

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)

NINTH REVISION

REVISED STATUTES

OF THE

STATE OF MAINE

1954

FIRST ANNOTATED REVISION

IN FIVE VOLUMES

VOLUME 3



THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA

Chapter 97.

Fire Departments and Fire Prevention.

Sections 1- 9. Fire Wards and Engineers.
 Sections 10-20. Municipal Inspection of Buildings.
 Sections 21-31. Investigation of Fire Hazards and Causes of Fire.
 Sections 32-60. Fire Prevention.
 Sections 61-69. Steam Engineers and Firemen.
 Sections 70-72. Aroostook County Fire Marshal.

Injunction available to town for fire prevention.—A town may maintain injunction proceedings against threatened nuisances affecting matters of which the state has confided to it either control or regulation, as in the prevention of fires under this chapter. *Houlton v. Titcomb*, 102 Me. 272, 66 A. 733.

Fire Wards and Engineers.

Sec. 1. Election of fire wards.—Each town, at its annual meeting, may elect as many fire wards as it deems necessary; and each person so chosen shall be notified within 3 days, and shall enter his acceptance or refusal of the office with the town clerk within 3 days after such notice on penalty of \$10, unless excused by the town; and if excused, the town shall elect another in his place. (R. S. c. 85, § 1.)

Sec. 2. Duties and powers of fire wards and other officers at fires.—When a fire breaks out in any town, the fire wards shall immediately attend at the place; and when there, any 3 of them may direct any building to be pulled down or demolished if they judge it necessary to prevent the spread of the fire; but in their absence the major part of the municipal or any 2 civil or military officers present, in the order in which they are named, have the same power.

During the continuance of any fire, said fire wards or other officers in charge may require assistance in extinguishing the fire and removing merchandise and furniture; appoint guards to secure the same and to aid in pulling down or demolishing buildings and suppressing disorder and tumult; and generally may direct all operations to prevent further destruction or damage; any person refusing to obey their orders forfeits \$10. (R. S. c. 85, § 2.)

Fire wards are public officers.—The officers mentioned in this section, though chosen directly by or under ordinances, or by-laws established by cities and towns, are public officers, performing public duties, acting upon their own responsibility, controlled by fixed principles and established rules as found in the laws applicable, with no power of control over the corporation, or power to impose any obligation upon it, except so far as such authority may be conferred by express statute or act of the corporation. They are a part of the municipal government, and not servants or agents of the municipality. Hence their relation to their respective cities and towns differs in no respect

from that of municipal officers generally. *Burrill v. Augusta*, 78 Me. 118, 3 A. 177.

And a city is not ordinarily liable for the act of the officers of its fire department, unless made so by express statute, or unless the act complained of was expressly ordered by the city government. *Burrill v. Augusta*, 78 Me. 118, 3 A. 177.

One officer may constitute "major part" of officers present.—Where only one municipal officer was present at a fire, he was held to constitute the "major part" of the officers present within the meaning of this section. See *Frankfort v. Waldo County Com'rs*, 40 Me. 389.

Cited in *Farmer v. Portland*, 63 Me. 46.

Sec. 3. Fire engines and apparatus; management; employment and compensation of men.—Any town, corporation or individuals providing fire engines, hose, ladders or other apparatus or equipment used for the extinguishment of fires, or the preservation of life or property from destruction at fires,

may by ordinances or by-laws prescribe rules and regulations for the care and management thereof, for the employment and compensation of men, not exceeding 60 to each engine, whether enginemen or other persons, and for the appointment of officers to govern them when on duty and to take charge of such apparatus or equipment and may prescribe their style, rank, powers and duties. (R. S. c. 85, § 3.)

Sec. 4. Engineers and officers to have powers and duties of fire wards; towns responsible.—The engineers or other officers chosen by any town under any ordinance or by-law shall, in addition to the powers thereby conferred, exercise all the powers and duties of fire wards as prescribed in this chapter, unless restricted by the ordinance or by-law under which they are chosen; and such towns are responsible for the acts of their said officers as for the acts or orders of fire wards in similar cases; and such firemen and enginemen, so employed, have all the powers and privileges and are subject to all the duties and liabilities of enginemen as prescribed in this chapter. (R. S. c. 85, § 4.)

Sec. 5. Enginemen; tenure of office; election of officers; rules and regulations. — Enginemen chosen under the provisions of this chapter shall: continue in office during the pleasure of the municipal officers; meet annually to elect such officers as are deemed necessary to give efficiency to their operations; establish such rules and regulations respecting their duty, as are approved by said municipal officers and not repugnant to law, and affix penalties to be recovered by their clerk of not more than \$6 for any one offense. (R. S. c. 85, § 5.)

Sec. 6. Duty of engine companies. — Companies of enginemen shall meet once every month, and oftener if necessary, to examine the state of their engines and the appendages thereof; and by night or by day without delay, under the direction of the fire wards, they shall use their best endeavors to extinguish all fires in the town or in its immediate vicinity. (R. S. c. 85, § 6.)

Sec. 7. Discharge of negligent enginemen and selection of enginemen for other duties at fires.—On proof of negligence, the municipal officers may discharge any engineman or member of the company organized under special laws and appoint some other person in his stead; and they may select from the enginemen any number for each engine in their town, who shall, under the direction of the fire wards, attend fires therein with axes, fire hooks, fire sails and ladders, and perform such further duty as said officers from time to time prescribe. (R. S. c. 85, § 7.)

Sec. 8. Officers appointed under special laws have same powers as fire wards.—The chief engineer, engineers, fire wards and other officers appointed for particular localities under special laws have the same power as fire wards to pull down or demolish buildings in order to prevent the spreading of fires and to do other things for the extinguishment thereof; and the town to which they belong is liable to pay such compensation for damages consequent upon their acts as other towns are for similar damages; and the members of the fire department in such localities shall enjoy all the privileges and be liable to all the duties of other firemen; but nothing herein shall be construed to control the manner of their election. (R. S. c. 85, § 8.)

Cited in *Farmer v. Portland*, 63 Me. 46.

Sec. 9. Compensation for building demolished.—If the pulling down or demolishing of any building, except that in which the fire originated, is the means of stopping the fire, or if the fire is stopped before it comes to the same, then the owner of such building is entitled to recover a reasonable compensation therefor from the town in a special action on the case. (R. S. c. 85, § 9.)

Applied in *Farmer v. Portland*, 63 Me.

Municipal Inspection of Buildings.

Sec. 10. Inspector of buildings; election; qualifications; compensation; jurisdiction; deputy.—In every town and city of more than 2,000 inhabitants, and in every town of 2,000 inhabitants or less if such a town shall so vote at a town meeting, and in each village corporation if such corporation shall so vote at the annual meeting thereof, the municipal officers shall annually in the month of April appoint an inspector of buildings, who shall be a man skilled in the construction of buildings, and shall determine his compensation. The municipal officers shall define the limits within which the inspector of buildings shall have jurisdiction, which shall include the thickly settled portion of each such city or of each village in each such city or town. Whenever the inspector of buildings shall become incapacitated, the municipal officers may appoint or authorize the inspector of buildings to appoint a deputy inspector of buildings who shall serve until removed by the municipal officers, but in no event beyond the term for which the inspector of buildings was appointed. Such deputy inspector shall perform such duties as may be required of him by the inspector. His compensation shall be determined by the municipal officers. (R. S. c. 85, § 10.)

Inspectors cannot authorize violation of law.—This section and those following do not give building inspectors authority to permit violation of law, or ordinances which are equivalent to law. *Lewiston v. Grant*, 120 Me. 194, 113 A. 181.

And town not estopped to prosecute for such violation.—A town is not estopped to

prosecute an action for violation of a fire ordinance prohibiting certain constructions, merely because the building inspector gave permission to build the prohibited structures. *Lewiston v. Grant*, 120 Me. 194, 113 A. 181.

