

MAINE STATE LEGISLATURE

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Revised Statutes of Maine

Chapter 1.

Sovereignty and Jurisdiction.

Eminent Domain. Flags. State Paper, etc.

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Cross Reference.—See c. 143, § 1, re crimes against the sovereignty of the state.

Sovereignty and Jurisdiction.

Sec. 1. Sovereignty and jurisdiction.—The jurisdiction and sovereignty of the state extend to all places within its boundaries, subject only to such rights of concurrent jurisdiction as are granted over places ceded by the state to the United States. (R. S. c. 1, § 1.)

See c. 36, §§ 28, et seq., re lands ceded to the United States for National forests; c. 36, § 63, re islands in great ponds; c. 36, § 64, re islands in the sea; c. 39, §§ 3, 4, re lands for displaced persons of Baltic origin.

Sec. 2. Sovereignty in space.—Sovereignty in the space above the lands and waters of the state is declared to rest in the state, except where granted to and assumed by the United States pursuant to a constitutional grant from the people of this state. (R. S. c. 1, § 2.)

Sec. 3. Division of the state.—The state is divided into counties, districts, towns, plantations and unorganized territory. (R. S. c. 1, § 3.)

Towns act in dual capacity.—In the absence of any special rights conferred or liabilities imposed by legislative charter, towns and cities act in a dual capacity, the one corporate, the other governmental. (This twofold character is recognized by this section making towns a subdivision of the state. *Libby v. Portland*, 105 Me. 370, 74 A. 805. Cited in *Harvey v. Wayne*, 72 Me. 430.)

Sec. 4. Standard time.—Within this state the standard time shall be that which is known and designated by the federal statute as “United States Eastern Standard Time.” (R. S. c. 1, § 4.)

Eastern Standard Time is legal time.—Except when changed or modified by the legislature, United States Eastern Standard Time is the legal time for all legal business of the state of Maine and, whenever statutes refer to time, unless it is otherwise specified, it means United States Eastern Standard Time as defined by this section. *MacDonald v. Sheriff*, 148 Me. 365, 94 A. (2d) 555.

Sec. 5. State processes executed in places ceded.—Civil, criminal and military processes, lawfully issued by an officer of the state, may be executed in places ceded to the United States, over which a concurrent jurisdiction has been reserved for such purpose. (R. S. c. 1, § 5.)

Sec. 6. Governor may cede not exceeding 10 acres to the United States; compensation to owner.—The governor, with the advice and consent of the council, reserving such jurisdiction, may cede to the United States for

purposes named in its constitution any territory not exceeding 10 acres, but not including any highway; nor any public or private burying ground, dwelling house or meetinghouse, without consent of the owner. If compensation for land is not agreed upon, the estate may be taken for the intended purpose by payment of a fair compensation, to be ascertained and determined in the same manner as, and by proceedings similar to those provided for ascertaining damages in locating highways, in chapter 89. (R. S. c. 1, §§ 6, 7.)

See c. 89, §§ 38-42, re proceedings before county commissioners regarding ways.

Sec. 7. Governor may purchase or take land for forts, etc., and may cede to the United States; compensation to owner; limitation.—Whenever the public exigencies require it, the governor with the advice and consent of the council may take in the name of the state, by purchase and deed, or in the manner herein denoted, any lands or right of ways, for the purpose of erecting, using or maintaining any fort, fortification, arsenal, military connection, way, railroad, lighthouse, beacon or other aid to navigation, with all necessary rights, powers and privileges incident to their use, and may deliver possession and cede the jurisdiction thereof to the United States, on such terms as are deemed expedient.

The owner of any land or rights taken shall have a just compensation therefor, to be determined as prescribed in section 6, provided that application is made within 5 years after the land is taken. (R. S. c. 1, §§ 8, 10.)

