

# MAINE STATE LEGISLATURE

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OPINIONS OF THE ATTORNEY GENERAL

1984

Opinion  
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Synopsis

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- 84-1 Four senior staff employees of the Public Utilities Commission, appointed by the Commission under 35 M.R.S.A. § 1, are not required to be members of the Maine State Retirement System because these employees serve at the pleasure of the appointing authority. (Jan. 9, 1984) (Howard).
- 84-2 Although members of the Public Utilities Commission are not eligible for the same retirement compensation provided to justices of the Superior Court, they are entitled to the so-called "five percent option" accorded to all confidential employees of the State by P.L. 1981, ch. 453, wherein certain employees are given a choice of having the State pay their contributions to the Maine State Retirement System or receive a five percent salary increase. (Jan. 10, 1984) (Howard).
- 84-3 Notwithstanding 30 M.R.S.A. § 408, which directs that any excess in a county budget at the end of a fiscal year be used to reduce the county tax levy in the ensuing year, it would not be futile for the legislature to enact L.D. 1809, which provides that funds previously appropriated for food stamps in Androscoggin County be distributed to the cities and towns of the county before February 1, 1984, since the funds in question are still in the possession of Androscoggin County and the tax levy for 1984 has not yet been fixed. (Jan. 23, 1984) (Howard).
- 84-4 The Human Rights Committee of the Elizabeth Levinson Center, which is created by federal and state regulation, and is composed of staff members, residents' relatives and citizens of the community, may not appoint its own members. Such a practice would be an unconstitutional delegation of state power. (Jan. 20, 1984) (Brann).

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- 84-5      The provisions of 32 M.R.S.A. § 1094-B, concerning the identification of dentures, are not in conflict with the Federal Privacy Act, 5 U.S.C. § 552b, and therefore are not violative of the Supremacy Clause of the United States Constitution. (Jan. 26, 1984) (Sample).
- 84-6      Both 30 M.R.S.A. § 105(3), which reapportions the county commissioner districts, and proposed legislation which is designed to either phase-in or totally delay county reapportionment until 1986, are constitutional. (Jan. 31, 1984) (Stokes).
- 84-7      The final section of the Swimming Pool Enclosure Law, 22 M.R.S.A. § 1634, provides that municipalities may adopt pool enclosure ordinances that are more or less restrictive than the state requirements. However, a municipality may not suspend the operation of that statute within its borders by providing, by ordinance, that swimming pools need not be enclosed. (Feb. 7, 1984) (Sample).
- 84-8      It does not violate the provisions of the Maine Administrative Procedure Act for the Maine Public Utilities Commission to establish, in the context of a particular ratemaking proceeding, a policy with regard to the compensation of intervenors, and then to apply that policy in other ratemaking proceedings not involving the same company, without following the rulemaking procedures of the APA. (Feb. 21, 1984) (Sample).
- 84-9      Although certain particular exercises of the power vested in the Commissioner of Labor by L.D. 1935, "AN ACT Relating to Occupational Safety and Health of Agricultural Workers," could be preempted by federal OSHA standards governing the same occupational issues, OSHA regulations currently do not preempt state standards regulating field sanitary conditions for agricultural workers. (Feb. 28, 1984) (Frank).
- 84-10     It does not violate the Equal Protection Clauses of the Maine or United States Constitutions for the University of Maine to sell alcoholic beverages only to those persons who possess a State of Maine drivers license or a state-issued identification card which indicates that the person has passed his/her 20th birthday. (March 5, 1984) (Howard).

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- 84-11 A bill which, if enacted, would have the effect of delaying the full implementation of county district reapportionment enacted by the Legislature in February, 1984 by permitting eleven commissioners elected in 1982 to complete their four-year terms of office, would be constitutional. (March 6, 1984) (Stokes).
- 84-12 The Department declined to answer a question concerning reimbursement for police training since the facts of the situation were uncertain. It did indicate that if Mechanic Falls offered the law enforcement officer employment on a part-time basis, but he declined and then moved to Bridgton, or if the officer, knowing of Mechanic Falls' 10-mile rule, moved to Bridgton and only then inquired as to part-time employment, Mechanic Falls would be entitled to compensation for his training were he to be subsequently hired as a part-time officer by Bridgton since he would not have left Mechanic Falls' employment at the discretion of the town, pursuant to 25 M.R.S.A. § 2807. (March 15, 1984) (Howard).
- 84-13 Notwithstanding 5 M.R.S.A. § 1092(2), the four percent annual cost-of-living increase in retirement allowances is binding on participating local districts, pursuant to 5 M.R.S.A. § 1128(1)(A). (March 23, 1984) (Matus).
- 84-14 The Site Location of Development law applies to a subdivision consisting entirely of lots located on an island except for a single piece of land located on the mainland. (March 30, 1984) (Sample).
- 84-15 Congressional approval under the Compact Clause, Art. I, § 10, ch. 3 of the United States Constitution, is not required if Maine, New Hampshire and Vermont enter into a tri-state lottery compact. (April 4, 1984) (Stokes).
- 84-16 The prohibition of 25 M.R.S.A. § 1503 against the holding of any other office by members of the State Police forbids a member of the State Police from holding office as a selectman or as a member of a school board during his term of service. (April 4, 1984) (Stokes).
- 84-17 The former counsel to the Governor did not violate the Maine Conflict of Interest Law, 5 M.R.S.A. § 18, by his appearance on behalf of private clients in two rulemaking proceedings before two state agencies, or in activities, also on behalf of private clients, relating to legislation currently before the Maine Legislature. (April 11, 1984) (Howard).

