

MAINE STATE LEGISLATURE

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FINAL REPORT
of
**Joint Special Legislative
Investigating Committee**

**Created by House Paper 2254
and Joint Order
Senate Paper 795**

**Eighty-ninth Legislature
and presented to the
Ninetieth Legislature
1940**

*To the Members of the
House of Representatives and
of the Senate of the Ninetieth
Legislature Assembled:*

The Joint Select Committee created by House Paper 2254 and the amendment thereto, pursuant to directions contained in Joint Order, Senate Paper 793, HEREWITH respectfully submits its final report together with supporting testimony and exhibits to the 90th Legislature.

On the part of the Senate:

NATHANIEL TOMPKINS, *Chairman*
GAIL LAUGHLIN
FRANK A. THATCHER
JEAN CHARLES BOUCHER

On the part of the House:

GEORGE D. VARNEY
MALCOM P. NOYES
ROBERT C. McNAMARA
ROBERT B. DOW
F. ARDINE RICHARDSON
WILLIAM P. DONAHUE
(Mr. Alexander A. MacNichol in absentia engaged in military duty with the United States Army.)

January 2, 1941.

FINAL REPORT
OF
JOINT SPECIAL LEGISLATIVE INVESTIGATING
COMMITTEE
PRELIMINARY STATEMENT

The Committee, having anticipated that its final report submitted to the last special session of the Legislature in October, 1940, would terminate its work, and feeling that further extended efforts on its part would probably not produce results which would justify the expense, has made no further effort to carefully scrutinize any State departments, but has held itself available to receive any specific complaint which might be lodged during the interim period. Such a complaint having been received, the Committee then held a short session of three days in order to inquire into the subject matter of the complaint. At the same time a few incidental matters were touched upon, as will be shown by the following report.

STATE INSURANCE

Section 34 of Chapter 2 of the Revised Statutes of 1930 provided: "All fire and liability insurance upon public buildings and other property belonging to the State shall be placed thereon by the several Boards of Trustees having said property in charge, subject to the approval of the Governor and Council, or by the Governor and Council, and all expense therefor shall be paid from the several appropriations for insurance on said property. The policies for all insurance so placed shall be deposited with the Treasurer of State, and a record thereof kept by the Governor and Council."

Since the enactment of the Administrative Code, Trustees of Institutions have been abolished so that the duties pre-

scribed by the quoted Statute are now vested solely in the Governor and Council.

With reference to the placing of State insurance, the Committee had brought to its attention a specific incident which was investigated in some detail.

The Committee finds that on August 20, 1940, Mr. Charles Jortberg, Jr. was granted a license as an agent to represent the Zurich General Accident and Liability Insurance Co., Ltd., and that as a result of negotiations carried on between the Insurance Department and the Zurich Company by Mr. Jortberg, a bid on behalf of the Zurich Company on the liability coverage of the State fleet of automobiles was submitted to the Insurance Department by Mr. Jortberg on the same day, August 20, 1940. The rate submitted on the bid was substantially lower than the rate paid the preceding year, and represented a saving to the State of Maine. The policy was issued by the company, countersigned by Jortberg as agent, and delivered on August 31, 1940. The insurance has been continued in force in the usual manner since that time. On October 2, 1940 the then Insurance Commissioner, Mr. Lovejoy, wrote the Zurich Company a letter, in which he stated as follows: "I have had some talk with Mr. Jortberg in connection with the commission to be paid on the Automobile Public Liability and Property Damage policy for the State of Maine. I would like to have you advise me regarding gross commission which will be allowed, and to further say that this commission will be allotted to properly licensed agents in the State by the Governor and Council, as has been done in connection with past policy." This letter having been called to Mr. Jortberg's attention by the company, Mr. Jortberg came to Augusta and saw Mr. Lovejoy and Mr. Cony Weston of the Executive Council separately. Mr. Jortberg stated, and Mr. Lovejoy recalled, that Mr. Jortberg then said that he was on a fee basis with the Zurich Company and that his fee included the commission, so that any allotment of any part of the commission to any other agent would reduce Mr. Jortberg's fee by that amount. Mr. Weston and Mr. Lovejoy had both apparently believed until then that Mr. Jortberg was on a

straight salary with his company and would not receive any part of the commission in any event.