Sec. 8. Land surveyed; plan, etc., to be filed and recorded.—When the governor and council determine that a public exigency requires the taking of any land or rights as provided for in section 7, they shall cause the same to be surveyed, located and so described that the same can be identified, and a plan thereof, with a copy of the order in council, shall be filed in the office of the secretary of state and there recorded. The filing of said plan and copy shall vest the title to the land and rights aforesaid, in the state of Maine or their grantees, to be held during the pleasure of the state and, if transferred to the United States, during the pleasure of the United States. (R. S. c. 1, § 9.)

Sec. 9. Consent of legislature to acquisition by United States of land within the state for public buildings; record of conveyances.—In accordance with the constitution of the United States, Article 1, Section VIII, Clause 17, and acts of congress in such cases provided, the consent of the legislature is given to the acquisition by the United States, or under its authority, by purchase, condemnation or otherwise, of any land in this state required for the erection of lighthouses or for sites for customhouses, courthouses, post offices, arsenals or other public buildings, or for any other purposes of the government; deeds and conveyances or title papers for the same shall be recorded upon the land records of the county or registry district in which the land so conveyed may lie; and in like manner may be recorded a sufficient description by metes and bounds, courses and distances, of any tracts and legal divisions of any public lands belonging to the United States set apart by the general government for either of the purposes before mentioned, by an order, patent or other official paper so describing such land. (R. S. c. 1, § 11.)

Cross reference.—See § 11, re lands acquired by § 9 not to be taxed.

Cited in Brooks Hardware Co. v. Greer, 111 Me. 78, 87 A. 889.

Sec. 10. Jurisdiction ceded to United States over land acquired for public purposes; concurrent jurisdiction with United States retained.—Exclusive jurisdiction in and over any land acquired under the provisions of this chapter by the United States shall be, and the same is ceded to the United States for all purposes except the service upon such sites of all civil and criminal processes of the courts of this state; provided that the jurisdiction ceded shall not vest until the United States of America has acquired title to

such land by purchase, condemnation or otherwise; the United States of America is to retain such jurisdiction so long as such lands shall remain the property of the United States, and no longer; such jurisdiction is granted upon the express condition that the state of Maine shall retain a concurrent jurisdiction with the United States on and over such lands as have been or may hereafter be acquired by the United States so far as that all civil and criminal process which may lawfully issue under the authority of this state may be executed thereon in the same manner and way as if said jurisdiction had not been ceded, except so far as said process may affect the real or personal property of the United States. (R. S. c. 1, § 12.)

Applied in *Brooks Hardware Co. v. Greer*, 111 Me. 78, 87 A. 889.

Sec. 11. Property not to be taxed.—Lands with the tenements and appurtenances acquired for the purposes mentioned in section 9 shall be and continue exempt from all state, county and municipal taxation, assessment or other charges which may be levied or imposed under the authority of this state, so long as the said lands shall remain the property of the United States, and no longer. (R. S. c. 1, § 13.)

See c. 92, § 6, sub-§ I, re property of United States, etc., exempt from taxation.

Sec. 12. Relinquishment to United States to title to land for erection of lighthouses, forts, etc., when title cannot otherwise be obtained; disposal of purchase money.—Whenever, upon application of an authorized agent of the United States, it is made to appear to any justice of the superior court that the United States desires to purchase a tract of land and the right of way thereto, within the state, for the erection of a lighthouse, beacon light, range light or light keeper's dwelling, forts, batteries or other public buildings, and that any owner is a minor, or is insane, or is from any cause incapable of making perfect title to said lands, or is unknown, or a nonresident, or from disagreement in price or any other cause refuses to convey such land to the United States, said justice shall order notice of said application to be published in some newspaper in the county where such land lies, if any, otherwise in a paper in this state nearest to said land, once a week for 3 weeks, which notice shall contain an accurate description of said land, with the names of the supposed owners, provable in the manner required for publications of notice in chapter 112, and shall require all persons interested in said land on a day specified in said notice to file their objections to the proposed purchase; and at the time so specified a justice of said court shall empanel a jury, in the manner provided for the trial of civil actions, to assess the value of said land at its fair market value and all damages sustained by the owner of such land by reason of such appropriation; which amount when so assessed, with the entire costs of said proceedings, shall be paid into the treasury of said county, and thereupon the sheriff thereof, upon the production of the certificate of the treasurer that said amount has been paid, shall execute to the United States and deliver to its agent a deed of said land, reciting the proceedings in said cause, which deed shall convey to the United States a good and absolute title to said land against all persons. The money paid into such county treasury shall there remain until ordered to be paid out by a court of competent jurisdiction. (R. S. c. 1, §§ 14, 15.)

