

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

and thus the Commission has no “jurisdiction” over “private memorials”; (2) 12 M.R.S.A. § 601, subsection 1 defines “memorials” to include only land and buildings established “for public use”; and (3) in order to “aset apart and publicly proclaim areas of land in this State including improvements, or other structures thereon, . . . as . . . memorials” the Commission must have acquired “title”<sup>3)</sup> to the said land and structures. (See 12 M.R.S.A. § 602, subsection 3.)

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January 8, 1971  
Labor and Industry

Madge E. Ames, Director  
Div. of Minimum Wage

Farnsworth Library and Art Museum

*SYLLABUS:*

Employees of the Farnsworth Library and Art Museum are “engaged in . . . a program controlled by an educational non-profit organization”, provided that their employment directly related to the basic functions of the organization.

*FACTS:*

The William A. Farnsworth Library and Art Museum, Rockland, Maine, is a non-profit organization offering to the general public the opportunity to view works of art and a reference library. The museum employs certain personnel without paying minimum wage. Title 26 M.R.S.A. §624 prescribes the minimum wage to be paid “employees”. Section 663 (3) (E) exempts from the definition of “employee”

“Any individual engaged in the activities of a public supported non-profit organization or in a program controlled by an educational non-profit organization . . . .”

*QUESTION:*

Are employees of the Farnsworth Museum “engaged in . . . a program controlled by an educational non-profit organization”?

*ANSWER:*

Yes, provided their employment directly relates to the basic functions of the organization.

3) Acquisition of an “interest” or “easement” by the Commission would not be acquisition of “title”. See “easement”, “interest” and “title”, *Black’s Law Dictionary*, pp. 599, 950 and 1655 (4th ed. 1951).

REASONING:

Though issue of whether a museum or library is an educational organization or institution has not been decided in Maine case law, numerous citations exist from other jurisdictions which define museums and libraries as educational. In fact, this appears to be the almost unanimous view of those courts that have considered the question: *In Re Arnot's Estate*, 130 N.Y.S. 499 (1911); *People ex. rel. Frick Collection v. Chambers*, 91 N.Y.S.2d 525 (1959); *United States v. Proprietors of Social Law Library*, 102 F.2d 481 (1st Cir. 1939); *Inhabitants of Town of Essex v. Brooks*, 41 N.E. 119 (Mass. 1895); *Board of Trustees of Newport Public Library v. City of Newport*, 187 S.W.2d 806, 300 Ky. 125 (1945) and *Tomay et al. v. Crist*, 226 P. 156, 75 Colo. 437 (1924). As the Court stated in *Matter of Moses*, 123 N.Y.S. 443:

“educational is not used in its meaning of instruction by school, college, or university, which is a narrower and more limited meaning of the word (Century Dictionary), but in its broader signification as the act of developing and cultivating the various physical, intellectual and moral faculties, toward the improvement of the body, the mind and the heart.” at p. 446.

The Court in *Tomay et al. v. Crist*, supra, aptly summarized the decisions on this issue when it said:

“That a library association is educational and therefore within the terms of the statute hardly requires the citation of authorities.”

The mere fact that such questions have been decided in cases involving tax law appears to be irrelevant to the substance of such decisions.

The only question remaining is whether the employee is engaged in a “program controlled” by the Farnsworth Library and Museum. It is clear that the term “program” was not intended to mean a particular course of study or a general curriculum leading to a degree. Rather, the term “program” is used in the sense of “activity” as mentioned in the same sentence with reference to “public-supported non-profit organizations”. In fact the two terms appear to be substantially synonymous. Since the normal “program” of the museum includes librarian, teaching, lecture and related “activities”, the requirements of § 663 (3) (E) are satisfied. Such employees are not covered by the minimum wage requirements of 26 M.R.S.A. §664.

However, the statute in question does not exempt *all* employees of educational non-profit organizations, but only those engaged in a “program controlled by” such an organization. There is a significant difference. It is apparent that the statutes does not intend to exclude employees engaged in janitorial, custodial or maintenance capacities, but rather only those whose employment directly relates to the basic museum and library functions of the organization. In each case a determination must be made as to whether the individual employee is engaged in the basic activity referred to, or whether in fact his type of work is entirely unrelated to the purpose of the organization. Since no specific facts regarding an individual employee have been presented, we do not render an opinion on that issue.

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