

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

ANSWER:

No.

REASON:

The Legislature has provided that:

“Any member who has served as a member of either the House of Representatives or the Senate, or as a member of the Executive Council of the State of Maine, shall be entitled to receive the appropriate creditable service for such legislative or Executive Council service.” 5 M.R.S.A. § 1094 (3).

The Justice who has applied for membership based on his service in the legislature and on the Executive Council is applying for credit for service performed prior to the effective date of the above quoted legislation. The above statute refers to “Any member who . . .”. “Member”, for purposes of the Retirement System, is defined as:

“12. Member. ‘Member’ shall mean any *employee* included in the membership of the Retirement System, as provided in section 1091.” 5 M.R.S.A. § 1001.

“Employee” is then defined as:

“10. Employee. ‘Employee’ shall mean any regular classified or unclassified officer or employee in a department . . . but shall not include any Justice of the Superior Court . . . who is now or may be later entitled to retirement benefits under Title 4, section 5 . . .”. 5 M.R.S.A. § 1001.

The Justice in question could not be an employee because he is either “now or may be later entitled to retirement benefits under Title 4 . . .”. Therefore, he is not now nor may he later become a “member” for the purposes of Section 1094, subsection 3 quoted above.

A Justice of the Superior Court may not participate in the State Retirement System while at the same time participating in the Retirement Plan, for Superior Court Justices.

CLAYTON N. HOWARD
Assistant Attorney General

August 6, 1971
Aeronautics

Linwood F. Wright, Director

Regulations of Augusta State Airport.

SYLLABUS:

The Director of Aeronautics may establish regulations for the Augusta State Airport governing aircraft traffic patterns, aircraft surface movement, aircraft parking and motor vehicle operation.

FACTS:

The Department of Aeronautics desires to establish certain rules and regulations for the Augusta State Airport. The rules and regulations would include, but not be limited to, those relating to aircraft traffic patterns, aircraft surface movement, aircraft parking

and motor vehicle operation, both on the airfield and off the airfield on airport property.

QUESTIONS:

1. Do the statutes relating to the Department of Aeronautics (Title 6 M.R.S.A. § § 1, et seq.) allow the promulgation of regulations for:

- A. aircraft traffic patterns;
- B. aircraft surface movement;
- C. aircraft parking; and
- D. motor vehicle operation,

at the Augusta State Airport, both on the airfield and off the airfield, on airport property.

2. How may the appropriate regulations be promulgated?

3. Are the Director of Aeronautics and the Inspector of Aeronautics authorized to enforce motor vehicle regulations on airport property, assuming they can be validly promulgated?

ANSWERS:

- 1. Yes.
- 2. See Opinion.
- 3. See Opinion.

REASONS:

The pertinent statutes are as follows:

“The director shall administer the laws relating to aeronautics and shall make such rules and regulations concerning air traffic, not inconsistent with federal regulations covering aeronautics, as may be necessary to promote public safety and the best interests of aviation in the State.

“The director shall supervise and control all state airports and shall make such rules and regulations concerning the use of the said airports and their facilities as he deems necessary for the efficient management thereof and the development of aviation” *Title 6 M.R.S.A. § 12.*

With respect to enforcement of statutes, rules and regulations, the statutes provide as follows:

“Inspectors, when so designated by the director, shall have, in any part of the State, the same authority to enforce and to make arrests for the violation of any provision of chapters 1 to 13 or any rule and regulation promulgated thereunder as sheriffs, policemen and constables have in their respective jurisdictions.” *Title 6 M.R.S.A. § 201.*

1. *May rules and regulations be promulgated for the Augusta State Airport covering aircraft traffic patterns, aircraft surface movement, aircraft parking and motor vehicle operation both on the airfield and off the airfield on airport property?*

The statutes provide that the Director shall make rules and regulations concerning “air traffic” (apparently at any airport) and the use of “airports” and their “facilities” (at State airports). (*Title 6 M.R.S.A. § 12*) The question is whether the language of the statute is broad enough to include the reference regulations.

“Traffic” has been defined as:

“. . . the passing to and fro of persons, animals, vehicles or vessels along a route of transportation, as along a street” *Black’s Law Dictionary, 4th Ed.*

“Airport” is defined in the statute as follows:

“Airport means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, any appurtenant areas which are used or intended for use, for airport buildings, other airport facilities, rights of way, together with all airport buildings, wharfs and facilities thereon.” *6 M.R.S.A. § 3, sub-§8.*

“Facilities” is not defined in the statute, but generally, “facilities” are defined as:

“That which promotes the ease of any action, operation, transaction or course of conduct.” See *Black’s Law Dictionary, 4th Ed.*

