

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

One Hundred and Seventh Legislature

AT THE

1ST SPECIAL SESSION

JANUARY 19, 1976 TO APRIL 29, 1976

AND

2ND SPECIAL SESSION

JUNE 14, 1976

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 164, SUBSECTION 6.

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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
One Hundred and Seventh Legislature
AT THE FIRST SPECIAL SESSION
January 19, 1976 to April 29, 1976
AND THE SECOND SPECIAL SESSION
June 14, 1976

Supplementary to the Acts and Resolves of the Regular Session

[supplied from page 3097 of volume]

36 MRSA § 1752, sub-§ 11, 5th sentence, as last amended by PL 1975, c. 359 and c. 450, is further amended to read:

“Retail sale” and “sale at retail” do not include the sale of tangible personal property which becomes an ingredient or component part of, or which is consumed or destroyed or loses its identity in the manufacture of, tangible personal property for later sale or lease, other than lease for use in this State, but shall include fuel and electricity but shall not include electricity separately metered and consumed in any electrolytic process for the manufacture of tangible personal property for later sale, nor any fuel oil, the by-products from the burning of which become an ingredient or component part of tangible personal property for later sale.

Effective September 13, 1976

CHAPTER 780

AN ACT to Provide for the Position of Associate Administrative Court Judge and to Revise the Administrative Court Law.

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

Sec. 1. 5 MRSA cc. 305 and 307, as amended, are repealed and the following enacted in place thereof:

CHAPTER 305

HEARINGS

§ 2401. Administrative Court

The Administrative Court, as heretofore established, shall be under the supervision of the Administrative Court Judge. In the event of his disability for any cause, an Associate Administrative Court Judge shall perform any and all of his duties. The Administrative Court shall be a court of record. The Administrative Court Judge shall establish a seal. He shall be responsible for the efficient operation of the Administrative Court and for the proper conduct of business therein.

1. Appointment of the Administrative Court Judge and Associate Administrative Court Judges. The Administrative Court Judge, as heretofore appointed, and Associate Administrative Court Judge shall be appointed by the Governor, with the advice and consent of the Council. Each shall hold office for a term of 7 years and until his successor has been appointed and qualified.

2. Qualifications of Administrative Court Judge and Associate Administrative Court Judges. The Administrative Court Judge and the Associate Administrative Court Judges shall be members of the bar of this State. Each shall devote full time to his judicial duties, shall not practice law during his term of office, nor shall he during such term be the partner or associate of any person in the practice of law.

3. **Salary.** The Administrative Court Judge shall receive as annual compensation an amount which is \$1,500 less than that of a Superior Court Justice. He shall be entitled to actual and necessary expenses in the performance of his duties. He may employ necessary clerical assistance for the court. An Associate Administrative Court Judge shall receive as annual compensation an amount \$1,000 less than the Administrative Court Judge and he shall be entitled to actual and necessary expenses in the performance of his duties.

4. **Hearing.** On receipt of a written complaint from an agency, a judge of the Administrative Court shall conduct a hearing on the applicable facts and law governed by the Administrative Code. The judge may subpoena and examine witnesses in accordance with chapters 301 to 307. He shall issue a written decision containing his findings of fact and conclusions of law in each case.

5. **Disqualification of Administrative Court Judge.** Whenever the Administrative Court Judge determines that he has a personal interest or a financial interest, directly or indirectly, in a case which is before him, he shall disqualify himself from hearing an individual case. He shall assign the case to an Associate Administrative Court Judge. Whenever an Associate Administrative Court Judge determines that he has a personal interest or a financial interest, directly or indirectly, in a case which is before him, he shall disqualify himself and give written notice to the Administrative Court Judge.

Whenever all judges of the Administrative Court have disqualified themselves in a case, the Administrative Court Judge shall give written notice of same to the parties to the action and shall file a copy of the notice in the docket of the case.

The moving party shall, within 10 days thereafter, commence an action by filing or refileing his complaint in the District Court. Jurisdiction is granted to the District Court to hear and determine such matters and to enter such rulings and orders as the nature of the case may require. The case shall be heard in the District Court in accordance with the Administrative Code and the District Court Judge hearing the case shall render a written decision thereon. The court reporter from the Administrative Court shall transcribe the testimony as in cases before a judge of the Administrative Court. An aggrieved party may appeal from the decision of the District Court Judge to the Superior Court as is provided in the Administrative Code, chapters 301 to 307.

6. **Retirement.** Title 4, section 103, providing for compensation upon retirement of Justices of the Superior Court and to benefits for their spouses and surviving minor children, is made applicable to the Administrative Court Judge and Associate Administrative Court Judges. The years in which the Administrative Court Judge served in the capacity of Administrative Hearing Commissioner during 1963 to 1973 shall be included in computing his retirement compensation and his spouse's and minor children's survivor benefits.

7. **Judges of the Administrative Court.** The Judges of the Administrative Court shall be the Administrative Court Judge and one Associate Administrative Court Judge.