Stated in *Skowhegan v. Heselton*, 117 Me. 17, 102 A. 772.

Sec. 11. Inspector may enter any building.—An inspector of buildings in the performance of his official duty may enter any building for the purpose of making the inspection required by this chapter. (R. S. c. 85, § 11.)

Sec. 12. Duty to inspect new buildings in process of construction.—The inspector of buildings shall inspect each new building during the process of construction, so far as may be necessary, to see that all proper safeguards against the catching or spreading of fire are used, that the chimneys and flues are made safe and that proper cutoffs are placed between the timbers in the walls and floorings where fire would be likely to spread; and may give such directions in writing to the owner or contractor, as he deems necessary, concerning the construction of such building so as to render the same safe from the catching and spreading of fire. (R. S. c. 85, § 12.)

See note preceding § 1, re use of injunction in the prevention of fires under this

chapter; § 16, re certification for new buildings.

Sec. 13. Inspection of buildings while being repaired.—The inspector of buildings shall inspect all buildings while in process of being repaired, and see that all reasonable safeguards are used against the catching and spreading of fire and that the chimneys and flues are made safe; and he may give such directions in writing to the owner as he deems necessary concerning such repairs, so as to render such building safe from the catching and spreading of fire. (R. S. c. 85, § 13.)

Of the constitutionality and reasonableness of this section there can be no question. *Skowhegan v. Heselton*, 117 Me. 17, 102 A. 772.

And it gives inspector authority without ordinance.—This section is broad and comprehensive and was undoubtedly intended to give the building inspector authority without any ordinance. *Skowhe-*

gan v. Heselton, 117 Me. 17, 102 A. 772.

"Directions in writing" are amply broad to embrace the power to approve or disapprove plans for extensive repairs. *Skowhegan v. Heselton*, 117 Me. 17, 102 A. 772.

And an ordinance requiring such approval is valid.—An ordinance that requires plans for repairs to be approved by the fire inspector and permits to be is-

sued by the selectmen is valid under this section. *Skowhegan v. Heselton*, 117 Me. 17, 102 A. 772.

Motive of framers does not affect validity of ordinance.—The motive of the framers of ordinances made pursuant to the fire prevention laws to discriminate against a certain class which does not appear from the language of the ordinance or statute will not make the enactment void or unconstitutional, and evidence as to their motive or the influences under which they are enacted is not admissible for the purpose of nullifying an ordinance. *Skowhegan v. Heselton*, 117 Me. 17, 102 A. 772.

And ordinance may prohibit enlargement of wooden buildings.—A municipal ordinance providing that no wooden build-

ing within the fire zone shall be repaired or altered so as to increase its present height or size is valid under the authority of this chapter, and not objectionable on constitutional grounds. *Lewiston v. Grant*, 120 Me. 194, 113 A. 181.

But cannot require damaged buildings to be torn down.—Where an ordinance of a small village declared that if damage to a wooden building amounted to more than one-half the value thereof, the building should be torn down; it was held that such ordinance was confiscatory and invalid. *Skowhegan v. Heselton*, 117 Me. 17, 102 A. 772.

An intended violation of a valid ordinance made pursuant to this section may be enjoined. See *Skowhegan v. Heselton*, 117 Me. 17, 102 A. 772.

Sec. 14. Inspection of chimneys, flues, funnels, etc.—The inspector of buildings shall at least once in 3 years, and oftener when required by the municipal officers, inspect chimneys, flues, funnels, stoves, furnaces, boilers, boiler connections and heating apparatus in all the buildings within his jurisdiction, in which fire is kept or used, to ascertain if the same are safe against fire. He may give such directions in writing as he may deem necessary to the owner of said building to make changes in the construction or situation of such chimneys, flues, funnels, stoves, furnaces, boilers, boiler connections and heating apparatus so as to make the same safe as aforesaid. The municipal officers may require such inspection of any particular building at any time. (R. S. c. 85, § 14.)

Sec. 15. Appeal.—An appeal in writing may be taken from any order or direction of the inspector of buildings to the municipal officers, whose order thereon shall be final. (R. S. c. 85, § 15.)

Sec. 16. New building not occupied unless inspector certifies as to safety from fire; appeal.—No new building shall be occupied until the inspector of buildings has given a certificate that the same has been built in accordance with the provisions of section 12, and so as to be safe from fire; if the owner permits it to be so occupied without such certificate, he shall be liable to a fine of \$10 for each week he permits such building to be so occupied, to be recovered by complaint or indictment. In case the inspector of buildings for any cause declines to give his certificate and the builder has in his own judgment complied with the provisions of section 12, an appeal may be taken to the municipal officers and, if on such appeal it shall be decided by them that the provisions of said section have been complied with, the owner of said building shall not be liable to a fine for want of the certificate of the inspector. (R. S. c. 85, § 16.)

Sec. 17. Owner neglecting or refusing to comply with orders of inspector.—If the owner of any building neglects or refuses for more than 30 days to comply with any direction of the inspector of buildings given as aforesaid concerning the repairs on any building as provided in section 13, or to make such changes in the construction or situation of chimneys, flues, funnels, stoves, furnaces, boilers, boiler connections and heating apparatus, as may be required by such inspector of buildings under the provisions of section 14, or as may be confirmed by the municipal officers on appeal, he shall be punished by a fine of \$10 for each week he so neglects or refuses, to be recovered by complaint or indictment. (R. S. c. 85, § 17.)

See note preceding § 1, re use of injunction in the prevention of fires under this chapter.

Sec. 18. Owner refusing inspector admission to building. — Any owner or occupant of a building, who refuses to permit an inspector of buildings to enter his buildings or willfully obstructs him in the inspection of such building as required by this chapter, shall be punished by a fine of not less than \$1 nor more than \$20, to be recovered by complaint or indictment. (R. S. c. 85, § 18.)

Sec. 19. Inspector and municipal officers may enter building in their jurisdiction; authority and duty to remedy dangerous conditions; appeal.—The inspector of buildings, the fire inspector and the municipal officers of any city or town may at all reasonable hours, for the purpose of examination, enter into and upon all buildings and premises within their jurisdiction. Whenever any of said officers shall find in any building or upon any premises combustible material or inflammable conditions dangerous to the safety of such buildings or premises, they shall order the same to be removed or remedied, and such order shall be forthwith complied with by the owner or occupant of said buildings or premises; provided, however, that if the said owner or occupant shall deem himself aggrieved by such order when made by the inspector of buildings or the fire inspector, he may within 24 hours appeal to the municipal officers, and the cause of the complaint shall be at once investigated by the direction of the latter and, unless by their authority the order above named is revoked, such order shall remain in force and be forthwith complied with by said owner or occupant. The inspector of buildings, the fire inspector or the municipal officers shall make, or cause to be made, an immediate investigation as to the presence of combustible material or the existence of inflammable conditions in any building or upon any premises under their jurisdiction, upon complaint of any person having an interest in said buildings or premises or property adjacent thereto. Any owner or occupant of buildings or premises, failing to comply with the orders of the authorities above specified, shall be punished by a fine of not less than \$5 for each day's neglect. (R. S. c. 85, § 19.)

See § 22, re insurance commissioner 25, § 254, re children's homes; c. 141, §§ may inspect buildings on complaint; c. 25-29, re certain buildings nuisances.

Sec. 20. Trial justices; jurisdiction.—Trial justices shall have jurisdiction of the offenses named in the 4 preceding sections. (R. S. c. 85, § 20.)

Investigation of Fire Hazards and Causes of Fire.

