

MAINE STATE LEGISLATURE

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OPINIONS OF THE ATTORNEY GENERAL

1983

Opinion
Number

Synopsis

- 83-1 A proposed amendment to the Tree Growth Tax Law, 36 M.R.S.A. §§ 571-584-A (1978 & Supp. 1982), that would condition the benefits of the tax law upon the processing of saw logs and pulpwood within the State would constitute an impermissible burden on interstate and foreign commerce under the Commerce Clause, and also would be an invalid duty on exports, under the United States Constitution. (January 7, 1983) (Garrett).
- 83-2 Section 611 of the property tax law does not violate the Equal Protection Clauses of the United States and Maine Constitutions and may be applied to vessels owned by nonresidents in a manner consistent with the Due Process Clause of the United States Constitution. 36 M.R.S.A. § 611 (1978). (January 10, 1983) (Warren).
- 83-3 The provision of the Maine Charitable Solicitations Act, 9 M.R.S.A. § 5006 (1980 & Supp. 1982), that differentiates among religious organizations based upon the scope of their solicitation activities is unconstitutional under the First Amendment to the United States Constitution, under a recent decision of the United States Supreme Court. (January 3, 1983) (Bickerman).
- 83-4 In creating the Board of Pesticides Control, the Legislature intended to displace the common law rules relating to conflicts of interest with regard to the pesticide registration (quasi-legislative) activities of the Board, and such displacement is not unconstitutional, although the traditional rules were intended to remain applicable to the Board in its licensing and enforcement (quasi-judicial) activities. (February 4, 1983) (Howard and Foster).
- 83-5 Affirming a previous opinion of the Attorney General, it was concluded that the Legislature had the constitutional authority to review, suspend or revise administrative rules or regulations, but only by a utilization of the means set

Opinion
Number

Synopsis

- forth in Article IV, Part Third of the Maine Constitution, governing the enactment of legislation. (February 15, 1983) (Sample).
- 83-6 Although no court has ruled directly on the question, it appears that if the State were to establish and operate a low level radioactive waste site, it could constitutionally limit use of that site to waste generated entirely within the State without violating the Commerce Clause of the United States Constitution. (February 15, 1983) (Howard).
- 83-7 The maintenance of a central repository for the negatives of picture driver licenses, and the possible disclosure of such negatives to any person, does not violate the right of privacy guaranteed by the United States Constitution. (February 18, 1983) (Brann).
- 83-8 Current Maine constitutional and statutory provisions have the practical effect of requiring the State to operate on a balanced budget. (March 2, 1983) (Macri).
- 83-9 The Legislature has an option, pursuant to Article X, Section 4, of the Maine Constitution, during the first regular session to have constitutional amendments voted on in November of the year of passage or in November of the following year, but constitutional amendments proposed during the second regular session must be voted on at the general election following that session. (March 23, 1983) (Macri).
- 83-10 As required by the Maine Constitution, the Apportionment Commission submitted its plan to reapportion the House of Representatives and Maine Senate within 90 days after the convening of the Legislature, and it did not exceed its authority by revising its plan after March 1, 1983 or act improperly when it met to consider the revision of the plan without conducting a public hearing or giving public notice of the meeting. (March 25, 1983) (Howard).
- 83-11 The division of the Towns of Wells and Hollis into three and two different House districts, respectively, does not violate the formula specified in Article IV, Part First, section 2 of the Maine Constitution because neither town