Sec. 13. Treasurer receiving money to give bond.—The justice directing the money to be paid to a county treasurer, in accordance with the provisions of the preceding 4 sections, shall require of such treasurer a bond in double the amount ordered to be paid to him, with two or more sufficient sureties, or with a surety company, as surety, to be approved by said justice. Such bonds shall be payable to the people of the state of Maine, for the use of such persons, severally, as are entitled to said money, and shall be approved and filed

with the clerk of said court before payment of the money to the treasurer. (R. S. c. 1, § 16.)

Sec. 14. Consent to certain acts of United States coast survey.—Persons employed under the government of the United States in the coast survey may enter on any land in the state and erect thereon such buildings and do such other acts as the objects of the survey require. (R. S. c. 1, § 17.)

See §§ 17, 18, re damages and injury.

Sec. 15. Compensation to owners for use of land.—If satisfactory compensation is not made to the owner by the officers or agents of the United States under whose direction such lands are taken, he may make complaint to the county commissioners who, after not less than 14 days' notice to the parties of the time and place of hearing, shall view the premises, hear the parties and assess the damages sustained by the taking of the land for said purposes, including the time during which it will be required for such use, order them to be paid at such time as they direct and award costs to the prevailing party. (R. S. c. 1, § 18.)

Sec. 16. Report of county commissioners filed with superior court; petition for new trial.—The commissioners shall file in the office of the clerk of the superior court a report of their doings, which shall be conclusive upon the parties, unless one of them within 30 days after the next term of the court files in court his petition for a new trial, which after due notice to the opposite party may for due cause be granted, to be had in said court. (R. S. c. 1, § 19.)

Sec. 17. Tender of amends; costs.—The person entering upon land as provided in section 14 may tender to the party injured sufficient amends, and if the damages finally assessed do not exceed the tender, judgment shall be rendered against the owner for costs. Costs recovered by the prevailing party shall be taxed as in case of appeal from judgments of a trial justice. (R. S. c. 1, § 20.)

See c. 111, §§ 4-9, re appeals to superior court.

Sec. 18. Injury to works.—Whoever willfully injures said buildings or works mentioned in section 14, or apparatus used therewith, forfeits not more than \$50, to be recovered by indictment to the use of the prosecutor; and is also liable in a civil action for damages. (R. S. c. 1, § 21.)

Sec. 19. Right of entry on lands.—All persons employed in the work of topographic mapping under the provisions of law are authorized to enter and cross all lands within the state, provided that in so doing no damage shall be done to private property. (R. S. c. 1, § 22.)

See c. 40, § 10, re right of way to mines.

Sec. 20. Public utilities commission to have charge of topographic mapping.—The public utilities commission shall have charge of topographic mapping on behalf of the state; and said commission is authorized and directed to enter into such agreements with the director of the United States Geological Survey as will assure the progress of the work in an efficient and economical manner. (R. S. c. 1, § 23.)

See c. 44, § 10, re cooperation with U. S. Geological Survey.