Sec. 21. Election of fire ward required who shall be a fire inspector; duties and compensation of fire inspectors.—Each town at its annual meeting shall elect at least 1 fire ward, who shall be a fire inspector and shall perform the several duties prescribed by this section and the 2 following sections; if more than 1 fire ward is elected by any town, one of said fire wards shall be designated as fire inspector of said town, and the other fire wards shall, under the direction of the fire inspector, assist in performing the duties imposed upon said fire inspector by said sections. Fire inspectors shall receive reasonable compensation for their services, to be determined by the town. In towns and cities having an organized fire department, the chief of such fire department shall perform the duties of fire inspector. The municipal officers may authorize such fire inspectors to perform the duties imposed upon them by sections 24, 25 and 27, and, when so authorized, said fire inspectors shall have all the powers thereby conferred and shall perform all the duties therein prescribed. Such fire inspectors shall furnish the insurance commissioner with such information as he may require and shall perform such inspections as the insurance commissioner may direct. When for any reason the office of fire ward is vacant or the fire ward is incapacitated, and there is no organized fire department, the

municipal officers may appoint one or more fire wards who shall serve until the next ensuing election of officers. (R. S. c. 85, § 21, 1953, c. 92.)

See note preceding § 1, re use of in- this chapter; c. 25, § 254, re children's
junction in the prevention of fires under home.

Sec. 22. Insurance commissioner upon complaint may inspect buildings; combustible or other dangerous matter removed. — The insurance commissioner, his deputy or the fire inspector, upon the complaint of any person or whenever he or they shall deem it necessary, may inspect or cause to be inspected all buildings and premises within their jurisdiction. Whenever any of said officers shall find any building or other structure which, for want of repairs, or by reason of age or dilapidated condition, or from any other cause, is especially liable to fire, and which is so situated as to endanger other property or the safety of the public, and whenever such officer shall find in or around any building combustible or explosive matter or inflammable or other conditions dangerous to the safety of such buildings, he shall order the same to be removed or remedied, and such order shall forthwith be complied with by the owner or occupant of such premises or buildings. If such order is made by any fire inspector, such owner or occupant may within 24 hours appeal to the insurance commissioner, who shall within 10 days review such order and file his decision thereon, and his decision shall be final and shall be complied with within such time as may be fixed in said order or decision of the insurance commissioner. (R. S. c. 85, § 22.)

See § 19; c. 25, § 254; re children's homes.

Sec. 23. Buildings repaired or demolished; special tax assessed. — If any person fails to comply with the order of any officer under the provisions of the preceding section or with the decision of the insurance commissioner on review and within the time fixed, then such officer may cause such building or premises to be forthwith repaired, torn down or demolished and such materials removed and all dangerous conditions remedied, as the case may be, at the expense of the town in which such property is situated; and if the owner thereof, within 30 days after notice in writing of the amount of such expense, fails, neglects or refuses to repay said town the expense thereby incurred, a special tax may be assessed by the assessors of taxes against the land on which said building was located for the amount of such expenses, and such amount shall be included in the next annual warrant to the collector of taxes of said town, for collection, and shall be collected in the same manner as state, county and municipal taxes are collected. (R. S. c. 85, § 23.)

Sec. 24. Municipal officers to investigate origin of fires; insurance commissioner may direct investigation.—When property is destroyed or damaged by fire the municipal officers in cities and towns shall immediately notify the insurance commissioner of the same, and shall investigate the cause, circumstances and origin of the fire, and especially examine whether it was the result of carelessness or of design. The investigation shall be commenced within 3 days after the occurrence of the fire, not including the Lord's day, and the insurance commissioner may supervise and direct such investigation whenever he deems it expedient or necessary. (R. S. c. 85, § 24.)

Cross reference.—See § 31, re penalty.

Cited in Howard v. Harrington, 114 Me. 443, 96 A. 769.

Sec. 25. Municipal officers to file statement of facts relating to cause of fire; record, open to public. — When the municipal officers have completed their investigation, which shall be within 2 weeks after the occurrence of the fire, they shall immediately file with the insurance commissioner a written

statement of all the facts relating to the cause, circumstances and origin of the fire; the kind, value and ownership of the property destroyed or damaged and such other information as may be required by said commissioner. The insurance commissioner shall make a record of all fires investigated under the provisions of sections 24 to 31, inclusive, together with all facts, statistics and circumstances connected therewith. Such record shall at all times be open to public inspection, and such portions of it as the said commissioner deems expedient shall be published in his annual report to the governor and council. (R. S. c. 85, § 25.)

See § 31, re penalty.

Sec. 26. Insurance commissioner may examine into cause and origin of all fires; testimony on oath; if evidence sufficient, to cause arrest.—The insurance commissioner may, whenever he deems it expedient or advisable, examine or cause to be examined the cause, circumstances and origin of all fires occurring in the cities and towns within the state, of which he has knowledge, by which property is damaged or destroyed, and may specially examine and decide whether the same was the result of carelessness or design. The insurance commissioner shall, when in his opinion said proceedings are necessary, take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matters as to which such examination is made, and may cause the same to be reduced to writing. If he shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson or incendiarism, he shall cause such person to be arrested and charged with such offense, and shall furnish to the proper county attorney all such evidence, together with the names of witnesses and all information obtained by him, including a copy of all pertinent and material testimony in the case. (R. S. c. 85, § 26.)

See § 31, re penalty.

Sec. 27. Witnesses compelled to testify; false swearing; investigations private.—The insurance commissioner, the deputy insurance commissioner and the municipal officers of cities and towns shall each have the powers of a trial justice for the purpose of summoning and compelling the attendance of witnesses before them or either of them, to testify in relation to any matter which is by the provisions of the 3 preceding sections a subject of inquiry and investigation, and to compel the production of all books, records, documents and papers pertaining to said subject of inquiry and investigation. Said insurance commissioner, deputy insurance commissioner and municipal officers may also administer oaths and affirmations to persons appearing as witnesses before them; and false swearing in any matter or proceeding aforesaid shall be deemed perjury and shall be punished as such. Said insurance commissioner and his subordinates shall have authority, at all times of the day or night, in the performance of the duties imposed by this chapter, to enter upon and examine any building or premises where a fire is in progress or has occurred and other buildings or premises adjoining or near the same. All investigations held by or under the direction of the insurance commissioner, deputy insurance commissioner or the municipal officers may in their discretion be private, and persons other than those required to be present by the provisions hereof may be excluded from the place where such investigation is held and witnesses may be kept separate and apart from one another and not allowed to communicate with one another until they have been examined. (R. S. c. 85, § 27.)

See § 31, re penalty; c. 135, § 1, re perjury.

Sec. 28. Insurance companies to report to commissioner adjustment of all losses.—Every fire insurance company or association transacting business in the state shall report to the insurance commissioner, within 10 days

after the adjustment of every loss, the amount of all policies issued by said company on the property destroyed or damaged, the amount paid or payable on account of such loss and such other information relating to the matter as the commissioner may require. (R. S. c. 85, § 28.)

See § 31, re penalty.

Sec. 29. Insurance commissioner may incur expense for administration of fire preventive laws.—The insurance commissioner may incur such expense and appoint a director of state fire prevention and such state fire inspectors, subject to provisions of the personnel law, as may be necessary to carry out the provisions of all fire preventive and investigative laws, rules and regulations which he is by law empowered to administer. He may also incur reasonable expenses in educating the public in fire prevention and protection. The director of state fire prevention and state fire inspectors appointed under the provisions of this section shall carry out those functions which the commissioner may direct. Every fire insurance company or association which does business or collects premiums or assessments in the state shall pay to the state tax assessor on the 1st day of May, annually, in addition to the taxes now imposed by law to be paid by such companies or associations, $\frac{1}{2}$ of 1% of the gross direct premiums for fire risks written in the state during the preceding calendar year, less the amount of all direct return premiums thereon and all dividends paid to policyholders on direct fire premiums during said calendar year. The state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. Said funds shall be used solely to defray the expenses incurred by the insurance commissioner in administering all fire preventive and investigative laws, rules and regulations and in educating the public in fire safety and are appropriated for such purposes.