Opinion
Number

Synopsis

- had sufficient populations to be entitled to a whole legislative district. (March 28, 1983) (Stokes).
- 83-12 The reapportionment of the City of Auburn, which created three whole House districts within the municipal boundaries of the City of Auburn, and placed two population remainders on opposite ends of the City in two other contiguous districts does not violate Article IV, Part First, section 2 of the Maine Constitution. (March 28, 1983) (Stokes).
- 83-13 A former teacher who is now receiving a retirement allowance under the Maine State Retirement System, and who is also serving in the State Legislature, is entitled to be covered under the State group health insurance program established pursuant to 5 M.R.S.A. § 285 (Supp. 1982) (April 4, 1983) (Macri).
- 83-14 36 M.R.S.A. §§ 2854 and 2855 (Supp. 1982) exempt from real estate taxation fixtures and surface improvements on mining property and thus expand the range of property to be exempted from local real estate taxation, requiring municipal reimbursement. This opinion corrects Op. Atty. Gen. 82-51. (April 4, 1983) (Howard).
- 83-15 Because 26 M.R.S.A. § 592 (1974) prohibits an employer from requiring an employee or accepted applicant for employment to bear the medical expense of physical examination for any purpose when such examination is ordered or required by the employer, the cost of obtaining a physician's certificate must fall on the employer. (April 5, 1983) (Gill)
- 83-16 If a bill, L.D. 1318, entitled "An Act Pertaining to the Political Activities of State Employees," were enacted, the federal Hatch Act would continue to apply to certain state officers and employees. The bill is ambiguous as to whether state employees, not subject to the Hatch Act, would be prohibited from running for State elective office. (April 15, 1983) (Stokes).
- 83-17 A bill, L.D. 7, "An Act Relating to Referendum Campaign Reports and Finances" which would limit contributions to referendum campaigns would violate the First Amendment of the United States Constitution in light of the U. S. Supreme Court's decision in Citizens Against Rent Control v. City of Berkley, 454 U.S. 290 (1981). (April 19, 1983) (Brann).

Opinion
Number

Synopsis

- 83-18 The transfer of funds from the group insurance fund, pursuant to a proposed amendment to 5 M.R.S.A. § 1151(7) (Supp. 1982), would not violate Article IX, section 18 of the Maine Constitution, although to the extent that such funds represent dividends on premiums, the cost of which have been paid by persons purchasing insurance through the group life insurance program, such funds are the property of persons involved, and cannot be transferred without violating the "taking" clauses of the United States and Maine Constitutions. (April 20, 1983) (Matus and Howard).
- 83-19 A Justice of the Superior Court, whose commission as a justice of the peace expired in 1983, and whose commission was renewed and bears the title "Justice of the Peace or Notary Public," pursuant to 5 M.R.S.A. § 82 (Supp. 1982), is not prohibited from accepting such commission by Article VI, § 5 of the Maine Constitution and therefore is eligible to solemnize a marriage under 19 M.R.S.A. § 121 (Supp. 1982). (April 25, 1983) (Brann).
- 83-20 A person criminally convicted of operating a motor vehicle under the influence of intoxicating liquor or drugs under 29 M.R.S.A. § 1312(B) (Supp. 1982), and sentenced to a period of incarceration, may serve the sentence in the Kennebec County Halfway House. (May 10, 1983) (Stokes).
- 83-21 A two-thirds vote of each House is not necessary: (a) to enact a bill which would add a new member to a state board when both the old and new members require confirmation; (b) to enact a bill adding specific qualifications for board members subject to confirmation without changing the number of members on the board or the confirmation procedures; (c) to enact a bill making certain technical changes in the confirmation procedures; or (d) to enact any of the changes described above by repealing and replacing the appropriate section, including the confirmation procedure language, when the repeal and replacement does not change the confirmation procedure. (May 20, 1983) (Macri).
- 83-22 Rangers at the Bureau of Parks & Recreation, endowed with police supervisory powers pursuant to 12 M.R.S.A. § 602(5) (1981), are employees of a law enforcement agency for purposes of 32 M.R.S.A. § 7166(3)(A) (Supp. 1982), and may therefore be required to take polygraph tests as a condition of their employment. (May 20, 1983) (Bowie).