§ 2402. **Petition for declaratory rulings by Administrative Court Judge**

On petition of any interested party, a judge of the Administrative Court

shall issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by an agency.

1. **Effect of declaratory ruling.** A declaratory ruling is binding with respect to the state of facts alleged, unless it is altered or set aside by the court. The ruling is subject to review in the Superior Court in the manner provided for appeal of decisions in contested cases.

2. **Form of petition.** The Administrative Court Judge shall prescribe by rule the form of the petition and the procedure for its submission, consideration and disposition.

§ 2403. Procedure in contested cases

In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

1. **Complaint filed.** On commencement of any contested case, a written complaint must be filed with the Administrative Court Judge. A copy of the complaint containing a notice of hearing must be served on the defendant either by personal delivery in hand, by leaving it with a person of suitable age or discretion at his dwelling place or usual place of abode, or by sending it by certified mail to his last known address. The copy of the complaint must be served at least 15 days before the time specified for the hearing, except as provided in section 2404. The notice of hearing must inform the defendant of the time and place of hearing, the time limit for filing an answer to the complaint and the consequences of his failure to do so. The complaint must contain a conclusion indicating the violation of a statute or rule and citing the statute or rule violated.

2. **Witnesses sworn.** At the hearing before any testimony is received, the presiding judge shall swear in the witnesses.

3. **Official record.** The presiding judge shall prepare an official record, including testimony and exhibits, in each contested case, but he need not have a transcript of the testimony prepared unless required for rehearing or appeal. The record of the hearing may be taken by stenographic notes or by mechanical recording.

4. **Disposition by agreement.** On approval of the presiding judge, disposition of any contested case may be made by agreement or consent decree.

5. **Rules of procedure.** The Administrative Court Judge shall adopt and may amend or repeal rules of procedure in contested cases, including forms which he deems appropriate.

§ 2404. Emergency hearings

A judge of the Administrative Court may require that a hearing be held in a contested case in less than 7 days after service of the complaint if either party on ex parte motion is able to show that an emergency exists which makes immediate action imperative. The moving party shall give the opposing party reasonable notice of the advanced hearing date.

§ 2405. Rules of evidence

The rules of evidence as applied in the trial of civil cases in the State shall be observed whenever practicable, except that this section shall not apply to hearings under Title 28.

1. Exception. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence which is not ordinarily admissible may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

2. Certain evidence excluded. The presiding judge shall exclude irrelevant, immaterial and unduly repetitious evidence.

3. Rules of privilege. The Administrative Court Judge shall give effect to rules of privilege recognized by law.

4. Cross-examination. A party may cross-examine the opposing party, a witness for the opposing party or a hostile witness.

5. Judicial notice. A judge of the Administrative Court may take judicial notice of facts so noticed by the Superior Court. Facts judicially noticed shall be stated in the decision issued by him.

§ 2406. Subpoenas by Administrative Court

At the request of a party in a contested case, a judge of the Administrative Court shall issue subpoenas for the attendance of witnesses or for the production of documents. He may issue subpoenas on his own motion.

1. Failure to obey subpoena. A person who fails to obey the subpoena of a judge of the Administrative Court may be punished as for contempt of court on application to the Superior Court by the Administrative Court or by the party requesting issuance of the subpoena.

§ 2407. Decisions

After hearing, on default, or by agreement of the parties, a judge of the Administrative Court may suspend, revoke or modify the license of any party properly served with process, or if the applicable law so provides he may order issuance of a license to an applicant according to the terms of the applicable law. He may take any other action with relation to the party which could have been taken before the enactment of this section by the agency involved in the hearing.

1. Decision rendered by Administrative Court. Each decision adverse to a party to the proceeding rendered by a judge of the Administrative Court in a contested case must be in writing or stated in the record. A final decision must include findings of fact and conclusions of law. Findings of fact consist of a concise statement of the conclusions on each contested issue of fact.

2. Notification of the decision and order; suspension. The Administrative Court shall notify the parties to the proceeding of the result of the hearing by sending a copy of the decision to each party or his attorney of record by certified mail, return receipt requested. There shall be no suspension ordered by the Administrative Court until a date at least 2 weeks after the date of the

notification of the decision and order, and if the aggrieved party, during the 2-week period, shall appeal the Administrative Court's decision to the Superior Court, then no suspension shall take effect until after hearing by the Superior Court except that, when an Administrative Court Judge determines the violation in question constitutes an immediate and serious hazard to the public health or safety, he may order that the appropriate license suspension or revocation commence immediately or prior to the 2-week waiting period, and remain in effect, upon appeal, pending the disposition of the Superior Court.

3. Fines. Notwithstanding any other provisions of chapters 301 to 307, a judge of the Administrative Court, in his judicial discretion, may impose a fine of a specific sum which shall not be less than \$50 nor more than \$1,500 for any one offense. Such a fine may be imposed instead of or in addition to any suspension, revocation or modification of a license by the court.

The Administrative Court Judge shall maintain a record of all fines received by the court and shall pay the fines into the General Fund of the State Treasury on or before the 15th day of each month.