Whenever there shall accumulate in the special fund created by this section a surplus sufficient to defray the expenses of such administration for an ensuing period of 1 year, then, in the discretion of the insurance commissioner, the foregoing special tax for that year may be omitted, and the insurance commissioner shall certify to the state tax assessor that the special tax is to be omitted and said certification is to be made not later than the 31st day of January of the year in which the tax would otherwise be assessed. The premium tax return shall be made at the same time and in the same manner as provided for insurance premium taxes specified in section 142 of chapter 16. (R. S. c. 85, § 29. 1947, c. 188, § 8. 1949, c. 349, § 120; c. 399. 1951, c. 266, § 102.)

See § 31, re penalty.

Sec. 30. Municipal officers to keep record of returns. — Municipal officers shall record or cause to be recorded all returns made under the provisions of the 6 preceding sections. (R. S. c. 85, § 30.)

See § 31, re penalty.

Sec. 31. Violation of §§ 24-30.—Any city or town officer or any insurance company neglecting or refusing to perform any duty required by the provisions of the 7 preceding sections shall be punished by a fine of not less than \$10 nor more than \$100, for each offense. (R. S. c. 85, § 31.)

Cited in *Howard v. Harrington*, 114 Me. 443, 96 A. 769.

Fire Prevention.

Sec. 32. Certain occupations in maritime towns. — No person shall occupy any tenement in a maritime town for sailmaking, rigging or as a livery stable, except where the municipal officers direct; whoever violates the provisions of this section forfeits \$10 a month during the continuance of such occupancy. (R. S. c. 85, § 32.)

See § 42, re recovery and appropriation of penalty.

Sec. 33. Defective chimneys, etc., removed or repaired.—On complaint of any citizen that a chimney, stove, stovepipe, oven, furnace, boiler or appurtenance is defective, out of repair or so placed in any building as to endanger it or any other building, the insurance commissioner or municipal officers of any town of not more than 2,000 inhabitants, if satisfied that such complaint is well founded, shall give written notice to the owner or occupant of such building, and if he unnecessarily neglects for 3 days to remove or repair the same effectually, he forfeits not less than \$10 nor more than \$100. (R. S. c. 85, § 33. 1947, c. 239.)

See note preceding § 1, re use of injunction in the prevention of fires under this chapter; § 42, re recovery and appropriation of penalty.

Sec. 34. Smoking in mills, passenger buses, shipyards, etc. — No person shall enter any mill, millyard, passenger bus or portion thereof, factory, machine shop, shipyard, covered bridge, stable or other building with a lighted pipe, cigarette or cigar, or shall light or smoke any pipe, cigarette or cigar therein under a penalty of \$5, if a notice in plain legible characters that no smoking is allowed therein is kept in a conspicuous position over or near each principal entrance to such building or place; and whoever defaces, removes or destroys such notice forfeits \$10; provided, however, that this section shall not apply to passenger buses except when operated upon routes authorized by a certificate issued by the public utilities commission. (R. S. c. 85, § 34. 1951, c. 276.)

See § 42, re recovery and appropriation of penalty.

Sec. 35. Throwing substances on highways.—It shall be unlawful to drop or throw from any vehicle upon a public or private way a lighted cigarette, cigar, match or live ashes or any substance or thing in and of itself likely to cause a fire.

Whoever violates the provisions of this section shall be punished by a fine of not less than \$10 nor more than \$50. (1953, c. 246.)

Sec. 36. Kindling fire on land without consent of owner.—Whoever kindles a fire on land not his own, without consent of the owner, forfeits \$10. If such fire spreads and damages the property of others, he forfeits not less than \$10 nor more than \$500, and in either case he shall stand committed until fine and costs are paid, or he shall be imprisoned for not more than 3 years. The provisions of this section shall not apply to the duties of state forest fire wardens to set a backfire to extinguish a forest fire actually burning. (R. S. c. 85, § 35. 1949, c. 150.)

See § 42, re recovery and appropriation of penalty.

Sec. 37. Kindling fire with intent to injure another. — Whoever with intent to injure another causes a fire to be kindled on his own or another's land, whereby the property of any other person is injured or destroyed, shall be punished by a fine of not less than \$20 nor more than \$1,000, or by imprisonment for not less than 3 months nor more than 3 years. (R. S. c. 85, § 36.)

See § 42, re recovery and appropriation of penalty.

Sec. 38. When lawful fires kindled. — Whoever for a lawful purpose kindles a fire on his own land shall do so at a suitable time and in a careful and prudent manner; and is liable, in an action on the case, to any person injured by his failure to comply with this provision. (R. S. c. 85, § 37.)

Cross references.—See § 41, re common-law remedy; § 42, re recovery and appropriation of penalty; c. 36, § 84, re slash and brush burning permits; § 85, re town or private dumps. **Section affirms common law.**—This sec-

tion does not abrogate the common law, but is rather a substantial affirmance of it, and the principles of the common law are applicable. *Hewey v. Nourse*, 54 Me. 256.

Husbandry is "lawful purpose."—Every person has a right to kindle a fire on his own land for the purposes of husbandry, if he does it at a proper time, and in a suitable manner, and uses reasonable care and diligence to prevent its spreading and doing injury to the property of others. *Hewey v. Nourse*, 54 Me. 256.

And a proprietor setting fire on his own land is not an insurer that no injury shall happen to his neighbor but is responsible only for negligence. *Sturgis v. Robbins*, 62 Me. 289.

Though he must exercise reasonable prudence and care.—The rule of law under this section is that an owner, about to burn blueberry land must, at his peril, select an hour that to the reasonably prudent man would seem suitable, i. e., not dangerous to nearby properties; and must exercise reasonable care in controlling the flames so that they may not do damage to others. *Hill v. Lehtinen*, 131 Me. 129, 159 A. 730.

But there is no fixed standard of care.—It is impossible that there should be any uniform practice or fixed standard of care, with respect to a duty so peculiarly dependent upon varying circumstances and conditions as that of guarding fire to prevent its spreading. *Pulsifer v. Berry*, 87 Me. 405, 32 A. 986.

And wrongdoer liable whether injury foreseen or not.—The wrongdoer may be held responsible for all injury necessarily and naturally resulting from his tortious act, whether foreseen by him or not. *Spear v. Hoffses*, 128 Me. 409, 148 A. 146.

Gist of action is negligence.—The time may be suitable and the manner prudent, and yet, if the person who kindles a fire on his land is guilty of negligence in taking care of it, and it spreads and injures the property of another in consequence of such negligence, he is liable in damages for the injury done. The gist of the action is negligence, and if that exists in either of these particulars, and injury is done in consequence thereof, the liability attaches; and it is immaterial whether the proof establishes gross negligence, or only a want of ordinary care on the part of the defendant. *Hewey v. Nourse*, 54 Me. 256.

But specific form of negligence not material.—Whether the fault or negligence of the person setting a fire consisted in the time or manner of kindling the fire, or

the means used to prevent its spreading is immaterial, as either will be sufficient to render him liable if a plaintiff suffers injury thereby. *Hewey v. Nourse*, 54 Me. 256.

Plaintiff must show want of ordinary care.—To permit recovery under this section a jury must be satisfied from the evidence that the defendant did not use ordinary care in setting, managing and keeping his fire, and in both these points the burden of proof is on the plaintiff. *Sturgis v. Robbins*, 62 Me. 289.

In complying with section.—In an action under this section it is not for the defendant to show, in the first instance, that he complied with the statute, but for the plaintiff to show that he did not. *Sturgis v. Robbins*, 62 Me. 289.

It is for the jury to determine whether the burning was performed in a negligent manner. *Lindsay v. McCaslin*, 123 Me. 197, 122 A. 412.

Upon consideration of factors bearing on negligence.—The number and magnitude of the fires, the condition of the soil, the state of the weather, the direction and force of the wind, and the relative situation and exposure of the plaintiff's property, would all be factors to be considered in the solution of the question in every case. *Pulsifer v. Berry*, 87 Me. 405, 32 A. 986.