Sec. 21. Leases of right to take kelp on submerged lands.—The power to lease the right to gather and harvest kelp on the submerged lands and reefs within the jurisdiction of the state, seaward of mean low-water mark, and east of 69 degrees 45 minutes west longitude, is vested in the governor

and council who shall have authority to make leases to such persons and upon such terms and for such length of time, except as hereinafter limited, as they may prescribe. No lease shall be executed for a period of over 30 years, but any lease executed as herein provided may be renewed by the lessee for a further period to be fixed by the parties. The rental to be paid to the state for these rights shall be not less than \$3 per year per square mile of territory covered by said lease and shall be determined by the governor and council. The lessee shall file with the secretary of state a plot showing the location of the territory desired to be leased with the boundaries located thereon. (R. S. c. 1, § 24.)

Eminent Domain by State.

Sec. 22. Real property may be taken by the state by right of eminent domain.—The taking of real estate or of any interest therein for the use of the state by right of eminent domain may be effected as provided in sections 23 and 24. (1945, c. 248.)

Sec. 23. Manner of taking.—Whenever the public exigencies require it, the governor and council may adopt an order of taking which shall contain a description of the land taken, sufficiently accurate for its identification, and shall state the interest therein taken and the purpose for which such property is taken. (1945, c. 248.)

Sec. 24. Procedure.—All proceedings under the provisions of the 2 preceding sections shall be in accordance with the provisions of sections 12 to 22, inclusive, of chapter 52. (1945, c. 248; c. 378, § 2.)

State Flag. Merchant and Marine Flag.

Sec. 25. State flag.—The flag to be known as the official flag of the state shall be of blue, of the same color as the blue field in the flag of the United States, and of the following dimensions and designs; to wit, the length or height of the staff to be 9 feet, including brass spearhead and ferrule; the fly of said flag to be 5 feet 6 inches, and to be 4 feet 4 inches on the staff; in the center of the flag there shall be embroidered in silk on both sides of the flag the coat of arms of the state, in proportionate size; the edges to be trimmed with knotted fringe of yellow silk, $2\frac{1}{2}$ inches wide; a cord, with tassels, to be attached to the staff at the spearhead, to be 8 feet 6 inches long and composed of white and blue silk strands. A flag made in accordance with the description given in this section shall be kept in the office of the adjutant general, as a model. (R. S. c. 1, § 25.)

See c. 14, § 25, re flag to be carried by National guard.

Sec. 26. Merchant and marine flag.—The flag to be known as the merchant and marine flag of the state shall be of white, at the top of which in blue letters shall be the motto "Dirigo"; beneath the motto shall be the representation of a pine tree in green color, the trunk of which shall be entwined with the representation of an anchor in blue color; beneath the tree and anchor shall be the name "Maine" in blue color. (R. S. c. 1, § 26.)

Uniform Flag Law.

Sec. 27. Definition.—The words "flag," "standard," "color," "ensign" or "shield," as used in sections 27 to 32, inclusive, shall include any flag, standard, color, ensign or shield, or copy, picture or representation thereof, made of any substance or represented or produced thereon, and of any size, evidently purporting to be such flag, standard, color, ensign or shield of the United States or of this state, or a copy, picture or representation thereof. (R. S. c. 1, § 27.)

Sec. 28. Desecration.—No person shall, in any manner, for exhibition or display:

I. Place or cause to be placed any word, figure, mark, picture, design, drawing or advertisement of any nature upon any flag, standard, color, ensign or shield of the United States or of this state, or authorized by any law of the United States or of this state; or

II. Expose to public view any such flag, standard, color, ensign or shield upon which shall have been printed, painted or otherwise produced, or to which shall have been attached, appended, affixed or annexed any such word, figure, mark, picture, design, drawing or advertisement; or

III. Expose to public view for sale, manufacture or otherwise, or to sell, give or have in possession for sale, for gift or for use for any purpose, any substance, being an article of merchandise, or receptacle, or thing for holding or carrying merchandise, upon or to which shall have been produced or attached any such flag, standard, color, ensign or shield, in order to advertise, call attention to, decorate, mark or distinguish such article or substance.

Any violation of the provisions of this section shall be a misdemeanor and punished by a fine of not more than \$50. (R. S. c. 1, §§ 28, 31.)

