

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

to meet obligations, the board of trustees shall have the right to *reduce* the rate of contribution. The board of trustees shall have the right to *increase* the rate of contribution after a reduction has been made, but shall not *increase* said rate to more than ¼ of 1%.” (Emphasis supplied).

“7 C. Should the actuary determine that this fund is larger than necessary to meet obligations, the board of trustees shall also have the right to *increase* the rate of contribution after a reduction has been made but shall not *increase* said rate to more than ½ of 1%.” (Emphasis supplied.)

In §1062 the Legislature saw fit to spell out the power of the Board to *increase* as well as to *decrease* contributions. Since it did not do so in § 1095, no such power exists and cannot be exercised.

WARREN E. WINSLOW, JR.  
Assistant Attorney General

May 29, 1970  
Employment Security Commission

James C. Schoenthaler, Chairman

*SYLLABUS:*

The administration of the Employment Security Law is the responsibility of a majority of the commissioners and not the responsibility of any one individual commissioner.

*FACTS:*

Recently it has been believed that the three man Employment Security Commission is a cumbersome method of administering that agency. To that end an attempt has been made to have two members agree that the complete administration of the agency be placed in the hands of the chairman. This attempt has not been successful.

*QUESTIONS:*

1. When the Maine Employment Security Law says “it shall be the duty of the commission to administer this chapter,” does the word commission mean three Commissioners individually or does it mean the single majority voice of the three Commissioners?

2. Can the Commission delegate power and authority as it deems reasonable and proper for the effective administration of the law?

3. Does the law permit individual Commissioners, as individuals, to exercise authority, control or direction over agency personnel or is each Commissioner bound by the organizational structure and methods of procedure determined by the majority voice of the three Commissioners?

*ANSWERS:*

1. Majority of the Commissioners.
2. Within limits it may delegate power and authority.
3. Same as 1.

*REASONS:*

It is indeed unfortunate that in writing laws more care and thought cannot be given to the language used. In 26 M.R.S.A., Chapter 13, the word "commission" is used frequently. It is defined in §1043, subsection 7, as "the Employment Security Commission." The Maine Employment Security Commission consists of 3 members. 26 M.R.S.A. §1081. It would seem from these 2 sections that the word "commission" refers to the 3 persons who are appointed by the Governor. However, a reading of Chapter 13 shows that such is not the case. The word may also refer to the whole agency. For examples, see second sentence § 1044, subsection 2, "any proceeding before the commission"; in most instances when used in §1193; §1221 in several places as subsection 3, A, 6, and 7; and § 1222. There may be other examples.

The Chairman of the Commission is asking the meaning of the word "commission" in the first sentence of 26 M.R.S.A. § 1082, subsection 1. The sentence reads,

"It shall be the duty of the commission to administer this chapter."

In this sentence the word "commission" refers to the 3 members appointed by the Governor in accordance with § 1081 subsection 1. The "commission" acts by a majority vote. This is stated in 1 M.R.S.A. § 71, subsection 3:

"Words giving authority to 3 or more persons authorize a majority to act, when the enactment does not otherwise determine."

26 M.R.S.A. Chapter 13, does not "otherwise determine." In fact, the language of §1081, subsection 3, confirms the general rule.

The Commission is authorized to delegate some of its powers and duties to subordinates. §1082, subsection 4, note particularly the second sentence:

"The commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this chapter, and . . ."

The answer to the third question is the same as the answer to number 1. The commission acts by a majority of its members. Allowing 3 commissioners to each go his own way could soon result in utter chaos.

GEORGE C. WEST  
Deputy Attorney General

May 29, 1970  
Environmental Improvement Comm.

George C. Gormley, Supervising Engineer

State grants to federally funded construction

*SYLLABUS:*

1. Title 38 M.R.S.A. § 411 (1) requires some federal funding in order than municipal pollution abatement facilities may qualify for State grants.

2. Title 38 M.R.S.A. § 411 (2) is read without reference to § 411 (1) requirements regarding federal funding, but contains its own prerequisite that State advancement must be in anticipation of federal reimbursement.

*FACTS:*

Title 38 M.R.S.A. § 411 (1) (1964) authorizes State contribution to municipal