

MAINE STATE LEGISLATURE

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32 M.R.S.A. 1000
32 M.P.S.A. 1570
32 M.P.S.A. 3302
34 M.P.S.A. 9751
34 M.P.S.A. 703
35 M.P.S.A. 811

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October 21, 1977

To: David Silsby, Director of Legislative Research

From: Donald G. Alexander, Deputy Attorney General

This responds to your letter of October 5, 1977, seeking clarification of six areas in Title 32 to 35 where legislative enactments have left uncertainty as to the effectiveness of particular provisions of law. This clarification is sought in light of plans to republish Volume 15 of the Maine Revised Statutes Annotated covering Titles 32 to 35. The sections are addressed in order, as follows:

1. 32 M.R.S.A. § 1658.

By P.L. 1977, c. 398, the Legislature substantially amended Chapter 23 of Title 32 relating to the Board of Cosmetology. Part of this amendment included adoption of a section numbered 32 M.R.S.A. § 1658 specifying penalties for failure to comply with the requirements of the law. Previously, by the provisions of P.L. 1975, c. 463, the Legislature had adopted Chapter 23-A of 32 M.R.S.A. relating to hearing aid dealers and fitters. This chapter also includes a section numbered 32 M.R.S.A. § 1658.

The law authorizing the Office of Legislative Research does not include authority to revise the numbering or citation of enacted legislation. Therefore, if the volume including Title 32 is to be republished prior to convening of the next regular session of the Legislature, it would be my view that both sections 1658 should be numbered as enacted and included in their respective chapters 23 and 23-A of Title 32. A footnote should be included indicating the basis for similar numbering of two sections.

I do agree with your observation that it will be most appropriate to amend Chapter 23 relating to cosmetology to renumber its § 1658 as § 1657-A.

As I have indicated before, in terms of developing a complete statute to include in a volume of the Revised Statutes, I believe that republication of Title 32, at this time, may not be productive. Because of the provisions of the new Administrative Procedure Act, P.L. 1977, c. 551, many of the provisions of Title 32 may be substantially revised and, perhaps, a number of the provisions may be rendered unnecessary. Currently the Office of Legislative Assistants is receiving from all agencies recommendations for legislation amending their authorizing legislation to implement provisions of the Administrative Code. Clearly all of the licensing agencies addressed

in Title 32 will be affected by these changes. Thus, it is likely that very substantial changes in Title 32 will be enacted during the next legislative session. While most of these changes will be of a technical nature, they would render the Title 32 republished in the bound volume substantially out of date almost as soon as it is published. It will also require that Volume 15 immediately be supplemented by a relatively large pocketpart.

2. 32 M.R.S.A. § 1870.

P.L. 1977, c. 381, § 2, amended the returnable bottle legislation to add a provision numbered 32 M.R.S.A. § 1870 authorizing publication of regulations by the Department of Agriculture. P.L. 1977, c. 564, § 120 (the errors and inconsistencies bill) also amended the bottle bill by adding a provision numbered 32 M.R.S.A. § 1870 to provide certain exemptions for containers used in international flights.

My recommendation here is the same as the recommendation regarding § 1658; that is, include in the republished volume both sections as numbered by the enacted legislation with a footnote indicating the basis for the identity of numbers. I do agree with your observation that § 1870, as enacted by Chapter 381 (the regulation provision) should be renumbered § 1871 at the next legislative session.

3. 32 M.R.S.A. § 3302.

32 M.R.S.A. § 3302 was amended by P.L. 1977, c. 78, § 182 (the initial errors and inconsistencies bill). Subsequently, 32 M.R.S.A. § 3302 was repealed and replaced by P.L. 1977, c. 469, § 6. As Chapter 469 was both later enacted legislation and had a later effective date, the repeal and replacement of § 3302 accomplished by this chapter clearly prevails over the amendment adopted by Chapter 78. Accordingly, I believe that the provisions of § 3302 as repealed and replaced by Chapter 469 prevail and are the presently effective provisions of § 3302. I do not believe that the amendment to § 3302 accomplished by c. 78, § 182, even needs to be cited by a footnote. After October 24, 1977, it will no longer have any force or effect.

4. 32 M.R.S.A. § 4751.

P.L. 1975, c. 477 established an entirely new Maine Veterinary Practice Act, including adoption of 32 M.R.S.A. § 4854 establishing a Board of Veterinary Medicine. The existence of § 4854 has subsequently been recognized and confirmed by the Legislature through amendments adopted as part of P.L. 1975, c. 770, §§ 190 and 191, in the 1976 special session. These amendments added a public member to the Board.

32 M.R.S.A. § 4751, although repealed by P.L. 1977, c. 477, § 3, was amended by P.L. 1977, c. 575, § 49 which was general legislation adding public members to licensing boards. Since that action, however, § 4751 has been ignored in legislative enactments, not even being amended with the general legislation removing the authority of the Executive Council.

Normally § 4751 would be presumed to have been repealed by implication by adoption of the broader inconsistent provisions of the Maine Veterinary Practice Act (Chapter 477). However, a problem is created since it was subsequently amended by P.L. 1975, c. 575.

Clearly the Legislature intended to repeal and replace this section. The 1976 amendments confirm the intent that § 4751 not exist by adding the public members to the reconstituted Veterinary Board under § 4854. As subsequently enacted legislation dealing with the same subject matter as P.L. 1975, c. 575, § 49, this legislation (the 1976 amendments) may be presumed, by implication, to have repealed or replaced the objective sought to be accomplished by Chapter 575, § 49. Accordingly, it is my view that § 4751 may be presumed to have been repealed by implication as P.L. 1975, c. 575, § 49 was only an amendment to the repealed section; it did not reenact the entire section.

5. 34 M.R.S.A. § 708.

34 M.R.S.A. § 708 was amended by P.L. 1975, c. 756, § 18, to substitute the Commissioner of Mental Health and Corrections for the Governor and Council as the entity authorized to certify overcrowding at the Maine State Prison. Subsequently, § 708 was again amended by P.L. 1975, c. 771, § 382, to specify the Governor as the person with authority to certify overcrowding for purposes of transfer. This latter amendment (by c. 771) was both later enacted and later effective legislation, as it took effect January 4, 1977, rather than 90 days after the close of the session. Accordingly, the latter version of § 708 prevails and the Governor presently has the authority to certify such overcrowding and transfers. The authority in the Commissioner only existed from 90 days after adjournment of the 1976 special session until the effectiveness of Chapter 771 on January 4, 1977. You may wish to note the version of § 708 adopted by Chapter 756 in a footnote. However, I do not believe this is necessary.

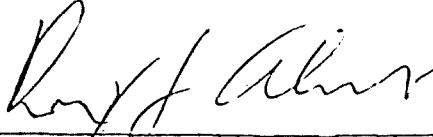
6. 35 M.R.S.A. § 861.

35 M.R.S.A. § 861 was the only section in Chapter 53 of Title 35. Section 861 was repealed by P.L. 1977, c. 341, § 12. Repealing the

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section also repealed the chapter. Therefore, a chapter heading need not appear in the republished volume.

I hope this information is helpful.



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Deputy Attorney General

DGA:mfe

cc: Honorable Samuel W. Collins, Jr.
Honorable Richard A. Spencer