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- 84-18      The authority of the county commissioners over expenditures within county departments is subject to the Legislature's control and is exercised within the bounds set by the legislatively approved budget. The Legislature, through the country budget review process, has specifically directed the Commissioners of Androscoggin County to provide an inmate medical position within the Support of Prisoners Department. The Commissioners' authority must not be exercised in such a way as to frustrate the legislative intent expressed in the budget. (April 22, 1984) (Howard).
- 84-19      The pendency of initiated legislation, which would make subject to popular referendum any recommendation to the Legislature (1) of the Board of Environmental Protection, made pursuant to 38 M.R.S.A. § 1478, that a low level radioactive waste disposal facility be constructed in Maine, and (2) of the Governor, made pursuant to 38 M.R.S.A. § 1474, that the State enter into any compact or agreement with any other state or the federal government concerning the disposal of low level radioactive waste, would not preclude the Legislature, prior to the approval of such initiated legislation, from approving a waste disposal facility or interstate agreement. The retrospective application of the initiated legislation could be unconstitutional if vested rights had arisen prior to the approval of the initiated legislation by the voters. (May 1, 1984) (Sample).
- 84-20      Legislation authorizing a bond issue is governed by the provisions of Art. IX, § 14 of the Maine Constitution and, notwithstanding the presence of an emergency preamble, a vote of two-thirds of the members of each house present and voting, rather than two-thirds of the entire elected membership, is all that is required for passage. (May 10, 1984) (Sample).
- 84-21      The State Liquor Commission possesses the authority to close a state-owned warehouse and may license private persons who directly supervise and control warehouses in the state to import and/or store wine and liquor prior to the assumption of ownership over these goods by the State. (June 8, 1984) (Gettleman)
- 84-22      The employment decisions of the Penobscot Nation, when acting in its capacity as a tribal governmental employer, are not subject to regulation by the State, and therefore do not fall within the jurisdiction of the Maine Human Rights Commission. (July 25, 1984) (Stokes).

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- 84-23      Although the Maine Human Rights Commission does have jurisdiction over complaints of unlawful employment discrimination against the Houlton Band of Maliseet Indians, in the context of the particular facts of this complaint, the Band may not have engaged in unlawful racial discrimination in view of the existence of certain provisions of federal law which require the Band to provide preference in employment to Indians. (August 6, 1984) (Stokes).
- 84-24      The statute creating the new Maine Judicial Retirement System does not attempt to utilize the assets of the Maine State Retirement System to pay its benefits, but in any event, such benefits could not constitutionally be paid out the reserves of the Maine State Retirement System. (August 22, 1984) (Matus).
- 84-25      (1) A letter sent from the Commission on Governmental Ethics and Election Practices is not a valid advisory opinion because the Commission violated the Freedom of Access Law by issuing the opinion in the absence of a public meeting; (2) Legislators who are teachers, or spouses of teachers, do not have a conflict of interest within the meaning of 1 M.R.S.A. § 1014(1)(F) if they vote on the Governor's proposed education bill in spite of a provision giving each teacher in the public school system a \$2,000 "teacher recognition grant". (Sept. 6, 1984) (Brann).
- 84-26      When the Legislature by adjourning prevents the return of legislation by the Governor within ten days, the Governor may exercise his veto, pursuant to Article IV, part 3, section 2 of the Maine Constitution, by returning the bill within three calendar days after the next meeting of the Legislature, not counting the day on which the Legislature reconvenes. (Sept. 7, 1984) (Sample).
- 84-27      Although the question is not free from doubt, a proposed amendment to a bill increasing the State cigarette tax, providing that the increase be contingent upon the taking effect, on October 1, 1985, of a provision of federal law which makes a corresponding reduction in the federal cigarette tax, does not violate Article IX, Section 9 of the Maine Constitution. (Sept. 10, 1984) (Howard).
- 84-28      Approval of the Maine Equal Rights Amendment would neither require the state to finance abortions for indigent women nor require the state to recognize, as legal, marriages between persons of the same sex. (October 30, 1984) (Kilbreth, Brann & Robbin).