

# MAINE STATE LEGISLATURE

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PUBLIC DOCUMENTS OF MAINE:

1903

BEING THE

ANNUAL REPORTS

OF THE VARIOUS

DEPARTMENTS AND INSTITUTIONS

For the Year 1902.

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VOLUME I.

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AUGUSTA  
KENNEBEC JOURNAL PRINT  
1903

STATE OF MAINE

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REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

November 30, 1902.

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AUGUSTA  
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1903

to said Honorable Board of State Assessors, differing only in this respect: that the main question therein was whether or not the water transportation of said Canadian Pacific Railway Company should be included as a part of the system of the railroad, and that in assessing the taxes against said railroad the entire mileage should include not only the railroad lines proper but also its transportation lines across the Pacific ocean as a part of its system.

My opinion as rendered thereon was that that portion of its business which related to transportation by water across the Pacific ocean was not included within the meaning and intention of the statute providing for the taxation of railroads.

#### TENURE OF OFFICE OF APPOINTIVE OFFICERS OF MAINE INDUSTRIAL SCHOOL FOR GIRLS.

The tenure of office of appointive officers in the Maine Industrial School for Girls is controlled wholly by the rules and regulations of the institution.

*To the Trustees of the Maine Industrial School for Girls:*

GENTLEMEN:—I herewith submit to you my opinion in relation to the tenure of office of the steward of the Maine Industrial School for Girls, concerning which you have made inquiry.

By examination of chapter 127 of the Public Laws of 1899 it appears that prior to March 17, 1899, a school known as the Maine Industrial School for Girls had been established in the city of Hallowell; that on said 17th day of March, 1899, said school, by legislation, was taken over and vested in the State and became a State institution to be cared for, managed and controlled by the State as all State institutions are, varying only in the kind of work to be done. Among other things which appear in said chapter 127 is the following:

“Sect. 4. The trustees shall have charge of the general interests of the school and see that its affairs are conducted in accordance with law and such by-laws as they may adopt. They may adopt by-laws which shall be valid when sanctioned by the governor and council.”

It will appear, then, from this that to make any by-law of the Maine Industrial School valid, the governor and council must sanction the same, or, in better words, approve the same. When the governor and council have so done then the by-law becomes valid and a part of the machinery under which the institution is to be run as much as the statute itself which took over the Maine Industrial School to the State. Hence any question which arises as to the tenure of office of any appointee or official in the institution, if such office of appointee or official appears by name in the by-laws, must be decided absolutely by the by-laws. In other words, the by-laws of this institution are not of an elastic nature which can be stretched or curtailed according to the views and desires of a board of trustees or any individual.

It appears that on June 3, 1899, John W. Church was elected treasurer and steward of the Maine Industrial School. It appears, also that on May 15, 1900, John W. Church was elected treasurer and steward of said school.

It appears that on February 19, 1901, John W. Church was elected steward, not combining the office of treasurer, and that on May 21, 1901, he was elected treasurer, combining, then, both offices of steward and treasurer.

The question really is as to his tenure of office as steward under the last election.

It appears, further, that on December 13, 1900, it was voted to amend chapter 2, section 1 of the by-laws, and that on February 19, 1901, it was *reported* that the proposed amendment had been approved by the governor and council, so that, as amended, the section reads as follows: "The board of trustees may appoint a steward and a principal, a matron, an assistant matron, and a teacher for each home, and such other officers as the trustees may at any time deem essential or desirable, and the appointment of all officers shall be for a term not exceeding one year. The term of office may be less than one year. The term of office of each appointee shall terminate on the last day of the *calendar year* for which the appointment is made."

As a matter of fact the by-law, as amended, could attach only to those officials who received appointment under the same after the approval of the same by the governor and council. The exact date of the approval of the amended by-law does not appear. The data before me simply shows that on *February 19,*

1901, the amendment was reported to have been approved. However, this matter has little or no bearing in the case since the question with which we have to deal arises subsequent to the date of the approval of the by-law. It must have been approved as early as February 19.

The office of steward falls within the by-law and is subject to it. The last clause of the by-law is conclusive in its force wherein it sets out that "the term of office of each appointee shall terminate with the last day of the *calendar year* for which the appointment is made." There can be no question as to the meaning of these words. They are specific, definite and plain. There might possibly have been some little room for a question to have arisen in the matter, if only the word "year" had been employed, but in this case the by-law sets out "calendar year." Now, the expression "calendar year" means but one thing, to wit, the period of time from and including the first day of January to and including the last day of December. It matters little when the appointment of an official is made. His term of office must expire on the last day of the calendar year; to wit, December 31st of the year for which he is appointed. It makes no difference whatever whether or not any official had notice of any change in the by-laws or the expiration of his period of office. This by-law is in the nature of a statute and must be as explicitly followed as the statute itself upon which the by-law rests. Hence the term of office of John W. Church as steward to which he was elected February 19, 1901, and also his office as treasurer to which he was elected May 21, 1901, expire on the last day of this year; to wit, December 31st, and the trustees, if they had so desired, could not extend the term otherwise than by re-appointment.

To be sure this construction cuts off part of the official year of John W. Church as steward and treasurer, but the legislature never takes into account the fact that a man has been appointed to an office for a period of time.

The by-law adopted December 13, 1900, which did not become effective until approved by the governor and council, was quite as effective in limiting the term of office in the case of John W. Church as though the matter had been taken directly before the legislature and the legislature had passed a limiting act, because the by-law is based on the provisions of chapter 127 of the Public Laws of 1899.

If the question of salary is raised then I feel quite as sure that the treasurer and steward would be entitled only to pro rata part of the annual salary. This view of the matter is fully sustained by the vote passed on May 21, 1901, which reads as follows:

“Voted that from June 6, 1901, the salary of the steward shall be at the rate of \$350 per year and that of the treasurer at the rate of \$250.”

In both these instances the expression “at the rate of” would clearly indicate that the treasurer and steward were to be paid pro rata as to time and that in serving in such capacities, if a less period of time were covered than a full year, then payment should be made for such part of the year as the official served.

My conclusions are, then, that the term of office of steward terminates December 31, 1901, and that the compensation for the period of time since the last appointment should be pro rated on the basis of full pay for one year.

Respectfully submitted,

GEO. M. SEIDERS, Attorney-General.

#### SCOPE OF AUTHORITY OF THE WARDEN OF THE STATES PRISON, IN RELATION TO THE DISBURSEMENT OF THE STATES PRISON FUNDS.

The warden of the States Prison has no authority to apply any portion of the States Prison funds to any other purpose than that of the States Prison, not even for the payment of his own salary.

March 6, 1902.

To the State Board of Inspectors of Prisons and Jails:

Gentlemen: Your communication under date of February 19th, in which you ask my opinion in relation to the question whether or not if the warden of the States Prison, should make loans from the States Prison money, on memorandum or on book accounts, that is from money belonging to the State and accumulated among the States Prison funds, it would be a breach of his bond and whether or not the bondsmen would become liable by reason of any funds so appropriated particularly in the event of the death of the warden.