

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ACTS, RESOLVES AND CONSTITUTIONAL RESOLUTIONS

AS PASSED BY THE

One Hundred and Sixth Legislature

OF THE

STATE OF MAINE

Published by the Director of Legislative Research in accordance with the Revised Statutes of 1964, Title 3, Section 164, Subsection 6.

THE KNOWLTON AND McLEARY COMPANY
FARMINGTON, MAINE
1973

PUBLIC LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE
One Hundred and Sixth Legislature

1973

CHAPTER 305

AN ACT to Permit Residents of Adjoining Counties to Serve as Assistant County Attorney in Oxford County.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the County of Oxford is experiencing great difficulty locating an assistant county attorney within the county; and

Whereas, the following legislation is vitally necessary to recruit for the position outside the county; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 30, § 559, amended. The first sentence of section 559 of Title 30 of the Revised Statutes, as enacted by section 2 of chapter 530 of the public laws of 1967, is amended to read as follows:

The county attorney of the County of Oxford may appoint an assistant, who shall be ~~a resident of the county~~ and duly admitted to the practice of law in this State, to be approved by the Chief Justice of the Supreme Judicial Court, and who shall hold office during the term of the county attorney by whom he was appointed, subject to removal at any time by the Chief Justice of the Supreme Judicial Court.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective May 3, 1973

CHAPTER 306

AN ACT Providing for Judicial Review from Decisions of the Banking Commissioner.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 9, § 7, repealed and replaced. Section 7 of Title 9 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 7. Orders of commissioner; notice and hearing; review

Orders issued by the commissioner shall be enforced by the Superior Court. Notice and hearing, upon the written request of any person with a sub-

stantial interest, shall be provided in advance of any order, the promulgation of any rule or regulation, the issuance of any certificate of public convenience and advantage including but not limited to sections 441, 442, 991 and 1003, merger, consolidation or asset acquisition issued by the commissioner except when, in the opinion of the commissioner, immediate action is required to protect the public interest or interests of depositors or shareholders. In such case, immediate action may be taken but the commissioner shall promptly afford a subsequent hearing upon application to rescind the action taken. No person shall be subjected to any civil or criminal liability for any act or omission to act in good faith in reliance upon a subsisting order, regulation or definition of the commissioner notwithstanding a subsequent decision by a court invalidating the order, regulation or definition. Notice of such hearing shall be issued in the manner provided in Title 24-A, section 230, the procedures thereof being incorporated herein by reference.

Sec. 2. R. S., T. 9, §§ 8, 9, 10 and 11, additional. Title 9 of the Revised Statutes is amended by adding new sections 8 to 11, to read as follows:

§ 8. Administrative procedures; hearings in general

1. May. The commissioner may hold a hearing without request of others for any purpose within the scope of this Title.

2. Shall. The commissioner shall hold a hearing:

A. As required by section 7, or

B. If no hearing was held pursuant to section 7, upon written application for a hearing by a person having a substantial interest and being aggrieved by any act or impending act, or by any report, rule, regulation or order of the commissioner, including, but not limited to, failure or refusal to issue a certificate of public convenience and advantage, failure or refusal to approve a merger, consolidation, asset acquisition, other than an order for the holding of a hearing, or order on a hearing or pursuant to such order, of which hearing such person had notice.

3. Application. Any such application must be filed with the commissioner within 15 days after such person knew or reasonably should have known of such act, impending act, failure, report, rule, regulation or order, unless a different period is provided for by other applicable law, and in which case such other law shall govern. The application shall briefly state the respects in which the applicant is so aggrieved, together with the ground to be relied upon for the relief to be demanded at the hearing. The commissioner may require that the application be signed and sworn to.

4. Time. If the commissioner finds that the application is timely and made in good faith, that the applicant would be so aggrieved if his grounds are established and that such grounds otherwise justify the hearing, he shall hold the hearing within 30 days after filing of the application, or within 30 days after the application has been sworn to, whichever is the later date, unless in either case the hearing is postponed by mutual consent.

