MAINE STATE LEGISLATURE

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REVISED STATUTES

OF THE

STATE OF MAINE

1954

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ANNOTATED

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VOLUME 1

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Constitution of the State of Maine as Amended

ARTICLE I.

DECLARATION OF RIGHTS.

§ 1. Equality and rights of man.

The retail sale of gasoline per se is not a business so affected with the public interest that it warrants exercise of police power without evidence of particular evil. State v. Union Oil Co., 151 Me. 438, 120 A. (2d) 708.

Section 200A of chapter 100 restricting retailers of motor fuels as to the size of price signs and where price signs may be located on their premises was held unconstitutional as not being reasonably necessary for the accomplishment of any real or legitimate purpose in the exercise of the police power and as an unnecessary and oppressive restriction upon a lawful business. State v. Union Oil Co., 151 Me. 438, 120 A. (2d) 708.

Statute relieving municipality from liability for snow or ice on sidewalk.—Chapter 96, § 92, which relieves a municipality from liability to an action for damages to any person on foot on account of snow or ice on any sidewalk or crosswalk, is not unconstitutional as being in violation of this section. Verreault v. Lewiston, 150 Me. 67, 104 A. (2d) 538.

§ 6. Rights of persons accused.

I. GENERAL CONSIDERATION.

Applied in Opinion of the Justices, 151 Me. 1, 117 A. (2d) 53.

Cited in State v. Union Oil Co., 151 Me. 438, 120 A. (2d) 708.

II. RIGHT TO DEMAND NATURE AND CAUSE OF ACCUSATION.

It is within the power of legislatures to prescribe the form of indictments and such forms may omit averments regarded as necessary at common law. But the legislature, while it may simplify the form of indictment, cannot dispense with the necessity of placing therein a distinct presentation of the offense containing allegations of all of its elements. State v. Popolos, 150 Me. 46, 103 A. (2d) 511.

Indictment for reckless driving.—See note to c. 22, § 148.

VII. "LAW OF THE LAND" OR "DUE PROCESS".

Provision affirms right to trial according to process, etc.

In accord with 1st paragraph in original. See Dwyer v. State, 151 Me. 382, 120 A. (2d) 276.

Right to counsel.—See Pike v. State, 152 Me. 78, 123 A. (2d) 774.

§ 19. Rights of redress for injuries.

Quoted in Dwyer v. State, 151 Me. 382, 120 A. (2d) 276.

§ 21. Taking private property for public use.

I. GENERAL CONSIDERATION.

The legislature may entrust the power of eminent domain to instruments of its choosing, such as a public body corporate and politic exercising public and essential governmental functions. Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

III. PROPERTY CAN BE TAKEN ONLY FOR PUBLIC USE.

A. In General.

And is determined by the courts.

In accord with 4th paragraph in original. See Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

Courts must consider existing conditions.—In determining whether a given use is public in nature, the court must consider existing conditions. Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

B. What Constitutes Public Use.

State constitution is not broader than constitution of U. S. — The provisions of the state constitution are not of a broader scope than the fourteenth amendment to the United States constitution with respect to the scope of "public use." Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

Public use and public advantage are distinguished. — The principle that "public use" in eminent domain means use by the public, or employment by the public, in contrast with public advantage, is well and firmly established. Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

It is not necessary that an active use be contemplated in a taking by eminent domain. The use may be negative in character. The prevention of evil may constitute a use, and as here a public use. Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

Slum clearance of blighted areas is public use.—Slum clearance of blighted areas for the public health, morals, safety and welfare is a "public use" within the meaning of the constitution. Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

But redevelopment of city is not.—Taken alone, the redevelopment of a city is not a "public use" for which either taxation or taking by eminent domain may properly be utilized. Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

IV. TAKING MUST BE REQUIRED BY PUBLIC EXIGENCIES.

And its determination is final, etc.

In accord with 1st paragraph in original. See Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

ARTICLE IV.

PART THIRD.

LEGISLATIVE POWER.

§ 1. Biennial meetings and general powers.

Quoted in Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

§ 7. Compensation and traveling expenses.

Mileage of legislators for travel to the legislature is not "compensation" within the meaning of the constitution and provision for an increase in mileage allowances may properly be made by an act or resolve. Opinion of the Justices, 152 Me. 302.

But may not be increased by joint order of legislature.—Mileage of legislators for travel to the legislature is personal expense as distinguished from legislative expense. Thus an increase in the mileage allowance may not be provided for in a joint order but can be effected only by an act or resolve of the legislature passed as a law by both branches thereof and submitted to the executive for his executive approval in accordance with the constitution. Opinion of the Justices, 152 Me. 302.

ARTICLE V.

PART FIRST.

EXECUTIVE POWER.

§ **4. Qualifications.**—The governor shall, at the commencement of his term, be not less than thirty years of age; a citizen of the United States for at least fifteen years, have been five years a resident of the state; and at the time of his election and during the term for which he is elected, be a resident of said state. (Amendment LXXIX, proclaimed September 26, 1955.)