On October 5, 1940, the company wrote to Mr. Lovejoy as follows:

"In reply to your letter of October 2nd., the maximum commission payable on the Automobile Public Liability and Property Damage policy covering the State of Maine automobiles is 5%.

"We are pleased to advise you that it is a positive rule of this company, to which we have always strictly adhered, to accept business from and pay commission to only properly licensed agents in any territory."

The reply to this letter by Mr. Lovejoy on October 7th was as follows:

"Wish to thank you for your letter of October 5th, and to further correct an impression which I apparently gave in my letter of October 2nd. We do not question the procedure of your company of paying commission to only licensed agents, but in this particular instance the licensed agent will be designated by the Governor and Council, and the amount of commission in dollars to each will also be designated."

On November 9th Mr. Lovejoy received from Councillor Weston a penciled memorandum in the hand of Governor Barrows and initialed by the Governor, on which the Governor allocated the commission on this policy as follows:

| | |
|--------------------------|----------|
| "Brooks Brown | \$600.00 |
| Charles A. Jortberg, Jr. | 293.63." |

Mr. Lovejoy then wrote the company as follows:

"I have today received advice from the Governor and Council that they wish to have the commission on the State of Maine Automobile Fleet paid to the following individuals, and in the following amounts:

| | |
|--------------------------|----------|
| Brooks Brown | \$600.00 |
| Charles A. Jortberg, Jr. | 293.63. |

When the premiums have been paid, checks for these amounts are to be sent to this office for transmission to these individuals through the Governor."

On November 18th, Mr. Lovejoy having in the meantime

resigned as Insurance Commissioner to enter private business, the company wrote to the Governor and Council as follows:

“On November 13th we received letter from the Honorable C. W. Lovejoy, Insurance Commissioner, informing us that the Governor and Council had advised him that they wished to have the commission on the State of Maine Automobile Fleet policy paid to the following individuals and in the following amounts:

| | |
|--------------------------|----------|
| Brooks Brown | \$600.00 |
| Charles A. Jortberg, Jr. | 293.63 |

Commissioner Lovejoy further instructed us that when the premiums had been paid to us, checks payable to the above individuals in the respective amounts indicated were to be sent to the Commissioner’s office for transmission to these individuals through the Governor.

“We interpret the laws of Maine to require that the commission on any policy may be paid only to properly licensed agents or brokers. Mr. Brooks Brown is not a licensed agent of our company, nor do we find record of a Maine broker’s license having been issued in his name. Consequently it appears to us that to follow your wishes as outlined by Commissioner Lovejoy would be in violation of law and we feel that this situation should be called to your attention before any commission is paid. We are therefore taking the liberty of writing direct to you in view of the fact that Commissioner Lovejoy has resigned, and we understand his successor has not been appointed.

“We await further advices.”

Upon receipt of this letter the Governor turned it over to Councillor Weston for opinion and advice. Apparently the letter was never taken up with the entire Executive Council. Mr. Weston in turn referred the matter to the State Controller, Mr. Rodgers, apparently because of the fact that Mr. Rodgers had been previously Deputy Insurance Commissioner. Mr. Rodgers prepared a suggested letter of reply which the Governor sent as his reply on November 20th, as follows:

“We acknowledge receipt of your letter of November 18th

relative to commission payments of the State of Maine Automobile Fleet policy.

“For your information we quote below, that portion of Section 122, Chapter 60, of the Revised Statutes of 1930 which pertains to the subject matter in question:

‘Agents of duly authorized insurance companies may place risks with agents of other duly authorized companies when necessary for the adequate insurance of properties, persons, or interests.’