And jury is capable of determination without expert testimony.—The management of fires burning in heaps of brush, and lingering in piles of brands, is manifestly a subject of inquiry with respect to which a jury, men of ordinary experience and intelligence, must be deemed capable of drawing conclusions from facts proved without the aid of those claiming special skill or experience in the premises. The tendency of fire to spread and cause damage, under certain circumstances and conditions, is a matter of common knowledge and experience, and the question of proper safeguards to prevent it is not one for expert testimony. *Pulsifer v. Berry*, 87 Me. 405, 32 A. 986.

But whether person burning land is contractor or servant is question of law.—When there is a written contract of employment for the burning of land, it is a question of law whether the person employed was an independent contractor or merely a servant. *Lindsay v. McCaslin*, 123 Me. 197, 122 A. 412.

Though in either case owner may be liable.—The rule as to non-liability of the employer for the acts of a contractor does

not apply where the contract directly requires the performance of a work intrinsically dangerous, such as burning of lands, however skillfully performed. *Lindsay v. McCaslin*, 123 Me. 197, 122 A. 412.

If the work is one that will result in injury to others unless preventive measures be adopted, the employer cannot relieve himself from liability by employing a contractor to do what it was his duty to do, to prevent such injurious consequences. *Lindsay v. McCaslin*, 123 Me. 197, 122 A. 412.

This section contemplates damages to produce just results. Damages are commensurate with damage. *Spear v. Hoffses*, 128 Me. 409, 148 A. 146.

Measure of damages.—In an action under this section a jury may find from the evidence how much, with respect to the most valuable purpose or use of trees de-

stroyed, either for timber or shade or beauty, but not both, the market value of the lands had been reduced; regard being had to their character, situation, present and probable use. *Spear v. Hoffses*, 128 Me. 409, 148 A. 146.

In an action under this section, the owner of a grove of trees destroyed by burning may treat them as personal property, and sue for their value as though they had been detached from the realty, in which case his measure of damages is the value of the trees separate and apart from the soil; but where he sues to recover damages for injury, permanent in nature, caused his land by the loss of the trees, the measure of damages is the market value of the land immediately before and immediately after the injury. *Spear v. Hoffses*, 128 Me. 409, 148 A. 146.

Sec. 39. Lumber drivers may kindle necessary fires.—Persons engaged in driving lumber may kindle fires when necessary, but shall use the utmost caution to prevent them from spreading and doing damage, and if they fail to do so, they are subject to all the foregoing liabilities and penalties, as if said privilege had not been allowed. (R. S. c. 85, § 38.)

See § 41, re common-law remedy; § 42, re recovery and appropriation of penalty.

Sec. 40. Not extinguishing camp, cooking or other fires; fines. — Whoever by himself, or by his servant, agent or guide, or as the servant, agent or guide of any other person, shall build a camp, cooking or other fire, or use an abandoned camp, cooking or other fire in or adjacent to any woods in this state, shall, before leaving such fire, totally extinguish the same, and upon failure to do so such person shall be punished by a fine of \$50, provided that such fires built upon the sea beach in such situation that they cannot spread into forest land, woodland or cultivated lands or meadows shall not be construed as prohibited by this section. One-half of any fine imposed and collected under the provisions of this section shall be paid to the complainant.

The penalty imposed by this section shall not be considered a substitute. (R. S. c. 85, § 39. 1951, c. 266, § 103.)

Sec. 41. Common law remedy not taken away. — The common law right to an action for damages done by fires is not taken away or diminished and it may be pursued notwithstanding the penalties set forth in this chapter, but any person availing himself of the provisions of section 38 is barred of his action at common law for the damage so sued for. No action shall be brought at common law for kindling fires in the manner described in section 39; but if such fire spreads and does damage, the person who kindled it and any persons present and concerned in driving the lumber, by whose act or neglect such fire is suffered to do damage, are liable in an action on the case for such damage. (R. S. c. 85, § 40.)

See § 42, re recovery and appropriation of penalty.

Sec. 42. Penalties, how recovered and appropriated.—Penalties provided in sections 32 to 39, inclusive, and section 41 may be recovered by complaint, indictment or action of debt, half to the town where the offense is committed and half to the prosecutor. (R. S. c. 85, § 41.)

Sec. 43. Regulations relating to explosives or inflammable liquids.

—The insurance commissioner shall make, amend or rescind, after public hearing thereon, notice of which has been duly advertised in the state paper, reasonable rules and regulations for the keeping or transporting from place to place in the state of all gunpowder, petroleum, coal oils, burning fluids, naphtha, benzine and all other explosives and illuminating substances which such commissioner believes dangerous to the lives or safety of citizens.

Such rules and regulations shall become effective when approved in writing by the governor and council and when a certified copy thereof has been filed with the secretary of state. Any person aggrieved by any such rule or regulation or the reasonableness of same, or any act or order of the insurance commissioner in enforcing any such rule or regulation, may appeal to a justice of the superior court by presenting to him a petition therefor in term time or vacation and he shall fix a time and place of hearing which may be in the chambers or in vacation and cause notice thereof to be given to the commissioner and, after the hearing, the justice may affirm or reverse the rule, regulation, act or order of the commissioner and the decision of such justice shall be final.

Said commissioner may waive the requirements of any such rules or regulations to cover any special circumstances, conditions or localities.

No person shall keep or transport any such article in any quantity or manner, except as prescribed in such regulations, unless waived by the commissioner as hereinbefore provided, under a penalty of not less than \$20 nor more than \$100, for each offense; all such articles may be seized by any peace officer and forfeited; and within 20 days after such seizure, may be libeled according to law. Cities and towns may also make and enforce reasonable ordinances or by-laws, not inconsistent with said rules and regulations. (R. S. c. 85, § 42.)

Cross references.—See note preceding § 1, re use of injunction in the prevention of fires under this chapter; c. 141, § 9, re buildings for manufacture of powder as nuisances.

Reasonable regulations for keeping dangerous substances valid.—Reasonable regulations, authorized under this section, not unlawfully discriminatory, which prohibit keeping oil, gasoline, gunpowder and other explosive and inflammable, and therefore dangerous, substances for sale near churches, hospitals, schools and other buildings are a proper exercise of the police power. *Boothby v. Westbrook*, 138 Me. 117, 23 A. (2d) 316.

And reasonable classifications may be made.—In the enactment of regulations pursuant to this section proper classification may be made, the legislation confined to a certain class or classes, different rules prescribed in favor of or against a class and discriminatory restrictions made or privileges extended, provided the partiality shown and the discriminations effected are reasonable and rest on substantial differences and distinctions which have a valid and real relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. *Boothby v. Westbrook*, 138 Me. 117, 23 A. (2d) 316.

But such regulations must operate uniformly.—A regulatory ordinance of towns or cities passed pursuant to the general grant of power by this section must be reasonable and not arbitrary and operate uniformly on all persons carrying on the same business under the same conditions. *Boothby v. Westbrook*, 138 Me. 117, 23 A. (2d) 316.

And discrimination in favor of present owners is invalid.—An ordinance of a city, which exempts from its operation the owners of filling stations now established, but prohibits all other persons from keeping in certain areas the substances mentioned in this section, makes an arbitrary discrimination between persons, carrying on the same business under substantially the same conditions, and upon grounds which bear no reasonable or real relation to the legitimate purpose of the law. Such an ordinance is unreasonable within the meaning of this section, and its arbitrary discriminations violate the fourteenth amendment. *Boothby v. Westbrook*, 138 Me. 117, 23 A. (2d) 316.

Fire prevention is the sole legitimate purpose for which an ordinance under this section can be enacted and is authorized. *Boothby v. Westbrook*, 138 Me. 117, 23 A. (2d) 316.

