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Retrospective or Prospective Application of 16 M.R.S.A. §600 (Records of Arrest).

SYLLABUS:

16 M.R.S.A. §600, which deals with expungement of records of arrest, does not apply to acquittals and dismissals occurring prior to its effective date of October 1, 1969.

FACTS:

You have requested the opinion of this Office as to whether 16 M.R.S.A. §600, effective October 1, 1969, applies solely to acquittals and dismissals made after October 1, 1969, or applies as well to acquittals and dismissals made prior to that date.

QUESTION:

Does 16 M.R.S.A. §600 require the expungement from the records of any law enforcement agency having records of arrest or detention relating to the arrest of a person who has been acquitted of the crime charged or who has had the complaint, information or indictment against him dismissed, where the acquittal or dismissal occurred prior to the Act's effective date of October 1, 1969?

ANSWER:

No.

REASON:

16 M.R.S.A. §600 (Records of arrests) provides:

> "Whenever a person has been acquitted of a crime in any court or has had a complaint, information, or indictment against him dismissed by any court, the clerk of that court shall forward a certified copy of the docket entry of acquittal or dismissal to any law enforcement agency, including the State Bureau of Identification, having records of arrest or detention relating to the arrest of the person. Upon the receipt of the certified copy, each agency shall expunge from its records, excluding

> investigative and communication records, fingerprints and photographs, any reference to the arrest of the person on that charge. The State Bureau of Identification shall forward a copy of the docket entry to the Federal Bureau of Investigation.
>
> Any person who shall willfully violate this section shall be punished by a fine of not more than $50."

The primary function of statutory construction or interpretation is to ascertain legislative intent and to place upon the statute under consideration a construction or interpretation which best answers the intention which the legislature had in view. King Resources Co. v. Environmental Improvement Commission, Me., 270 A. 2d 863, 869 (1970).

During the Senate debate (see L.R. 1969, at 1853-1854) the possible costs in carrying out the administrative work necessitated by this Act were considered, and it was assumed that the costs of the first year were to be the same as for subsequent years. If this legislation were to be applied retroactively, the costs involved in initiating it would at least logically be greater. Thus the assumption that a uniform cost would apply suggests a prospective application.

Apart from this rather tenuous indicator, however, neither a review of the Act's legislative history nor an analysis of its language is helpful in establishing legislative intent. In consequence it is therefore necessary to turn to a consideration of certain fundamental rules of statutory construction.

It is a general rule of statutory construction that all statutes are to be construed as having only a prospective construction unless the purpose and intent of the legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used. Miller v. Falon, 134 Me. 145, 148, 183 A. 416, 417 (1936); Bowman v. Gever, 127 Me. 351, 354-355, 143 A. 272 (1928). See also, Attorney General's Report, 1959-60, at 68. In an Opinion of the Attorney General dated August 30, 1973 we recognized an exception with respect to the above where the legislation falls within the classification "remedial legislation" despite the fact we could find no pertinent Maine authority dealing with the application of the "remedial legislation" rule. With

respect to the Act here under consideration, however, it is not a purely remedial law because it contains a penalty provision. In consequence the general rule of non-retrospective operation of statutes appears more logically to control.

Finally, Clerks of Court and law enforcement agencies have treated this Act as prospective in effect since its enactment in 1969. Thus they have carried out a reasonable and practical interpretation of the Act and the Legislature has had adequate opportunity to witness and assess their interpretation. The Legislature's failure to act to change the interpretation is evidence that the Legislature has acquiesced in the interpretation. See Androscoggin Savings Bank v. Campbell, Me., 282 A. 2d 858 (1971).

In light of the above analysis, we are of the opinion that the Legislature intended that 16 M.R.S.A. §600 have a prospective operation.

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