

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

a town liable to repay money borrowed and expended for the town by a town officer or agent, the municipality must have previously authorized or subsequently ratified the borrowing by vote at a legal town meeting upon a sufficient article in the warrant. Extending the meaning of the clause to the several matters recited in the municipal fiscal provisions of the statutes, thus calling for the printing of such fiscal questions on the ballot, would require that all town meeting action be conducted under the secret ballot provisions; not just the town's election of officers. Moreover, such an interpretation would render the provisions of 30 M.R.S.A. § 2061, 4 (petition procedure for placing an article on the ballot) a nullity because everything coming before the voters would appear on the ballot.

JOHN W. BENOIT, JR.
Deputy Attorney General

July 7, 1970
Mental Health and Corrections

G. Raymond Nichols, Director
Probation and Parole

Commutation Power of Governor and Council

SYLLABUS:

Although, under the commutation power vested in the Governor and Council they can not per se change a felony to a misdemeanor, they can commute a sentence for a felony to provide for eligibility for parole hearing equivalent to that applicable to a sentence following conviction for commission of a misdemeanor, such reduction of period of confinement being entirely within the commutation power.

FACTS:

One, Howard V. Alley, was convicted of possession of a narcotic drug under 22 M.R.S.A. 1964, § 2362. At the time of commission of the offense it was, under that section, a felony. Following conviction in the Superior Court and pending his appeal to the Supreme Judicial Court the 104th Legislature revised the above statute by P.L. 1969, Chapter 433, making such offense a misdemeanor.

The Supreme Judicial Court upheld Mr. Alley's conviction and he is currently serving a sentence at the Men's Correctional Center for a crime which, as above stated at the time of commission was a felony. Mr. Alley, by his attorney, has petitioned the Governor for commutation of his sentence in view of the legislative revision of the statute under which the crime of which Mr. Alley was convicted, is now a misdemeanor. Specifically, Mr. Alley has asked the Governor with the advice and consent of the Council to commute his sentence from a felony to a misdemeanor.

QUESTION:

Although, without authority to change the designation of the offense, has the Governor with the advice and consent of the Council authority to commute the sentence in question, so that the period of confinement prior to parole eligibility, may be equivalent to the period of confinement applicable to a sentence following conviction for the commission of a misdemeanor?

ANSWER:

Yes.

REASON:

The specific request of the petitioner, Howard V. Alley, that the Governor with the advice and consent of the Council alter the sentence which he is serving, from one for the conviction of the commission of a felony to one for conviction for the commission of a misdemeanor can not be granted per se, since the request calls for action to be taken by the Governor unrelated to the power of commutation of sentence, viz., the changing of one class of offense to another – felony to misdemeanor – a legislative function.

Pursuant to the commutation power possessed by the Governor, he, with the advice and consent of the Council can in substance grant the request of the petitioner, if in his judgment the request merits such determination. Under 34 M.R.S.A. § 1673 eligibility for parole hearing in the case of a felony arises prior to one year of confinement and in the case of a misdemeanor prior to six months of confinement. The Governor may commute Mr. Alley's sentence by providing that he shall be eligible for parole hearing upon completion of six months of confinement, resulting in treatment equivalent to that to which a misdemeanant is entitled. The total sentence does not appear to be in question here, since every sentence to the Men's Correctional Center, whether for a misdemeanor or a felony, is indeterminate to three years.

COURTLAND D. PERRY
Assistant Attorney General

July 9, 1970
Labor & Industry

Madge E. Ames, Dir. Minimum Wage

Applicability of Maine Labor Laws to Civilian Employer on a Military Base.

SYLLABUS:

The State of Maine does not have jurisdiction to enforce its labor laws on land that has been ceded to the exclusive jurisdiction of the United States Government.

FACTS:

A civilian employee operates a beauty parlor on Loring Air Force Base, Maine. The shop is located on the base in the Base Exchange, Building 5300. The records of the U.S. Air Force indicate that the site on which the building is located was purchased by the United States Government, and exclusive jurisdiction was accepted by the U.S. Air Force from the Governor of Maine on May 16, 1950.

The employee referred to is not paying the employees at the shop the minimum and overtime wages as required by Title 26 M.R.S.A. § 664.

QUESTION:

Must a civilian employer on a military base comply with Maine minimum wage laws?