The word has been applied to land reasonably necessary for the operation of a railroad and accommodation of patrons. *16 Words and Phrases “Facilities”* citing *Munoz v. Porto Rico Railway Light and Power Company, CCA Puerto Rico, 74 F.2d 816, 821.* It has been applied to barracks for Air Force personnel at an airport. *3 Words and Phrases “Airport Facilities”* citing *National Aircraft Maintenance Corp. v. U.S., 171 F. Supp. 946, 949.*

The statute clearly would allow the promulgation of regulations governing “air traffic” patterns. Too, the meaning of air traffic is broad enough to include aircraft surface movement and aircraft parking. In any event, the remaining language of the statute referring to “airports” and “facilities” appears to encompass those areas of regulation including motor vehicle operation. The sense of the statute indicates that the Director is to “supervise” and “control” airports and their facilities. We read this to refer to all necessary incidents to the operation of airports. This conclusion is reinforced by a statement of purpose of the aeronautics laws as being for “. . . the protection and promotion of the public interest and safety in connection with the operation of aircraft”. (*Title 6 M.R.S.A. § 2, sub-§4.* See also *Title 6 M.R.S.A. § 2, sub-§3.*) It is important to the safety of the public and to the operation of aircraft to control the operation of motor vehicles on airport property.

We interpret the noted provisions of reference § 12 as giving the Director of Aeronautics authority to promulgate rules and regulations concerning aircraft traffic patterns, aircraft surface movement, aircraft parking and motor vehicle operation on airport property. Although the question is not posed, we advise that “motor vehicle operation” would include parking.

It should be noted that any regulation concerning air traffic promulgated under the first-above-cited portion of § 12 must not be inconsistent with federal regulations covering aeronautics and must be “necessary to promote public safety and the best interests of aviation in the State”. (See *Title 6 M.R.S.A. § 12*) Too, any regulations promulgated under the second above-cited portion of § 12 must, in the judgment of the Director, be necessary for the efficient management of airports and the development of aviation. (See *Title 6 M.R.S.A. § 12, 3rd paragraph*)

2. How may the appropriate regulations be promulgated?

There is no specific method provided in the statute for promulgating regulations. We would recommend generally following, insofar as possible, the guidelines in the statutes of Maine relating to the administrative code. (See *Title 5 M.R.S.A. Ch. 303*) Generally speaking, the code contemplates that prior to the adoption, amendment or repeal of a rule or regulation an agency shall so far as practicable publish or otherwise circulate notice of its intended action and afford interested persons opportunities to submit suggestions concerning the action. It also contemplates that prior to the adoption,

amendment or repeal of any rule or regulation that the agency is to submit the proposal to the Attorney General for approval as to form and legality. Thereafter, regulations are filed with the Secretary of State in the form prescribed by Title 5 M.R.S.A. § 2352.

We stress that the following of these provisions is not mandatory here. We suggest that these provisions would furnish a guideline for the necessary formality in promulgating the regulations. Of course, any regulations promulgated should be dated and signed by the Director and we would recommend that they be submitted to this office for approval as to form and legality in order to avoid any unnecessary enforcement difficulties.

3. *Who is authorized to enforce any motor vehicle regulations promulgated?*

With respect to enforcement of regulations promulgated by the Director, inspectors, when so designated by the Director, may have the authority to enforce rules and regulations. It appears that the Director does not have that enforcement authority. *Title 6 M.R.S.A. § 201.* (See also P.L. 1969, c. 590, § 7 repealing previous authority of Director.)

We note also chapter 404 of the Public Laws of 1971, which is not yet effective, provides in section 14 thereof that the Director shall have, in any part of the State, the same authority to enforce and make arrests for violation of any provision of chapters 1 to 15 or any rule or regulation promulgated thereunder as sheriffs, policemen and constables have in their respective jurisdictions. We add this as a caveat to our statement that the Director does not presently have that authority. This provision will become effective on September 23, 1971.

We have also examined Ch. 404 of the Public Laws of 1971 relating to changes in the aeronautics laws, which will become effective September 23, 1971, and with the exception of the above parenthetical comment, do not believe that any changes therein would work a change in the results herein reached.

JON R. DOYLE
Deputy Attorney General

August 11, 1971
Environmental Improvement Comm.

William R. Adams, Director

Use of proceeds from certain bond issues

SYLLABUS:

The proceeds of the bond issues authorized by Me. Priv. & Spec. Laws 1965, c. 235 and Me. Priv. & Spec. Laws 1969, c. 181 may not be used to finance the development of guidelines for administering Me. Public Laws 1971, c. 535.

FACTS:

Me. Public Laws 1971, c. 535, directs Environmental Improvement Commission, in concert with the Maine Land Use Regulation Commission, and after consultation with the State Planning Office, to adopt suitable zoning ordinances for the shoreland areas of those municipalities which, by June 30, 1973 have either failed to adopt such ordinances or have adopted ordinances which, in the judgment of the two Commissions, are lax and permissive.