And this section does not authorize the

exemption of nonconforming structures and uses as allowed to municipalities by the zoning law. *Boothby v. Westbrook*, 138 Me. 117, 23 A. (2d) 316.

Sec. 44. Recovery of damages by sufferers by explosion.—A person injured by the explosion of such articles in the possession of any person contrary to such regulations has an action for damages against such possessor, or against the owner if cognizant of such neglect. (R. S. c. 85, § 43.)

Sec. 45. Town officers may search for explosives, etc.—Any municipal officer, with a lawful search warrant, may enter any building or other place in his town to search for such articles supposed to be unlawfully concealed there. (R. S. c. 85, § 44.)

See note preceding § 1, re use of injunction in the prevention of fires under this chapter.

Sec. 46. Approval of certain appliances. — No heating, cooking or refrigerating appliances consuming flammable liquids, flammable liquid compounds with flash point of 200° Fahrenheit or under, liquefied petroleum gases, artificial, natural or manufactured gases shall be sold or offered for sale in this state unless such appliances have the approved listing of the Underwriters' Laboratories, Inc., the American Gas Association Testing Laboratories or the department of industrial cooperation at the University of Maine. The expense of obtaining such approval shall be paid by the manufacturers, distributors or marketers of such appliances.

This section shall not apply to those types of heating units such as bunsen burners, torches, flares, urn burners, etc., which are not an integral part of the appliance.

Any violation of the provisions of this section shall be punished by a fine of not more than \$100 or by imprisonment for not more than 90 days, or by both such fine and imprisonment. (1949, c. 292. 1953, c. 308, § 98.)

Sec. 47. Approval of certain compounds.—No individual, partnership or corporation shall sell or offer for sale in this state any type of flame retardant or flame proofing compound, powder or liquid, or any fire extinguisher, or any compound, powder or liquid utilized for fire extinguishing purposes unless such product shall have the approved listing of the Underwriters' Laboratories, Inc. or the department of industrial cooperation at the University of Maine.

The expense involved in ascertaining if such product shall be approved shall be paid by the individual, partnership or corporation selling or offering the same for sale.

Any violation of the provisions of this section shall be punished by a fine of not more than \$100 or by imprisonment for not more than 90 days, or by both such fine and imprisonment. (1949, c. 292. 1953, c. 308, § 98.)

Sec. 48. Doors of public buildings to open outwards.—Every building intended temporarily or permanently for public use, and every schoolhouse of more than 1 story in height and every schoolroom therein, shall have all doors, intended for egress, open outwards. (R. S. c. 85, § 45.)

See c. 41, § 27, re schoolhouses to have proper exits.

Sec. 49. Fire escapes for certain buildings; appeal. — Each story above the first story of a building used as a schoolhouse, orphan asylum, insane asylum, reformatory, opera house, hall for public assemblies, hotel, boardinghouse or lodginghouse, accommodating more than 6 persons, or tenement house occupied by more than 2 families or store in which more than 10 persons are employed above the first story, shall be provided with more than one way of egress, by stairways on the inside or fire escapes on the outside of such building. Such

stairways and fire escapes shall be so constructed, in such a number, or such size and in such location as to give reasonably safe, adequate and convenient means of exit, in view of the number of persons who may need to use such stairway or fire escape, shall at all times be kept free from obstruction and shall be accessible from each room in each story above the first story.

No individual, partnership or corporation shall offer for sale in this state, any type of fire escape device or fire alarm systems unless first securing approval of the insurance commissioner or fire inspector.

Any person or corporation aggrieved by any order of the commissioner issued under the provisions of this section may appeal to a justice of the superior court by presenting to him within 30 days from the effective date of such order, a petition therefor in term time or vacation and he shall fix a time and place of hearing which may be in the chambers or in vacation and cause notice thereof to be given to the commissioner and, after the hearing, the justice may affirm or reverse in full or in part any such order of the commissioner and the decision of such justice shall be final. If the commissioner in the interest of public safety, because he deems there is immediate danger, forbids the use of such buildings for any public purpose until satisfactory compliance with his order, such order shall become immediately effective and the filing of a petition for review shall not operate as a stay thereof. (R. S. c. 85, § 46. 1947, c. 271. 1949, c. 301.)

Cross reference.—See c. 30, § 4, re power of state factory inspector or agent to enter manufacturing establishments.

Section specifies what buildings require fire escapes.—Under this section and §§ 50, 51 and 52 it is not the duty of the officers named to determine what buildings shall be provided with fire escapes, for that is done by this section itself; but it is merely their duty to see that the requirements of the law are complied with and to pass upon the sufficiency of safeguards already provided. Carrigan v. Stillwell, 97 Me. 247, 54 A. 389.

Duty of owner to provide fire escapes not dependent on action of officers.—The duty of an owner under this section to place fire escapes upon the buildings designated does not depend upon the action

of the municipal officers or fire engineers, or upon their failure to take action. Carrigan v. Stillwell, 97 Me. 247, 54 A. 389.

And duty remains notwithstanding building in possession of tenant.—This section and §§ 50, 51 and 52 impose the duty upon the owner of a building to provide and maintain suitable and sufficient fire escapes upon buildings of the kinds specified, notwithstanding they are in the possession of a tenant. Carrigan v. Stillwell, 97 Me. 247, 54 A. 389; Robinson v. Leighton, 122 Me. 309, 119 A. 809.

Former provision of section.—For a case relating to a former provision of this section requiring fire escapes only where there are "workmen above the first story," see Carrigan v. Stillwell, 99 Me. 434, 59 A. 683.

Sec. 50. Inspection of fire escapes.—In towns or parts of towns having no organized fire department, the insurance commissioner or the municipal officers shall annually make or direct the fire inspector to make careful inspection of the precautions and safeguards provided in compliance with the foregoing requirements, and pass upon their sufficiency as to arrangement and number, and upon their state of repair; and direct such alterations, additions and repairs as they adjudge necessary. In cities, towns and villages with a population of over 5,000, having an organized fire department, the duties aforesaid shall be discharged by the insurance commissioner or by the board of engineers and in cities, towns and villages with a population of less than 5,000, having an organized fire department, the duties aforesaid shall be discharged by the insurance commissioner or the chief of the fire department. (R. S. c. 85, § 47. 1947, c. 238.)

This section presupposes that the required safeguards are to be provided before the prescribed inspection, and that the fire inspector's duty is to inspect safe-

guards already supplied and pass upon their sufficiency in number and in other respects. Carrigan v. Stillwell, 97 Me. 247, 54 A. 389.

Sec. 51. Notice as to sufficiency of safeguards.—The municipal officers or chief of the fire department shall give written notice to the occupant of such building, also to the owner thereof if known, of their determination as to the sufficiency of said precautions and safeguards, specifying in said notice any alteration, addition or repair which they require. Sixty days are allowed for compliance with such notice and order. (R. S. c. 85, § 48.)

Stated in Carrigan v. Stillwell, 97 Me. 247, 54 A. 389.

Cited in Howard v. Harrington, 114 Me. 443, 96 A. 769.

Sec. 52. Failure to comply with orders for safeguards.—Any owner or occupant who neglects to comply with such order made under the provisions of the 3 preceding sections, within the time so allowed, forfeits \$50, besides \$5 for every day's continuance of such neglect; and the building or part of a building so occupied shall be deemed a common nuisance, without any other evidence than proof of its use; and the keeper shall be punished accordingly. Said officers may forbid the use of such building for any public purpose until their order has been complied with. If the owner or occupant of said building lets or uses the same in violation of such order, he forfeits not less than \$20 nor more than \$50, for each offense. (R. S. c. 85, § 49, 1949, c. 217.)

Cross references.—See § 56, re how fines recovered; c. 141, § 1, re nuisances.

Stated in Carrigan v. Stillwell, 97 Me. 247, 54 A. 389.