5. Failure to hold hearing. Failure to hold the hearing upon application therefor of a person entitled thereto as provided shall constitute a denial of

the relief sought and shall be the equivalent of a final order of the commissioner on hearing for the purpose of an appeal under section 11.

6. Pending hearing. Pending the hearing and decision thereon, the commissioner may suspend or postpone the effective date of his previous action.

§ 9. Order on hearing

1. Capacity of commissioner. In the conduct of hearings under this Title and making his order thereon, the commissioner shall act in a quasi-judicial capacity.

2. Orders. Within 30 days after termination of a hearing, or of any re-hearing thereof or reargument thereon, or within such other period as may be specified in this Title as to particular proceedings, or within such further reasonable period as the commissioner for good cause may require, the commissioner shall make his order on hearing covering matters involved in such hearing, and give a copy of the order to each party to the hearing in the same manner as notice of the hearing was given to such party.

3. —contents. The order shall contain:

A. A concise statement of facts found by the commissioner upon the evidence presented at the hearing;

B. A concise statement of the commissioner's conclusions from the facts so found;

C. His order, and the effective date thereof; and

D. Citation of the provisions of this Title upon which the order is based; but failure to so designate a particular provision shall not deprive the commissioner of the right thereafter to rely thereon.

4. —effect. The order may affirm, modify or rescind action theretofore taken or may constitute taking a new action within the scope of the notice of the hearing.

§ 10. Conduct of hearing

The hearing shall be conducted in accordance with Title 24-A, section 231 in the same manner as if the provisions of said section were herein set out in full.

§ 11. Appeal from the commissioner

1. Appeal. An appeal from the commissioner shall be taken only from an order on hearing, or as to a matter on which the commissioner has refused or failed to hold a hearing after application therefor under section 8, or as to a matter as to which the commissioner has failed to make his order on hearing as required by section 9.

2. —Superior Court. Any person who was a party to such a hearing, and who is aggrieved by such order, refusal or failure may appeal from such order. The appeal shall be in accordance with Rule 80 B of the Maine Rules of Civil Procedure and shall be taken to the Superior Court of Kennebec County. If the appeal is from the commissioner's order on hearing, the petitioner shall also deliver to the commissioner a sufficient number of copies of the complaint and the commissioner shall mail or otherwise furnish a copy thereof to the other parties to the hearing to the same extent as a copy of the commissioner's order is required to be furnished to the hearing parties under section 9.

3. —record. Upon receiving the complaint on appeal, the commissioner shall forthwith prepare an official record certified by him which shall contain a copy of all proceedings and orders of the commissioner appealed from and the transcript of testimony and evidence. Within 30 days after the complaint was served upon him, the commissioner shall file such official record with the court.

4. —jurisdiction. Upon filing of the complaint on appeal, the court shall have full jurisdiction of the proceeding. Such filing shall not stay the enforcement of the commissioner's order or action appealed from unless stayed by order of the court.

5. —preliminary order. The court shall have power, by preliminary order, to settle questions concerning the completeness and accuracy of the commissioner's official record.

6. —remand. The court may remand the case to the commissioner for further proceedings in accordance with the court's direction.

Effective October 3, 1973

CHAPTER 307

AN ACT Establishing by Statute the Division of Eye Care for Services to the Blind.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 22, §§ 3500 and 3500-A, additional. Title 22 of the Revised Statutes is amended by adding 2 new sections, 3500 and 3500-A, to read as follows:

§ 3500. Division of Eye Care

The Division of Eye Care, as heretofore established within the Department of Health and Welfare and hereafter in this chapter called the "division," shall be under the jurisdiction of the Director of the Division of Eye Care, hereafter in this chapter called the "director." The commissioner shall appoint the director, subject to the Personnel Law.

§ 3500-A. Jurisdiction of Director of Division of Eye Care, defined