“Reference to the records on file in the Insurance Department reveal that Mr. Brooks Brown is a licensed insurance agent in this State, and in view of the fact that Mr. Brown placed the State of Maine Automobile Fleet policy through an authorized agent of your company, namely Charles A. Jortberg, Jr., it is my opinion and that of the Council that Mr. Brooks Brown can legally be paid a commission on this business, in accordance with proper interpretation of the insurance laws of this State.”

Upon examination, Mr. Brooks Brown, an insurance agent of Augusta, Maine, admitted frankly that he was not a licensed agent of the Zurich Company, and did not hold a broker’s license; that he had nothing whatsoever to do with the placing of this insurance business; that he had never contacted anyone about it; had never seen the policy until it was shown him by the Committee, and that his only knowledge of the transaction was that he had been informed that he was to receive six hundred dollars of the commission. He acknowledged that this money would be in the nature of a gift and a matter of political patronage. Mr. Brown admitted frankly that when the Automobile Fleet policy was written the preceding year with the Indemnity Insurance Company of North America, it was countersigned by Mr. Donald Tozier of Augusta, agent for that company. Mr. Tozier, being a salaried representative of that company, received no commission, the commission having been paid to Mr. Byron Boyd of Augusta and Mr. Brooks Brown, who did not represent the company in question, and neither of whom had anything to do with writing the business. Mr. Brown satisfied the Committee that he

retained the gift and was not expected to pass it on to any other person.

Up to the present time the Zurich Company has not paid the commission to the designated individuals, but has referred the matter to its legal staff at its home office for opinion and instructions.

The Committee took the testimony of Mr. Charles Jortberg, Jr., Councillor Cony Weston, Mr. Brooks Brown, Mr. Harold Rodgers, Mr. C. W. Lovejoy and Governor Barrows.

The Committee finds that there has been a well established practice and custom during the past several administrations for the Governor and the members of the Executive Council to allocate the State fire insurance coverage among various key agents. The method has been for the Governor and the members of the Council each to allocate one twenty-fourth of the total fire coverage each June. These designated key agents write eight master policies, and in turn are supposed, under the method, to reinsure part of the allocation with various designated sub-agents. Governor Barrows stated that during his administration it has been also customary in placing boiler, casualty and liability coverage, for the Governor to designate the agent or agents to whom commissions on business should be paid. All the witnesses agree that this was a form of political patronage, but the State officials who testified claimed that it was both legal and proper and that no monetary loss results to the State.

In some instances, particularly on placing of liability coverage, the Insurance Department has dealt directly with the insuring company, and there has been no intermediary who could be termed an insuring agent. It is always apparently the practice for the Insurance Bureau to approve the rate submitted on bid, and apparently in each case there has been included as a factor in determining the rate an agent's commission. In the case of the Zurich transaction this commission was established at 5%. The company would not be permitted under the present law of the State of Maine to rebate that commission. The State officials took the position that on the basis that a commission which

has been included in fixing a rate must be paid and cannot be rebated; that in cases where no intermediary agent existed it was proper to fictitiously create one and allocate the commissions to him. In the Zurich transaction the State officials apparently treated the entire matter as though there were no producing agent involved.

That portion of Section 122, Chapter 60 of the Revised Statutes quoted in Governor Barrows' letter of November 20th apparently was construed as permitting the Governor to designate the agent or agents who should receive the commission. This Statute reads: "Agents of duly authorized insurance companies may place risks with agents of other duly authorized companies when necessary for the adequate insurance of properties, persons, or interests." The Committee feels that the Statute quoted has been interpreted beyond its intent and that the Statute is designed only to protect an agent who produces the business and places it in the first instance from losing part or all of the coverage because of the inability or unwillingness of the companies which he represents to undertake part or all of the risk. The Committee feels that the Statute contemplates that the first agent referred to by the Statute is an active participating agent who contacts and deals with the Insured, effectuates and places the business, and thereafter because of some necessity of the case places a part or all of the risk with another agent. The Committee does not feel that it was ever intended or that it is proper for an agent to participate in a commission on state insurance when he did not produce the business, had no contact with it or knowledge of it and was not even the licensed agent of the company writing the business. In this particular case it is not disputed that some efforts were made and some services performed in contacting the company and securing an admittedly advantageous rate for the State of Maine by Mr. Jortberg and the Dunlap agency, general agent of the Zurich Company in the State of Maine. Neither is it disputed that Mr. Brown did nothing. The Committee further feels that the matter of allocation of commission is a matter of contractual arrangement between the insuring company and its agents, and the allocation of the com-

mission to its agent should be determined by the company, and not by officials of the State of Maine.