Sec. 53. Issuance of certificate of sufficiency of safeguards; compensation for inspection; return.—Whenever the municipal officers or chief of the fire department, upon inspection, find that proper safeguards and precautions for escape in case of fire or of alarm have been provided, they shall give to the occupant of such building a certificate, under their hands, of such fact which shall be valid for 1 year only from its date; and a reasonable compensation for such inspection shall be paid by the city or town in which any such building is located, by an order drawn upon its treasurer. Such officers shall return to the clerk's office of their town, monthly, a list of such certificates by them issued, which the clerk shall record in a suitable book. (R. S. c. 85, § 50.)

See § 56, re how fines recovered.

Sec. 54. Certificate posted in building, evidence.—Every person receiving such certificate provided for in the preceding section shall keep the same posted in such building. Such annual certificate, so posted, is prima facie evidence of the inspection of such building and of the presence of such suitable safeguards and precaution. Every occupant of such building who neglects or refuses to procure such certificate, or to post the same as aforesaid, forfeits \$10 for every week that he so neglects and refuses. (R. S. c. 85, § 51.)

See § 56, re how fines recovered.

Sec. 55. Town officers' refusal to perform duties.—Every municipal officer or fire inspector or chief of a fire department who refuses to perform the duties imposed upon him by the 7 preceding sections forfeits \$50. (R. S. c. 85, § 52, 1947, c. 77.)

See § 56, re how fines recovered.

Sec. 56. Fines.—All fines and forfeitures imposed by the 4 preceding sections may be recovered by the town where the building is located, by an action on the case or by indictment. (R. S. c. 85, § 53.)

Sec. 57. Investigation by state factory inspector or insurance commissioner.—Whenever it comes to the knowledge of the state factory inspector or his deputy, or to the insurance commissioner or his deputy, or if complaint is made to such state factory inspector or his deputy, or to the insurance commissioner or his deputy by any citizen of the state, that any of the above-named officers have failed to comply with any provision of sections 48 to 55, inclusive,

the state factory inspector or his deputy, or the insurance commissioner or his deputy shall at once proceed to investigate such complaint, and if sufficient evidence can be obtained, he shall at once institute proceedings against such officer, and the county attorney shall prosecute the same. (R. S. c. 85, § 54.)

Sec. 58. Plundering at fires declared larceny.—Whoever takes, carries away or conceals any property not his own, at a fire, or exposed by reason thereof, and does not give notice of it to the owner or one of the fire wards shall be deemed guilty of larceny and punished accordingly. (R. S. c. 85, § 55.)

Sec. c. 132, § 4, re larceny at a fire; c. 136, § 16, re penalty for giving false alarms of fire.

Sec. 59. Forest fire wardens; appointment; term; deputy forest fire wardens; fee.—The forest commissioner shall appoint a forest fire warden for a 3-year term in each organized town, city and plantation within the state outside the limits of the Maine forestry district for the prevention, control and extinguishment of forest fires. Such forest fire warden appointment shall be made with the approval of the municipal officers. A municipal officer, fire chief, fire ward or any citizen is eligible for appointment. All appointed forest fire wardens shall be sworn to the faithful discharge of their duties and a certificate thereof shall be returned to the office of the forest commissioner. Whoever has been notified of this appointment shall file with the forest commissioner his acceptance or rejection within 10 days. The appointed forest fire warden may appoint one or more deputy forest fire wardens subject to approval of the municipal officers. The forest commissioner shall have the authority, with local municipal approval, to remove from office any town forest fire warden who fails to perform his official duties and to fill any vacancy caused by death, resignation or transfer.

The state shall pay the appointed forest fire warden an annual fee of \$50. This payment shall be made contingent upon attendance at forest fire training schools, preparation of an annual forest fire plan for his town and such reports as the forest commissioner may require. This fee in no way limits payment to the warden from his town. His services for work on actual forest fires, also deputy forest fire warden's, shall be paid by the town and at a rate determined by the town. (R. S. c. 85, § 58. 1945, c. 362. 1949, c. 354, § 1.)

Cross references.—See c. 36, § 10, re duties of fire wardens to post notices furnished by forest commissioner; c. 36, § 111, re towns becoming part of Maine forestry district, effect on duties of town officers.

Former provisions of section.—For a case relating to a former provision of this section whereby a town could be held liable for negligence of selectmen acting as fire wardens, see *Hutchins v. Penobscot*, 120 Me. 281, 113 A. 618.

Sec. 60. Forest fire fighter pay and aid to towns.—

I. Right to call and employ assistance. State and town forest fire wardens shall be responsible for the control and extinguishment of forest fires in any town, city or plantation within the state, outside the limits of the Maine forestry district. For this purpose they may have the authority to employ any person or persons deemed necessary to assist in fighting forest fires. Any person under the age of 16 should have parent approval. All called and employed assistance shall proceed to help control and extinguish forest fires as directed by the state or town forest fire warden in charge. Persons who refuse or willfully fail, when called upon by the proper forest fire warden in charge, to render assistance or leave a forest fire before being released by him without a just and fair excuse shall upon conviction pay a fine of \$10 and such fine shall be credited in the name and to the use of the town in which the forest fire occurred.

II. Compensation for fighting forest fires. Town forest fire wardens

shall receive compensation for forest fire fighting services at the prevailing rate in the town. Labor and equipment may be provided by individuals or groups on a forest fire without pay. All requested assistance, persons or equipment used in fighting forest fires shall upon application receive compensation fixed by the town in which the forest fire occurred, but labor coming from outside such town shall receive a rate of pay not less than that established annually by the state highway commission for state highway labor. However, fire departments, organized crews or other groups used outside the town in which the forest fire occurred may receive pay at their usual rates. Forest fire fighters may be provided with subsistence while on the fire.

III. Hindering state or town forest fire warden. Any person who shall prevent or obstruct, or attempt to prevent or obstruct, a state or town forest fire warden in the performance of his duties, or the exercise of the rights of entry, access or examination by any state or town forest fire warden, shall upon conviction pay a fine not exceeding \$100 or 30 day jail sentence, or by both such fine and imprisonment.

IV. Payment of forest fire suppression costs; state $\frac{1}{2}$ reimbursement. Towns, cities or plantations, within the state, outside the limits of the Maine forestry district, shall be holden to pay for controlling and extinguishing forest fires up to 2% of their tax valuation and the state shall reimburse them $\frac{1}{2}$ the above costs incurred by the forest fire warden in charge therein. Reimbursement will not be allowed for use or loss of municipally owned equipment within the town in which the fire occurred. A town going to the aid of another, even to protect itself, when requested by the state forest fire warden in charge, shall be paid by the town aided if the total suppression cost of the town is not over 2% of its tax valuation.

V. Payment of forest fire suppression costs beyond 2% town tax valuation. All forest fire suppression costs in towns, cities and plantations within the state, outside the limits of the Maine forestry district, in an amount greater than 2% of the town tax valuation in which the fire occurred shall be paid by the state. Any town, city or plantation in order to pay labor quickly may pay beyond the 2% town tax valuation and submit for full state reimbursement or forward the unpaid bills, approved by the state forest fire warden in charge, for payment.

VI. Preparation of reports and payrolls. Town and state forest fire wardens shall promptly prepare a report of their investigation as to the cause, extent and damage on all forest fires in their charge. They also shall prepare an exact and detailed statement of expenses incurred therein immediately after total extinguishment on forms provided by the forest commissioner.

Statement of expenses shall have proper payroll receipts and vouchers. Forest fire suppression costs qualifying for town and state payment are labor, transportation, food, fire department equipment from outside the affected town, privately owned equipment and other costs approved by the forest fire warden in charge.

All requests for the state $\frac{1}{2}$ reimbursement shall be presented to the forest commissioner within 60 days after total extinguishment or become void. However, after major forest fires he may extend the time provided a preliminary report has been made.