<u>Opinion Number</u>	<u>Synopsis</u>
83-23	A bill, L.D. 373, which would limit the number of spent fuel assemblies which may be stored, either on a temporary or a permanent basis, at the Maine Yankee Atomic Power Plant, is unconstitutional because it violates the Supremacy Clause of the United States Constitution, in that the power of states to legislate in this area has been preempted by the Atomic Energy Act of 1954. (May 20, 1983) (Howard).
83-24	Under 28 M.R.S.A. § 153 (Supp. 1982), the Joint Standing Committee on Legal Affairs has only advisory powers concerning the decision of the State Liquor Commission to close a State liquor store. (May 27, 1983) (Kilmister).
83-25	The term "school year" as used in 20 M.R.S.A. § 3123(1), now 20-A M.R.S.A. § 1701 (effective July 1, 1983), to determine the final year of eligibility of exceptional children for free education once they have attained the age of 20, is the period beginning on July 1 and ending on June 30 in which an exceptional child reaches his or her 20th birthday. (May 27, 1983) (L. Smith).
83-26	Article IX, § 14 of the Maine Constitution does not prohibit the issuance of bonds after the expiration of five years following the ratification of the authorization of such bonds by the voters, when at least some of the authorized bonds had been issued during that time period. (June 1, 1983) (L. Smith).
83-27	Because the proposed appointment procedure for the county budget committees is not a procedure to which the guarantees of the Equal Protection Clause of the 14th Amendment apply, the procedure does not violate the "one person-one vote" principle, and, furthermore, the limitation on the membership of the budget committees to municipal and so-called unorganized territory officers does not violate the same clause. (June 2, 1983) (Macri).
83-28	A bill which would require broadcasting stations to make time available for presentation of conflicting viewpoints (rebuttals to station editorials) and which would prohibit the station from controlling the content of the material, except for length, obscenity, or slander, would clearly not violate the First Amendment and would be probably not

Opinion
Number

Synopsis

- violative of the Supremacy Clause of the United States Constitution by virtue of the Federal Communications Act of 1934. (June 3, 1983) (Howard).
- 83-29 A provision of the legislative ethics statute, 1 M.R.S.A. § 1014(1)(A) (1979), does not prevent a legislator from voting on a measure unless he or she, or a member of the immediate family, will receive a direct financial benefit by virtue of the proposed legislation separate and distinct from the remuneration one receives as an employee or agent for services rendered. The purpose of the conflict of interest statute is to prohibit the use of legislative office for private gain. (June 10, 1983) (Stokes).
- 83-30 Constitutional officers, that is, those officers who, under the Constitution, are elected by the Legislature, are entitled by statute to sick leave and vacation time. (June 14, 1983) (Stewart and Howard).
- 83-31 An act which would create a Maine "Milk Pool" would not violate Article IX, § 9 of the Maine Constitution, the "taking" clauses of the United States or Maine Constitutions or the Equal Protection Clause of the United States Constitution. (June 16, 1983) (Frankel and Foster).
- 83-32 The practice of the State Budget Office of making payments representing employer contributions to the Maine State Retirement System other than on a quarterly basis does not conflict with 5 M.R.S.A. §§ 1062(5) or 1667 (Supp. 1982). (June 15, 1983) (Macri).
- 83-33 The Legislative Council did not exceed its authority when it approved an expenditure of \$88,252 for expenses incurred by the the Legislative Apportionment Commission. (June 20, 1983) (Larouche).
- 83-34 A requirement that a person convicted of a crime sign a waiver of extradition as a condition to release on probation is legitimate and reasonable. Prior waivers of extradition as a condition of probation are valid and enforceable and eliminate the necessity of formal extradition proceedings. (July 14, 1983) (Stokes).
- 83-35 The State is not required by law to comply with municipal ordinances governing the construction of buildings,

Opinion
Number

Synopsis

although cooperation is to be encouraged between the State and its municipalities as to the manner of construction of state buildings. (July 26, 1983) (Howard).

