

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

these license provisions. The fact that the auctioneer is engaged by the Small Business Administration is of no relevant significance.

The exemptions from the licensing sections under 32 M.R.S.A. § 4001, sub-section 3 include:

“ . . . any person, partnership, association or corporation who as owner or lessor shall perform any of such acts . . . or . . . the regular employees thereof . . . where such acts are performed in the regular course of, or as an incident to the management of such property . . . .”

Since the auctioneer is not a regular employee performing these acts as an incident to the management of the subject property he would not qualify for this state exemption.

Counsel for the Small Business Administration has argued that the auctioneer is exempt from our State laws because his commission is paid by the Administration.

It is apparent that an independent auctioneer is not an authorized agent of the Small Business Administration, within the meaning of the following language from the Small Business Act:

“The Administrator is authorized, subject to the civil service and classification laws, to select, employ, appoint, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary to carry out the provisions of this Act; . . . ” 15 USCA § 624(a)

Whether or not an agent of the administration would be exempt from our real estate laws we need not now decide.

In conclusion, if an auctioneer is engaged in an activity that requires a license from the Maine Real Estate Commission he does not become exempt from the license requirements merely because he is auctioning property owned by the Small Business Administration.

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February 26, 1970  
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Per diem allowance for Interim Legislative Investigating Committee

*SYLLABUS:*

Members of an Interim Legislative Investigating Committee may not receive a per diem allowance unless specific provision is made therefor in order creating the committee.

*FACTS:*

An Interim Legislative Investigating Committee was created by a joint order (S.P. 633) of the Special Session of the 104th Legislature to investigate certain aspects of the Maine Industrial Building Authority and Maine Sugar Industries. No provision is made in the order for compensation or expenses of members of the committee.

*QUESTIONS:*

1. Can the State Controller pay a per diem amount to members of the reference committee?
2. Is it proper for members of the committee to vote themselves a per diem amount?

*ANSWERS:*

Members of the Interim Legislative Investigating Committee may not receive a per diem amount of compensation but may receive their expenses.

*REASONS:*

The compensation of members of the Legislature is controlled both by the Constitution and by statute.

The Constitution of Maine, Article IV, Part Third, Section 7 provides:

“The Senators and Representatives shall receive such compensation, as shall be established by law; but no law increasing their compensation shall take effect during the existence of the Legislature, which enacted it. The expenses of the Members of the House of Representatives in traveling to the Legislature, and returning therefrom, once in each week of each session and no more, shall be paid by the State out of the public treasury to every member, who shall seasonably attend, in the judgment of the House, and does not depart therefrom without leave.”

The thrust of the constitutional provision is that compensation of members of the Legislature shall be that established by law. The pertinent statutory provisions are Title 3 M.R.S.A. § 2 and 3. Section 2 provides for a salary for members of the Legislature for regular session, together with their expenses, and in addition, provides a per diem amount for special sessions of the Legislature.

Section 3 provides:

“The President of the Senate, the Speaker of the House of Representatives, the floor leaders and their assistants may meet when the Legislature is not in session at any convenient location within the State to arrange for legislative activities. They shall be reimbursed for their actual expenses with the exception of mileage which shall be paid at the same rate received by state employees.

“*The expenses of members of joint interim committees meeting within the State shall be reimbursed as provided in the preceding paragraph within the limitation of the committee appropriation.* The expenses of members of the Legislature, excepting members of the Legislative Research Committee on committee duties, traveling outside the State shall be reimbursed as provided in the preceding paragraph, provided that the expense vouchers are approved by the President of the Senate or the Speaker of the House of Representatives.” (Emphasis supplied)

The reference committee is a “joint interim committee” by its creation and by the terms of the order.

There is no specific provision contained in the statutes for a per diem amount of compensation for members of the Legislature serving on joint interim committees. The only provision is that of section 3 supra providing that the *expenses* of members of such a committee shall be reimbursed. (Compare, however, Title 3 M.R.S.A. §163, subsection 14 clearly providing for a per diem compensation to members of the Legislative Research

Committee.)

The general rule articulated by legal encyclopedias is that a legislator's right to compensation arises as an incident of his office and is controlled by constitutional and statutory provisions. It has also been held that members of a legislative committee are not entitled to a per diem amount for services rendered after adjournment even when they may be so entitled during the session. The basis of the rule is that the Legislature may properly fix, if it deems it necessary, the amount of any compensation. See 81 C.J.S., *States*, Sec. 36.

In the absence of a legislative declaration of payment of per diem, it is our opinion that members of the committee may receive only their expenses.

We are of the opinion that they may not vote themselves a per diem amount of compensation. Cf. *Opinion of the Justices*, (1953) 148 Me. 528, 96 A.2d 749; *Opinion of the Justices*, (1957) 152 Me. 302; 140 A.2d 762 and *Opinion of the Justices* (1963) 159 Me. 77, 190 A.2d 910.

JON R. DOYLE  
Assistant Attorney General

March 17, 1970

Charles F. Trumbull, Member of the  
Executive Council

Jurisdiction of Governor and Council to Authorize Transfer of Funds from Bond Issue Account to General Fund Appropriation Account.

*SYLLABUS:*

The Governor and Council are without jurisdiction to authorize the transfer of funds from a Bond Issue Account to a General Fund Appropriation Account.

*FACTS:*

There is pending before the Governor and Council a Council Order proposed to authorize the transfer of funds from a Bond Issue Account of the Department of Mental Health and Corrections, viz., General Fire Prevention and Safety Projects \$100,000, enacted by the 104th Legislature by P&SL 1969, Chapter 194, ratified by the electorate, to a General Fund Appropriation Account of the Augusta State Hospital, viz., Fire Prevention and Safety Projects \$42,000, enacted by the 103rd Legislature in Special Session, P&SL 1967, Chapter 191, Part B.

*QUESTION:*

May the Governor and Council properly and legally transfer funds from a Bond Issue Account to a General Fund Appropriation Account?

*ANSWER:*

No.