

# MAINE STATE LEGISLATURE

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17 MRSA § 3206  
17 MRSA § 3205  
Bowling Alleys  
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STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL

30 December 1976

The Honorable Ross Green  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Representative Green:

This is in answer of your request for an opinion of the Attorney General on the following two questions:

1. Is it unconstitutional to compel prisoners of the county jails or state prison to work against their will?
2. If 17 MRSA §3206, relating to the operation of bowling alleys on Sunday, were repealed, what would be the standing of bowling alleys under 17 MRSA §3205?

Answer No. 1: It is not per se unconstitutional to require work for inmates who have been convicted of a crime and sentenced to a term of incarceration, though there are limits as to the type of work they may be required to perform. Pre-trial detainees may not be forced to work.

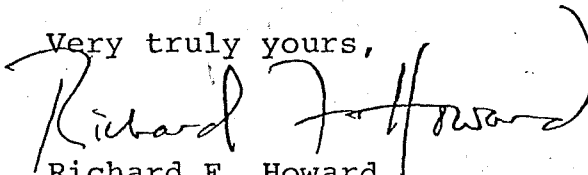
Employment of able-bodied prisoners of the Maine State Prison and the Maine Correctional Center in various work projects is already authorized by 34 MRSA §5. Convicted inmates of jails may now be sent to work under 34 MRSA §501. Federal courts have held that some type of forced labor for convicted prisoners does not per se violate the Thirteenth Amendment of the United States Constitution, Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970), affirmed 442 F. 2d 304 (8th Cir. 1971); Parks v. Ciconne, 281 F. Supp. 805 (W.D. Mo. 1968). The basis for this finding is the explicit exception in the Thirteenth Amendment's prohibition of involuntary servitude in cases of "punishment for crime whereof the party shall have been duly convicted." The language of the Amendment and rationale of the cases does not extend to pre-trial detainees who have not been convicted of a crime, See Parks v. Ciconne, supra at 808. The constitutional limitations on the type of work required

of convicted inmates would be that it not be so "shocking to the conscience" as to violate the prohibition of "cruel and unusual punishment" in the Eighth Amendment of the United States Constitution, Sostre v. McGinnis, 442 F. 2d. 178 (2d Cir. 1971). The Supreme Court has complicated the analysis of any particular practice by including penological considerations in that "the sanction imposed cannot be so totally without penological justification that it results in the gratuitous infliction of suffering," Gregg v. Georgia, 96 S. Ct. 2909, 2931 (1976), opinion of Mr. Justice Stewart. Such a limitation still leaves leeway for a reasonable work requirement for convicted inmates.

Answer No. 2: Repeal of 17 MRSA §3206 and reference thereto in 17 MRSA §3204 would allow unlimited operation of bowling alleys under 17 MRSA §3204. Bowling alleys would not be covered by 17 MRSA §3205.

The opening of business to the public on Sundays and holidays is limited to necessity, emergency, and charity by 17 MRSA §3204. The section then lists numerous types of businesses to which this limitation does not apply, including "sports and athletic events" and "recreational and amusement facilities." There is no direct reference to these terms in the legislative history, but it is our opinion that bowling alleys would be covered by one or both of these exceptions. The section goes on to provide that these exceptions shall not exempt businesses covered by sections 3205 and 3206 of the same title. 17 MRSA §3205 provides for a local option to allow certain sports events between certain hours on Sunday. 17 MRSA §3206 is a similar provision relating to bowling alleys. If the latter provision were repealed along with reference to it in section 3204, there would be no explicit reference to bowling alleys and they would be controlled by the exceptions to holiday closing in section 3204. Section 3205 would not apply, since by its terms it concerns only to "outdoor recreational or competitive amateur sport or game." (Emphasis supplied). The result would be that bowling alleys would be allowed to stay open on Sundays and holidays under 17 MRSA §3204.

Very truly yours,



Richard F. Howard  
Assistant Attorney General