- 83-36 The State Board of Registration in Medicine may not deny a temporary educational certificate, or defer granting a temporary educational certificate, to a person seeking to become a hospital resident solely because the applicant graduated from a foreign medical school which has refused to provide information regarding the school requested by the Federation of State Medical Boards. (August 4, 1983) (Bickerman).
- 83-37 The Legislature has not empowered the Joint Select Committee on Job Training to review, overrule, or modify the recommendations of the State Job Training Coordinating Council or the decisions of the Governor concerning the designation of "service delivery areas," made pursuant to § 101 of the Federal Job Training Partnership Act. (August 8, 1983) (Howard & Waite).
- 83-38 The members of the Finance Authority and its related boards and the chief executive officer of the Authority may be prospectively nominated and confirmed prior to the effective date of P.L. 1983, ch. 519; the Finance Authority exists as a public entity as of September 23, 1983, notwithstanding the fact that its members and chief executive officer may not have been confirmed, and on that date, the agencies which the Finance Authority replaces no longer exist as public entities. (August 18, 1983) (Stokes).
- 83-39 In the process of updating the voting list to remove the names of those who have died, moved, or otherwise become disqualified to vote pursuant to 21 M.R.S.A. § 171(2) (1983), a registrar may not remove the names of registered voters from the voting list solely because they did not participate in recent elections, although the registrar may utilize voting inactivity, in conjunction with other factors, in proceeding within the current statutory framework to update the voting list. (August 19, 1983) (Brann).

<u>Opinion Number</u>	<u>Synopsis</u>
83-40	Because the answer to the opinion request concerned matters of fact and not of law, the Department respectfully declined to provide a formal opinion on the question of whether a person may simultaneously serve as a member of a school administrative district and a town manager within that district. (August 25, 1983) (Macri).
73-41	Because the answer to the question concerned matters of fact and not of law, the Department respectfully declined to provide a formal opinion on the question of whether a person is qualified to continue as a county commissioner if he no longer lives within the district from which he was elected. (August 25, 1983) (Macri).
83-42	The selection of the a particular bid for the State's purchase of an executive aircraft did not constitute a violation of any statute or procedure governing competitive bidding for state purchases, but, on the contrary, was entirely consistent with state law. (October 3, 1983) (Stokes).
83-43	A municipality is authorized to appoint individuals as special police officers without having them trained at the Maine Criminal Justice Academy, so long as such officers are not authorized to arrest or carry a weapon. (October 28, 1983) (Stokes).
83-44	The appropriate official of a municipality is legally permitted, but not legally required, to deny a concealed weapons permit to an applicant who has committed three speeding infractions within the five years previous to his application for a concealed weapons permit. (November 23, 1983) (Stokes).
83-45	It would not violate any provision of law for the members of the Low-Level Waste Siting Commission to accept an offer of the Maine Yankee Atomic Power Company to pay their transportation and housing expenses for a trip to Barnwell, South Carolina, in order to inspect the low level radioactive waste disposal facility there. (December 5, 1983) (Howard).
83-46	A proposal to change the membership of the Baxter State Park Authority by substituting the Commissioner of the

Opinion
Number

Synopsis

- Department of Conservation for the Director of the Bureau of Forestry would contradict the terms of trust for Baxter State Park as expressed by Governor Percival Baxter. (December 6, 1983) (Brown).
- 83-47 A district budget meeting of a school administrative district may approve a particular expenditure which was defeated at a prior district referendum only if it differs in some material respect from the proposed expenditure which was defeated at the referendum. (December 6, 1983) (Buschmann and Howard).
- 83-48 Pursuant to 29 M.R.S.A. § 1368(2) (1978 and Supp. 1982), police department vehicles may emit only a blue light and not a combination of red and blue lights. (December 6, 1983) (Stokes).
- 83-49 State law does not prohibit a municipal police officer from being a candidate in a partisan political election for the office of County Sheriff, but the Federal Hatch Act might prohibit such a candidacy if the officer is paid in whole or in part by federal funds. (December 22, 1983) (Stokes).