

MAINE STATE LEGISLATURE

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Public Documents of Maine:

BEING THE

ANNUAL REPORTS

OF THE VARIOUS

PUBLIC OFFICERS AND INSTITUTIONS

FOR THE YEAR

1875.

VOLUME I.

AUGUSTA:

SPRAGUE, OWEN & NASH, PRINTERS TO THE STATE.

1875.

REPORT

OF THE

ATTORNEY GENERAL

OF THE

STATE OF MAINE.

1874.



AUGUSTA:

SPRAGUE, OWEN & NASH, PRINTERS TO THE STATE.

1875.

OPINIONS.

STATE OF MAINE.

ATTORNEY GENERAL'S OFFICE, }
 Augusta, February 20, 1874. }

Hon. JOSHUA NYE, *Insurance Commissioner*:

DEAR SIR:—I am in receipt of your communication requesting my opinion upon the following question, viz:

“Whether insurance placed in foreign companies that have not complied with the laws of this State, is valid and binding upon such companies?” And I have the honor to reply:

1st. That if the policy be issued in another State where the company has a right to issue policies, such policy is good at Common Law, although it be a policy outside of the State for which it be issued. The laws of the State where the policy is issued, afford the rule of validity and construction.

2d. If the policy be issued in this State by an agent who has no right to issue it, the policy is good by virtue of the Insurance Law (Revised Statutes, chapter 49, section 50), which makes the policy valid, though the agent be liable to a penalty.

These two classes embrace all cases. If issued from without the State, the policy is good at Common Law; if issued from an agency within the State, it is good by Statute.

STATE OF MAINE.

ATTORNEY GENERAL'S OFFICE, }
 Augusta, February 26, 1874. }

To the Hon. NELSON DINGLEY, JR., *Governor of Maine*:

SIR:—The following question is submitted for my opinion, viz.:

Whether upon the facts stated, the Sheriff's Enforcement Act, chapter sixty-two, Public Laws of eighteen hundred and seventy-two, gave to the Sheriff of Knox county the discretion to omit proceedings by complaint and warrant of search and seizure,

against certain alleged offenders, under the provisions of chapter twenty-seven, Revised Statutes, known as the Liquor Law, and to adopt the alternative method prescribed in said Enforcement Act, of proceeding by indictment.

Section second of said act of 1872, provides that it shall be the duty of sheriffs and their deputies, diligently and faithfully to inquire into, and institute legal proceedings against the illegal sale of intoxicating liquor, the keeping of drinking houses and tippling shops, &c., within their respective counties, either by entering complaints before a magistrate competent to try or examine the same, or by furnishing the County Attorney with the names of supposed offenders, together with the names of the witnesses, for the action of the Grand Jury.

These provisions of the said act are intended to secure the more efficient enforcement of the law against drinking houses and tippling shops, by imposing upon sheriffs and their deputies, in addition to local officers, the duty of instituting legal proceedings either by complaint or by indictment. Clearly the alternative methods of procedure prescribed by said Enforcement Act, do not give to the said officers the discretion to elect to proceed by indictment instead of by the process of search and seizure. If it were so, the process of search and seizure might become practically a dead letter. This most efficient feature of the law is quite independent of the proceeding by indictment, except so far as it is in aid of it—seizures being frequently made the foundation of indictments for nuisances. But the process of search and seizure is based upon complaint supported by the oath or affirmation of the complainant, that he *believes* intoxicating liquors are kept or deposited in the places designated, and intended for unlawful sale within this State. This is not a requirement of the statute merely, (sec. 35, chap. 27, R. S.), but a constitutional provision, intended to secure the people "from all unreasonable searches and seizures." If, therefore, these officers whose duty it is to make the complaints under the law, and upon which alone warrants of search and seizures can issue, do *not believe* intoxicating liquors are so kept and deposited and intended for illegal sale in the places designated, they cannot make the requisite complaints without swearing falsely, or execute the process without a violation of a sacred provision of the Constitution.

It appears from the statement of facts submitted, that the Sheriff of Knox county was requested, in writing, by certain prominent

citizens of Rockland, to procure a warrant of search and seizure, and to search certain designated places, where, it was alleged, intoxicating liquors were kept for illegal sale, and to prosecute the alleged offenders; that the Sheriff applied to the proper magistrate for such process, but before making his complaint, he learned that the proposed prosecution had come to the knowledge of the supposed offenders, without any fault on his part, and he believed that if search were made no intoxicating liquors would be found in the places designated; in other words, he believed that no such liquors were then and there kept and deposited for illegal sale. How, then, could he make oath that he believed they were then and there so kept and deposited and intended for sale in violation of law? In my opinion, he could no more make such complaint against the alleged offenders and the places designated, than he could against any other citizens of Rockland, or places of business where he did not believe intoxicating liquors were kept or deposited for illegal sale.

The only course open to the Sheriff under the circumstances, was to prosecute the supposed offenders for illegal sales, either by complaint to the proper magistrate, or by the alternative method prescribed, of indictments at the next session of the Grand Jury, early in March; and in my opinion, it was within his discretion to adopt either of these modes of procedure.

STATE OF MAINE.

ATTORNEY GENERAL'S OFFICE,
Bangor, June 1, 1874. }

To the Honorable the Governor and Council:

I have the honor to submit my opinion, as requested by the Council, upon the following question:

“How many acres of land in all are the Trustees of the Maine Female Seminary entitled to receive from the State under their grant of May 20, 1850?”

The language of the grant is: “The Land Agent is hereby authorized and directed to convey to said Trustees a quantity of land equal to two townships from any lands held in severalty by this State,” (Chap. 374, Special Laws of 1850).

In this State the average township is six miles square, a size