Councillor Weston, Mr. Rodgers, Mr. Lovejoy and Governor Barrows, all maintained that the position taken in allocating the commissions in the Zurich case was a correct one and advanced several reasons for their positions, as follows:

First, that it was a long established custom to so allocate. Second, that the Statute contemplated and permitted such an allocation. Third, that Mr. Jortberg had obtained his position with the company through the intercession of Mr. Lovejoy, and understood from the beginning that commissions would be allocated to a person or persons then undetermined. Fourth, that the original understanding was that Mr. Jortberg was on a salary basis and not entitled to commissions, and that when it was discovered that this was not the fact, it was too late to do anything about it.

As to the first reason advanced, the Committee believes that the mere existence of a custom or practice is not in itself any reason for its continuance. Neither has the Committee any evidence that the custom or practice with regard to liability coverage goes any further back than the present administration. As to the second reason, the Committee has already expressed its belief that the Statute has been over-extended by interpretation. As to the third reason, the Committee feels that regardless of what the personal obligation of Mr. Jortberg may have been to Mr. Lovejoy for assisting Mr. Jortberg in obtaining his position with the company, the basic principle of taking commissions from a producing agent and giving them to an agent who was an entire stranger to the transaction, for no apparent consideration, is highly improper. As to the fourth reason, the Committee finds that in view of the fact that at the time of the hearing the commissions had not been paid, it was not even then too late to rectify the situation.

In fairness it should be stated that Mr. Rodgers in drafting the letter which was sent by the Governor, proceeded on an erroneous assumption that Mr. Brooks Brown had in fact placed the business with the State through Mr. Jortberg.

INSURANCE ON UNIVERSITY OF MAINE PROPERTY

The Committee found that property of the University of Maine is included in State blanket insurance, but upon the insufficient information which it was able to obtain in the limited time available, has been unable to determine satisfactorily exactly how the title in University of Maine property is held and whether part or all is properly included in the coverage of State owned property. "S" plates are issued to the University of Maine on its automobiles without fee and the Committee is not yet satisfied that there is proper authority for such registration. More than thirty of these cars are included in the State automobile fleet coverage on liability insurance, with the result that the University of Maine enjoys the State's low rate and the rate in turn fluctuates in part according to the loss ratio on these cars. There is some indication that the loss ratio in the last three years on University of Maine cars has been high in proportion to other State owned vehicles, and it is indicated that if this is so the State could procure a lower rate if University of Maine cars should be excluded from the coverage. It is recommended that the Secretary of State make inquiry as to whether there is proper authority for issuing "S" plates to the University of Maine without fee, and that the Insurance Commissioner make inquiry as to whether real and personal property of the University of Maine is properly included under blanket coverage of State owned property.

RECENT SALARY ADJUSTMENTS

The Committee took the testimony of Mr. Earl Hayes, the Director of Personnel, in connection with the Committee's inspection of recent Council orders adjusting salaries, and secured from the Bureau of Personnel lists covering adjustments and increases in pay for employees in the State departments and institutions effected during the months of October, November, and the first half of December. Mr. Hayes stated that all of these adjustments and increases had the approval of the Personnel Board before being passed by the Governor and Council.