CHAPTER 307

APPEALS

§ 2451. Procedure

Any party aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to appeal.

1. Procedure. The appeal must be instituted by filing a complaint in the Superior Court in and for the county in which the aggrieved party filing the appeal resides within 30 days after service of the final decision of an Administrative Court Judge, except as otherwise provided in Title 28. Copies of the complaint must be sent to the Administrative Court and to all other parties of record. No responsive pleading need be filed.

2. Content of complaint. The complaint must contain a concise statement of the grounds upon which the appellant contends he is entitled to relief, and shall demand the relief to which he believes himself entitled.

3. Effect. The filing of the complaint does not stay enforcement of the decision, but the Superior Court may order a stay upon such terms as it deems proper.

4. Record. Within 30 days after service of the complaint, or within such further time as the court may order, the Administrative Court shall transmit to the Superior Court the original or certified copy of the entire record of the proceeding under review, but by stipulation of all parties to the appeal the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

5. Additional evidence. If, before the date set for hearing, application is made to the court for leave to present additional evidence to the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in

the proceeding before a judge of the Administrative Court, the court may order the additional evidence to be taken before the Administrative Court Judge upon such conditions as the court deems proper. An Administrative Court Judge may modify his findings and decision by reason of the additional evidence and shall file with the Superior Court, to become a part of the record, the additional evidence, together with any modification or new findings or decision.

6. Conducted by the court. The appeal shall be conducted by the court without a jury and shall be confined to the record. The court shall, upon request, hear oral argument and receive written briefs.

7. Decision of the court. The court may affirm, modify or reverse the decision of the Administrative Court if the Administrative Court's findings, references, conclusions or decisions are:

- A. In violation of constitutional or statutory provisions;
- B. In excess of the statutory authority of the court;
- C. Made upon unlawful procedure;
- D. Affected by other error of law; or
- E. Unsupported by substantial evidence on the whole record or supported exclusively by hearsay evidence.

The court may also remand the case to the Administrative Court for further proceedings, findings of fact or conclusions of law, but the court shall not substitute its judgment for that of the Administrative Court as to the weight of the evidence on questions of fact.

§ 2452. To Supreme Judicial Court

An aggrieved party may appeal from the decision of the Superior Court to the Supreme Judicial Court as in other civil cases.

Sec. 2. 28 MRSA § 153, sub-§ 1, last paragraph, 1st sentence, as repealed and replaced by PL 1975, c. 256, is repealed and the following enacted in place thereof:

Any applicant aggrieved by a decision made by the Bureau of Alcoholic Beverages may appeal the decision to the Administrative Court by means of filing a complaint with the Administrative Court Judge, designated in Title 5, chapters 301-307, and serving a copy of the complaint upon the bureau, within 15 days of the mailing of the decision of the bureau by certified mail to the mailing address given by the applicant in his application for a special agency store permit.

Sec. 3. 28 MRSA § 401, sub-§ 5, as enacted by PL 1973, c. 523, is repealed and the following enacted in place thereof:

5. Fines. Notwithstanding any other provisions of this Title, a judge of the Administrative Court, in his judicial discretion, may impose a fine of a specific sum which shall not be less than \$50 nor more than \$1,500 for any one offense. Such a fine may be imposed instead of or in addition to any suspension, revocation or modification of a license by the court.

The Administrative Court Judge shall maintain a record of all fines received by the court and shall pay the fines into the General Fund of the State Treasury on or before the 15th day of each month.

Sec. 4. 28 MRSA § 403, 6th, 7th and 8th sentences, as last amended by PL 1973, c. 303, § 3, are repealed and the following enacted in place thereof:

The operation of a suspension or revocation of a license imposed by the Administrative Court shall be suspended, pending judgment of the Superior Court, provided that the licensee files an appeal in the Superior Court and notifies the Administrative Court that the appeal has been filed, within 7 days of the mailing of the decision of the Administrative Court by certified mail to the address given by the licensee at the time of his application for a license. Appeal by such aggrieved person to the law court from such decision may be taken. Upon such appeal, the law court may, after consideration, reverse or modify any decree so made by the court based upon an erroneous ruling or finding of law.

Sec. 5. Reference. The reference to the Executive Council contained in section 1 of the bill in Title 5, section 2401, subsection 1, shall be null and void effective January 1, 1977.

Sec. 6. Application and effective dates. All provisions of this Act relating to Associate Administrative Court Judge and the powers and duties relating to that position shall be effective on July 1, 1977. All other provisions of this Act shall be effective 90 days after the adjournment of the legislative session in which it is enacted.

Effective September 13, 1976, except as otherwise indicated

CHAPTER 781

AN ACT Pertaining to Private School Tuition.

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

20 MRSA § 1292, first ¶, as last repealed and replaced by PL 1975, c. 746, § 14, is further amended by adding at the end the following new sentence:

Notwithstanding the above, a private school may charge tuition above the maximum legal tuition in those cases where a pupil has alternative choices for secondary education at the legal tuition rate.

Effective September 13, 1976