Effect of amendment.—Prior to amendment LXXIX this section required that the governor should be a "natural born" citizen. The amendment deleted the two quoted words and added the clause requiring a 15-year residency in the United States.

§ **11. Reprieves, commutations and pardons.**—He shall have power, with the advice and consent of the council, to remit, after conviction, all forfeitures and penalties, and to grant reprieves, commutations and pardons, except in cases of impeachment, upon such conditions, and with such restrictions and limitations as may be deemed proper, subject to such regulations as may be provided by law, relative to the manner of applying for pardons. Such power to grant

reprieves, commutations and pardons shall include offenses of juvenile delinquency. And he shall communicate to the legislature, at each session thereof, each case of reprieve, remission of penalty, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of the reprieve, remission, commutation, or pardon, and the conditions, if any, upon which the same was granted. (Amendment LXXVIII, proclaimed September 26, 1955.)

Effect of amendment. — Amendment LXXVIII inserted the second sentence relative to offenses of juvenile delinquency.

ARTICLE VI.

JUDICIAL POWER.

§ 3. Opinions to be given when required by either branch of government.

Applied in Opinion of the Justices, 150 Me. 362, 105 A. (2d) 454.

ARTICLE IX.

GENERAL PROVISIONS.

§ 8. Taxes apportioned and assessed according to valuation; levy on intangibles.

Percentage of true value taken for taxation purposes must be uniform and equal. —The law requires equality, and requires that each property owner pay his just proportion of taxes. The law requires that real estate and tangible personal property be valued on an equal basis "according to the just value thereof." The law requires that there be no favoritism nor discrimination. The law requires that when a percentage of the true value is taken for taxation purposes, the percentage be uniform and equal on all real estate and tangible property. Sears, Roebuck & Co. v. Presque Isle, 150 Me. 181, 107 A. (2d) 475.

Assessment held proper.—See Sears, Roebuck & Co. v. Presque Isle, 150 Me. 181, 107 A. (2d) 475.

§ **12. Voting by persons in military service for county officers.**—Repealed by Amendment LXXXI, proclaimed September 26, 1955.

§ **15. Municipal indebtedness limit.**—No city or town shall hereafter create any debt or liability, which singly, or in the aggregate with previous debts or liabilities, shall exceed seven and one-half per cent of the last regular valuation of said city or town; *provided, however,* that the adoption of this article shall not be construed as applying to any fund received in trust by said city or town, nor to any loan for the purpose of renewing existing loans or for war, or to temporary loans to be paid out of money raised by taxation, during the year in which they are made. Long term rental agreements not exceeding forty years under contracts with the Maine School Building Authority shall not be debts or liabilities within the provisions of this section. (Amendment LXXX, proclaimed September 26, 1955.)

Effect of amendment. — Amendment LXXX added the last sentence of this section relating to rental contracts with "Maine School Building Authority."

Provision added to section by amendment LXXIII was eliminated by amendment LXXVI. — Amendment LXXVI, proclaimed September 21, 1954, which raised the limitation upon municipal indebtedness from 5% to 7½%, failed to include in this section as amended the provision added by amendment LXXIII, proclaimed September 26, 1951, to the effect that "long term rental agreements not exceeding forty years under contracts with the Maine School Building Authority shall not be debts or liabilities within the provisions of this article." Thus the exemption provision added by amendment LXXIII was effectively removed from this section and repealed by amendment LXXVI. Opinion of the Justices, 150 Me. 362, 105 A. (2d) 454.

But contracts entered into before proc-

lamation of amendment LXXVI are not affected.—Contracts between municipalities and the Maine School Building Authority entered into between September 26, 1951 and September 21, 1954, within the terms of amendment LXXIII, adopted in 1951, would not be affected by amendment LXXVI, proclaimed on September 21, 1954. Opinion of the Justices, 150 Me. 362, 105 A. (2d) 454.

And indebtedness exempt when incurred is not counted as part of municipal debt.—The removal from the constitution of the exemption of debts incurred under contracts with the Maine School Building Authority does not require that those debts which were exempt from municipal indebtedness under this section, when incurred, must now be counted as part of the municipal debt of any municipality which has contracted with the authority. Opinion of the Justices, 150 Me. 362, 105 A. (2d) 454.

Quasi municipal corporation not limited by section.—The Bangor recreation center is a quasi municipal corporation, the available borrowing capacity of which is not limited by the constitutional debt limit of the city of Bangor. Carlisle v. Bangor Recreation Center, 150 Me. 33, 103 A. (2d) 339.

ARTICLE X.

ADDITIONAL PROVISIONS.

§ 3. Laws now in force continue until repealed.

A writ of error coram nobis was originally, and now is, a part of the procedural law of Maine. In 1820, when Maine became a state, this article effectively incorporated all "laws" then in force. Whether the word "law" refers to Massachusetts law or to the common law is immaterial, for by either standard a writ of error coram nobis was then recognized as a remedy. Dwyer v. State, 151 Me. 382, 120 A. (2d) 276.