The summary of the adjustments is as follows:

| Name of Department | No. Affected | Net Weekly Increase in Dollars |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|--------------------------------------|
| Accounts and Control | 10 | \$ 32.00 |
| Agriculture | 1 | 6.00 |
| Audit | 2 | 4.00 |
| Banks and Banking | 12 | 45.00 |
| Boxing | 1 | 2.50 |
| Maine Development | 1 | 5.00 |
| Inland Fisheries and Game | 1 | 2.65 |
| Health | 2 | 7.00 |
| Insurance | 3 | 9.00 |
| State Library | 2 | 4.00 |
| Military Defense Commission | 1 | 2.00 |
| Milk Control Board | 2 | 6.00 |
| Public Utilities | 1 | 2.00 |
| Purchases | 2 | 3.00 |
| Reviser of Statutes | 2 | 7.00 |
| Secretary of State | 2 | 8.00 |
| Social Welfare | 122 | 512.19 |
| (Mr. Hayes stated that it was the understanding of the Personnel Board from information received from Commissioner Earnest that these salary adjustments are offset by savings in connection with personnel to the extent that the increased expenditure to the State would be only \$153 per year) | | |
| Augusta State Hospital | 11 | 73.76 |
| Bangor State Hospital | 23 | 41.81 |
| Central Maine Sanatorium | 5 | 13.50 |
| Northern Maine Sanatorium | none | |
| Western Maine Sanatorium | 2 | 10.50 |
| Maine School for Deaf | none | |
| State Children's Home at Bath | none | |
| Pownal State School | 28 | 51.10 |
| Maine State Prison | 4 | 18.00 |
| State School for Boys | none | |

| | | |
|-----------------------------|------|------|
| State School for Girls | 2 | 6.00 |
| State Reformatory for Men | none | |
| State Reformatory for Women | 3 | 3.26 |

To summarize, the salaries of some two hundred forty-five people have been very recently increased approximately \$875 per week, or approximately \$45,500 per year. The increased expenditure for salaries in the operation of Social Welfare alone amounts to \$26,733.88. The Committee feels that for any administration on the eve of leaving office to increase the salaries of such a substantial number of State employees by such a substantial amount is embarrassing to an incoming administration and can hardly be recommended as an economy program. The salary increases in the Welfare Department particularly must be considered in connection with the fact that there has consistently and repeatedly been a very substantial annual overdraft in this Department.

DEPARTMENT OF VITAL STATISTICS

There was brought to the attention of the Committee the matter of registration of births, marriages, and deaths with the Registrar of Vital Statistics. Some complaint has been made by the Clerks that frequent changes made by this Department in the information required to be returned to the Department caused the Clerks of different towns and cities to be put to the necessity of frequently purchasing new record books.

Mr. Parker B. Stinson, Division Director of the Bureau of Vital Statistics, testified before the Committee and, in explaining the large amount of information required on birth certificates, stated that a great deal of this information was requested by the Census Department of the United States and Child Welfare Bureaus. Mr. Stinson admitted that much of this information was in addition to the statutory requirements for birth records.

It may be suggested that the Statutes should be made more definite and certain as to exactly what shall be recorded in the case of births. This suggestion would also apply to the records of deaths and marriages. If the Regis-

trar of Vital Statistics finds it necessary to obtain supplemental data for statistical purposes it seems that the birth or death certificate should be divided into two parts, part number one to be signed by the physician and the information contained in this certificate recorded and returned by the Town Clerk, and part number two to contain whatever supplemental information the Director of Vital Statistics may from time to time require, which data need not be recorded.

It is further suggested that when the Town or City Clerk reports a death or birth to the Department according to the Statute he should report only the facts constituting the legal record and detach from the certificate of birth or death the part containing the supplemental data and forward that together with his report to the Department. By this method the Clerks would know exactly what had to be recorded. The form of the record would be made permanent, and the Registrar of Vital Statistics would obtain the supplemental data which he might require.

Section 79 of Chapter 2 of the Revised Statutes as amended by the Public Laws of 1933 relative to defective and erroneous records of deaths, births, and marriages should be brought up to date to correspond with the new form of birth and death certificate and it further appears advisable that this certificate should be amended to make certain the authority for making the so-called "delayed return of birth." The certificate for this purpose should follow the regular birth certificate form and bear the legal form of affidavit for the person making the return, and the law should be amended to specify by Statute exactly what would be expected as evidence to prove a birth which has not previously been recorded.