Sec. 29. Mutilation. — No person shall publicly mutilate, deface, defile, defy, trample upon, or by word or act cast contempt upon any such flag, standard, color, ensign or shield.

Any violation of the provisions of this section shall be punished by a fine of not more than \$500, or by imprisonment for not more than 6 months, or by both such fine and imprisonment. (R. S. c. 1, §§ 29, 31.)

Essence of offense is its publicity.—The very essence of the offense provided for in this section is its publicity. The statute is designed to prevent that which would shock the public sense and, because of the publicity accompanying it, would be likely to result in breaches of the peace. In condemning only what may be publicly said or done, the law recognizes the futility of attempting, with respect to such a matter as this, to control what one may say or do

under other circumstances. *State v. Peacock*, 138 Me. 339, 25 A. (2d) 491.

And the rule is not whether the words are spoken or the acts are done in the presence of others in a place where persons have an opportunity to come. Such a test would bring within the statutory prohibition conduct which might take place privately and secretly without any publicity whatsoever. *State v. Peacock*, 138 Me. 339, 25 A. (2d) 491.

Sec. 30. Exceptions.—The provisions of sections 27 to 32, inclusive, shall not apply to any act permitted by the statutes of the United States or of this state, or by the United States Army and Navy regulations, nor shall they apply to any printed or written document or production, stationery, ornament, picture or jewelry whereon shall be depicted said flag, standard, color, ensign or shield with no design or words thereon and disconnected with any advertisement. (R. S. c. 1, § 30.)

See c. 5, § 15, re display in voting places; c. 41, § 73, re display on school buildings.

Sec. 31. Interpretation.—Sections 27 to 32, inclusive, shall be so construed as to effectuate their general purpose and to make uniform the laws of the states which enact them. (R. S. c. 1, § 32.)

The rule that a penal statute must be construed strictly is in no respect modified by the provisions of this section. The section is but a declaration of a funda-

mental principle applicable to all statutory construction. *State v. Peacock*, 138 Me. 339, 25 A. (2d) 491.

Sec. 32. Name, "Uniform Flag Law."—Sections 27 to 32, inclusive, may be cited as the "Uniform Flag Law." (R. S. c. 1, § 33.)

State Paper.

Sec. 33. State paper.—The Daily Kennebec Journal, a newspaper printed at Augusta, shall be the state paper of this state, in which shall be published all laws and resolves of a public nature and also all advertisements, notices and orders required by law to be published in the state paper. (R. S. c. 1, § 34.)

Legal Notices, etc.

Sec. 34. Publication of legal notices and advertising.—To be qualified as a medium for the publication of legal notices, legal advertising and other matter required by law to be published in a newspaper, a newspaper, unless otherwise ordered by the court in the proceedings, must be published and printed in whole or in part in this state or, where the law so requires, in whole or in part in the county where the notice is required to be published; must be printed in the English language; and must be entered as second class postal matter in the United States mails at the post office in the place of such printing and publication; provided that nothing herein contained shall be construed to alter or in any way affect the existing law governing the foreclosure of real estate mortgages, chattel mortgages or any conditional sales contract, by publication. (R. S. c. 1, § 35.)

Destruction of Records.

Sec. 35. Destruction of records.—The old records of any state department which in the opinion of the head of such department are no longer of value to the state may be destroyed upon approval in writing of the attorney general, state auditor, commissioner of finance and administration and state historian; but not otherwise. Provided, however, that if any old record appears to have sufficient value, approval to destroy shall be withheld until said old record has been copied at the expense of the state by any photostatic, photographic, microfilm or other process which produces a clear, accurate and permanent copy or reproduction thereof and satisfactory provision is made for the permanent storing of such copies or reproductions in fireproof containers. Nothing in this section shall be construed as amending or altering the provisions of section 11 of chapter 22, which provisions are applicable only to the department of state. (R. S. c. 1, § 36. 1951, c. 91. 1953, c. 265, § 6.)