The forest commissioner shall examine all forest fire suppression bills rendered by the town to the state for reimbursement or direct payment. After items not qualifying have been deducted the forest commissioner shall approve them for payment. (1949, c. 356, § 1. 1951, c. 266, § 104.)

Steam Engineers and Firemen.

Sec. 61. Sections 62-69, inclusive, not applicable to places of less than 40,000.—Sections 62 to 69, inclusive, shall not apply to cities and towns having less than 40,000 inhabitants. (R. S. c. 85, § 60.)

Sec. 62. Municipal examiners of steam engineers and firemen. — The municipal officers of cities and towns shall annually in the month of April, or as soon as practical thereafter, appoint an examiner of steam engineers and firemen, who has had not less than 5 years practical experience operating boilers and engines. (R. S. c. 85, § 61.)

Sec. 63. Certificates of competency; application; exemption. — It shall be unlawful for any person or persons to operate a steam plant consisting of boiler or engine where the services of an engineer or fireman are required, without first obtaining a certificate of competency from said examiner; the provisions of sections 61 to 69, inclusive, shall not apply to dwelling houses, apartment houses and buildings where the steam plant is used for heating purposes only, excepting boilers where the safety valve is set for a pressure higher than 15 pounds.

Any person intending to operate a steam plant except as herein provided shall make application in writing to the city clerk, who will notify him in writing when to appear for examination. (R. S. c. 85, § 62. 1945, c. 279.)

Sec. 64. Licenses graded; qualifications and exemptions.—Licenses shall be granted as follows:

First grade, horsepower unlimited.

Second grade, limited to 500 horsepower.

Third grade, limited to 200 horsepower.

Special grade, limited to engineers and firemen operating some special steam plant, and to night engineers and firemen, and to engineers handling donkey, hoisting and steam-roller engines. A special license shall state for what purposes such license is issued and the location of the plant.

An engineer or fireman who has been granted a second grade certificate may operate a plant as specified in the first grade under direction of an engineer or fireman who has been granted a first grade certificate, and an engineer or fireman who has been granted a third grade certificate may operate a plant as specified in the second grade under direction of an engineer or fireman who has been granted a second grade certificate. All persons holding engineer's or fireman's licenses issued by the United States local inspectors of steam vessels shall be exempt from the provisions of sections 61 to 69, inclusive, and said sections shall not apply to buildings owned by the United States government. (R. S. c. 85, § 63.)

Sec. 65. Examination; certificate; fee.—An examiner's fee of \$2 for every applicant shall be paid to the city clerk when application is made. It shall be the duty of the city clerk to forward all applications to the examiner. The examiner shall examine all applicants in writing, and shall issue a certificate in the following form, if the applicant is of temperate habits and has suitable competency:

“STATE OF MAINE.

This is to certify that _____, having made application to the city clerk for permission to take charge of and to operate a steam plant, and having produced evidence of his competency to act in said capacity as _____, I have issued to him this certificate as approved by law this _____ day of _____.”

Said certificate when issued shall be filed in the office of the city clerk and said clerk shall issue and deliver to said applicant a duly attested copy of said

certificate; and the copy so issued shall be posted by the holder thereof in a frame under glass in a conspicuous place in or near the boiler room of the steam plant to be operated.

The city clerk shall pay the examiner the sum of \$1.75 out of the fee of \$2 deposited with him for that purpose, retaining the sum of 25¢ as payment for the attested copy issued by said city clerk. (R. S. c. 85, § 64.)

Sec. 66. Term of certificate.—The term of certificate shall be 1 year from date granted unless revoked as hereinafter provided. (R. S. c. 85, § 65.)

Sec. 67. License renewed; refusal; duplicate.—When an engineer or fireman shall apply for a renewal of his license for the same grade, the presentation of the attested copy of the original certificate shall be considered sufficient evidence of his title to renewal, which certificate shall be retained by the examiner upon the official files as the evidence upon which the license was renewed, and a new certificate shall be issued upon the payment of a fee of \$1, unless such license shall be forfeited or unless facts shall have come to the knowledge of the examiner which would render a renewal improper. In such case the applicant shall be entitled to a hearing before the examiner. In case of loss or destruction of applicant's certified copy of his license, the city clerk shall, by direction of the examiner, issue to the applicant a duplicate attested copy, upon payment of a fee of 25¢. (R. S. c. 85, § 66.)

Sec. 68. Incompetency; hearing; license revoked; temporary operator.—When the examiner receives notice in writing signed by 10 or more residents of the city or town where the steam plant in question is located stating that in their opinion the person in charge of such steam plant is incompetent to discharge his duties, or by reason of negligence, intemperance or other cause, such person ought not to longer remain in charge of such steam plant, the said examiner may temporarily suspend the authority of such person to act in said capacity until the investigation and hearing as herein provided can be made; provided, however, that said certificate shall not be permanently revoked until the said examiner shall have given a hearing to the person against whom a complaint has been filed, and shall have given him a written copy of said complaint at least 48 hours before said hearing is to be held. Said examiner shall immediately cause an investigation to be made as to the habits and qualifications of the person so complained of; and if such person is found to be incompetent to remain in charge of said steam plant, said examiner shall cause the certificate granted under the provisions of sections 61 to 69, inclusive, to be revoked, and notice of such revocation shall be filed with the city clerk; if the examiner shall after hearing revoke said license he shall then give the person or corporation having control of such plant notice of his findings. If after the receipt of such notice the person or corporation having control of such steam plant shall neglect or refuse to cause said steam plant to be placed in charge of some person qualified under the provisions of sections 61 to 69, inclusive, within a reasonable time thereafter, such person or corporation shall be subject to the penalty provided in section 69. The person or corporation in control of a steam plant, in case of sickness, emergency or other good and sufficient reason, may temporarily employ some competent person, not holding a license as herein provided, to operate said plant for a period not exceeding 2 weeks. (R. S. c. 85, § 67.)

Sec. 69. Violation of §§ 61-68. — Whoever violates any provision of sections 61-68, inclusive, shall be punished by a fine of not more than \$50. (R. S. c. 85, § 69. 1949, c. 349, § 121.)

Aroostook County Fire Marshal.

Sec. 70. Purpose.—The purpose of sections 70, 71 and 72 is to promote

the public welfare of Aroostook county by creating and providing for a county fire marshal, in order that the county may have a qualified and trained fire inspector available at all times. (1949, c. 227.)

Sec. 71. Appointment of county fire marshal.—A county fire marshal for Aroostook county, hereinafter in sections 70, 71 and 72 called the "marshal," shall be appointed by the county commissioners with the approval of the Aroostook county fire chiefs' association, and shall hold his office for 2 years and until his successor has been appointed and qualified. The location of his office shall be as designated by the county commissioners. He shall keep a correct account of all his doings. He shall receive an annual salary of \$4,000 from the treasury of Aroostook county, in monthly payments paid on the last day of each month, and shall be paid his actual expenses incurred by him in the performance of his duties in such amount as the county commissioners shall approve. The municipal officers of the towns in said county may authorize such marshal to perform the duties imposed upon them by sections 24, 25 and 27, and when so authorized, said marshal shall have all the powers thereby conferred, and shall perform all the duties therein prescribed. Such marshal shall furnish the insurance commissioner with such information as he may require and shall perform such inspections as the insurance commissioner may direct. (1949, c. 227. 1951, c. 291, § 1.)

Sec. 72. Additional duties and powers.—Such marshal shall, within Aroostook county, have the same powers and duties given to fire inspectors by virtue of the provisions of section 19; shall have the same powers and duties given the fire inspector by virtue of section 22; shall have the same powers and duties given to fire inspectors, boards of engineers and chiefs of fire departments by virtue of sections 49, 50, 51 and 52, except that in case of conflict in authority between state, county and town fire officials, the order of final determination or decision shall be first in the state, second in the county and third in the town fire officials. (1951, c. 291, § 2.)