

# MAINE STATE LEGISLATURE

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October 9, 1973

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Public Safety

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SYLLABUS:

A Commissioner of the Maine Law Enforcement and Criminal Justice Academy is an officer under this State. He must take the oath prescribed by the Constitution, Article IX, Sec. 1. A non-resident cannot take that oath.

FACTS:

A question has arisen concerning the appointment of a non-resident as a member of the Board of Commissioners of the Maine Law Enforcement and Criminal Justice Academy. The question is whether such person may hold such a position.

QUESTIONS:

1. Is a Commissioner of the Maine Law Enforcement and Criminal Justice Academy an officer under this State?
2. May a non-resident appointee take the oath prescribed by Article IX, Section 1 of the Constitution?

ANSWERS:

1. Yes.
2. No.

REASONS:

The problem relates to the first paragraph of Article IX, Section 1 of the Constitution of Maine. That part of Section 1 provides that:

"every person, . . . appointed . . . to any judicial, executive, military or other office under this State, shall, before he enters on the discharge of the duties of his place or office, take and subscribe the following oath of affirmation: "I, \_\_\_\_\_ do swear that I will support the Constitution of the United States and of this State, so long as I shall continue a citizen thereof. So help me God."

The first question is whether a Commissioner of the Maine Law Enforcement and Criminal Justice Academy is an officer under this State. He is appointed but not to a judicial or military office. He may be appointed to some "other office under this State."

"We apprehend that the term 'office' implies a delegation of a portion of the sovereign power to, and possession of it by the person filling the office; and the exercise of such power within legal limits, constitutes the correct discharge of the duties of such office. The power thus delegated and possessed, may be three great departments, and sometimes to another; still it is a legal power, which may be rightfully exercised, and in its effects it will bind the rights of others and be subject to revision and correction only according to the standing laws of the State . . . . By giving this construction to the term 'office,' the meaning of the first section of the ninth article and fourth part of the Constitution appears plain, and the word office therein contained becomes intelligible as to the extent of its import." Opinion of the Justices, 3 Me. 483.

The duties of the Board of Commissioners are contained in 25 M.R.S.A. subsection 2803. They are to certify and set standards for certification of the graduates of the Academy; promulgate the standards for recruitment of Academy students and prescribe the content of the curriculum. Also determine the location of the Academy; establish fees for attendance.

The position of which the non-resident is appointed has:

"a legal power, which may be rightfully exercised, and in its effects it will bind the rights of others, and be subject to revision and correction only according to the standing laws of the State." Opinion of the Justices, supra.

Hence, we find that a Commissioner of the Maine Law Enforcement and Criminal Justice Academy is an office under this State.

"An office being a grant and possession of a portion of the sovereign power, it is highly proper that it should be guarded from abuse as far as possible; and to this end, that every person holding an office should be under the obligation of the oath in that section specified. It appears then, that every 'office' in the constitutional meaning of the term, implies an authority to exercise some portion of the sovereign power, either in making, executing or administering the laws." Opinion of the Justices, supra.

Having determined that such a Commissioner is any office, the holder must take the oath prescribed by Article IX, Section 1 of the Constitution of Maine. A non-resident cannot swear to support the Constitution of this State, "so long as I shall continue a citizen thereof." He is not a citizen of Maine and hence cannot make such an oath to be binding upon himself.

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