 1969 relates in part as follows:

“There are 88 persons, former teachers, who had retired prior to the date that the two Systems were merged on July 1, 1947, and who had retired on length of service, that is 25, 30 and 35 years at minimum dollar amounts, and were not retired ‘on the basis of a 5-year average highest compensation.’ Further, there are 13 persons who are drawing retirement allowances now and who retired under Council Order and also did not retire ‘on the basis of a 5-year average highest compensation.’”

*QUESTION:*

Is the adjustment referred to above available to the 88 persons whose retirement allowance had not been computed on the basis of a 5-year average highest compensation?

*ANSWER:*

No.

*REASON:*

The above-quoted wording states in part that “each person who is receiving a retirement allowance *which had been computed on the basis of a 5-year average highest compensation* shall be entitled to a recomputation of benefits.” (Emphasis supplied.)

The words “each person who is receiving a retirement allowance” is modified by the wording “which had been computed on the basis of a 5-year average highest compensation.” Consequently, only persons who are in fact receiving a retirement allowance that has been so computed are eligible under the hereinabove-quoted wording to a recomputation of benefits of not less than an increase of 2% on the basic retirement allowance.

Under these circumstances, the 88 persons described under FACTS whose retirement allowance had not been computed on the basis of a 5-year average highest compensation would not be eligible for a recomputation based upon the wording of the statute quoted above.

HARRY N. STARBRANCH  
Assistant Attorney General