

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

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?

ANSWER:

No.

REASONING:

The law in Maine as applied to these facts is best defined by *Berube v. White Plains Iron Works, Inc.* 211 F.Supp. 457 (1962). The facts in that case involved the issue of State jurisdiction over a tort occurring on Loring Air Force Base and whether the tort-feasor was doing business in the State. The Court said:

“Loring Air Force Base was established some years prior to the accident at which time there was in effect a statute by which the State of Maine ceded to the United States exclusive jurisdiction over lands which it might take for constitutional purposes. Such a grant results in a transfer of sovereignty over the ceded land to the United States . . . Territorial jurisdiction in such a case is vested in the United States, and State regulation of activities upon such land is illegal.”

The statutes of cession referred to above were Me. Rev. Stat. Ch. 2 § § 10, 11 (1930), Me. Rev. Stat. Ch. 1 § 11, 12 (1944) and Me. Rev. Stat. Ch. 1 § 9 (1954). These sections were subsequently repealed by P.L. 1959, Ch. 213 § 1 now 1 M.R.S.A. § § 8-10 (1964). The present state law, however, does not redefine the issue of jurisdiction; but only states the manner in which land in the future will be ceded to the U.S. Government. The exclusive jurisdiction of the United States in Loring Air Force Base vested under the prior acts and cannot be subsequently modified without concurrence of the United States. *In Re Ladd*, 74 Fed. 31 (Neb. 1896).

The interpretation by the District Court in *Berube* agrees with prior Maine case law on this subject. In *Brooks Hardware Co. v. Greer*, 111 Me. 78, 87 A. 889 (1913) the court said that “the effect of a cession of jurisdiction over certain territory within a state to the United States, by consent of the state, reserving to the state only concurrent jurisdiction to serve civil and criminal processes therein, is to put that territory under the exclusive jurisdiction and dominion of the United States, with the single exception expressed, at least when the property is purchased for the constitutionally specified purposes.”

In our case *Berube*, supra, recognized that the acquisition of Loring Air Force Base was for a “constitutionally specified purpose.” Those purposes are spelled out in Art. I, Section 8, Clause 17 of the United States Constitution. In view of the above interpretation, the State of Maine may not constitutionally exercise its jurisdiction with regard to its labor laws on Loring Air Force Base.

JOHN M. R. PATERSON
Assistant Attorney General

July 14, 1970
Aeronautics

Linwood F. Wright, Director

Possible revocation of Aircraft Dealers Registration.

SYLLABUS:

An individual cannot retain an aircraft dealer's registration certificate under the terms