

MAINE STATE LEGISLATURE

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For the Year 1902.

VOLUME I.

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STATE OF MAINE

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

November 30, 1902.

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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.

This is a purely statute matter and the answer thereto, in my judgment, is clear and beyond question.

Section 5 of chapter 140 of the Revised Statutes provides that "the warden of the States Prison shall give bond to the State in the sum of ten thousand dollars, with sufficient sureties, approved by the governor and council, conditioned that he will account for all moneys that come to his hands as treasurer of the States Prison; that he will not be concerned in trade or commerce during his continuance in office, and that he will faithfully perform all the duties incumbent upon him as warden of said prison."

This provision covers the obligation of the bond.

The question which next arises is, what are the duties of warden in respect to the States Prison moneys collected or held by him?

Section 13 of chapter 140 of the Revised Statutes provides, among other things, that he shall have the care "of the lands, buildings, machines, tools, stock, provisions and every other kind of property belonging to or within its precincts; he shall be the treasurer of the prison, receive, pay out, and be accountable for all moneys granted for its maintenance or derived from the manufactures or the concerns thereof; make in the books of the prison regular entries of all its pecuniary and other concerns, and on the first days of March, June, September and December of each year he shall render to the inspectors a fair account of all the expenses and disbursements, receipts and profits of the prison, with sufficient vouches therefor, and a statement of its general affairs for the quarter past * * * and he shall also on the same days render under oath a similar account and statement, examined and approved by the inspectors, to the governor and council with whom he shall settle all his accounts whenever required."

This provision gives the full latitude of the warden's right to deal with the funds of the States Prison. It provides for the receipt and disbursement of all moneys; for his official account to be rendered at stated times to the inspectors. This account must contain the expenses and disbursements, receipts and profits of the prison, with vouchers therefor. The balance of cash remaining on hand must appear as cash in the hands of the treasurer of the States Prison and not as personal obligations on

his part for moneys which he may have used from the States Prison funds.

The care which the legislature took to provide against the expenditure of the States Prison money for any other purposes than to carry on the affairs of the States Prison, appears very distinctly in said section 5, which provides that he; to wit, the warden of the States Prison, will not be "concerned in trade or commerce during his continuance in office," which is made a part of his bond, and also in said section 13, that "the warden shall not carry on or be concerned in trade or commerce during his continuance in office." In other words, the warden is hedged around by these strong provisions for the express purpose of protecting the States Prison funds which he holds as treasurer of the States Prison.

Section 8 of said chapter 140 provides, substantially, that the inspectors shall audit, correct and settle the accounts of the warden with the States Prison, and at a stated period make report thereof to the governor and council, which provision requires the inspectors to see to it that the warden performs his duties faithfully in all financial matters.

Surely, then, should the warden make personal use or loans from the States Prison funds, and the inspectors on examination of the accounts should find such to be the case and this use or loans or money made by the warden were outstanding, the inspectors could not properly audit and settle the accounts of the warden. They would have no right to do so under their oath of office, and should at once report the situation to the governor and council.

Again, it might be supposed that the warden of the States Prison, being treasurer thereof, might from time to time, as his salary accrued, draw from the States Prison fund against his salary and account for the same, as such, to the inspectors. But this situation is provided for by statute, as appears by chapter 115, page 864, under section 8, which reads as follows: "The salaries of all public officers and the pay of all clerks in public offices, not otherwise provided for, shall be from the state treasury in quarterly payments."

So that the warden of the States Prison has no right even to make use of the funds in his hands to pay himself, but must go to the State treasurer for his quarterly payments, since I do not

find any provision whereby he may pay himself from the funds of the States Prison.

To sum up in brief, all the provisions of the statutes go to this one point, that the warden of the States Prison, while he is treasurer of the States Prison, can employ the funds of the States Prison only and solely for the expenses, disbursements and affairs of the States Prison and nothing else, and, that when he makes application of the funds of the States Prison to any other purpose than to the affairs of the States Prison, to wit, to himself, or to other parties not connected with the States Prison, on loans or otherwise, his bond becomes liable for such funds so illegally disbursed.

Respectfully submitted,

GEO. M. SEIDERS, Attorney General.

HEALTH INSURANCE—NOTICE.

The notice required in chapter 46 of the Public Laws of 1895 relating to insurance is not applicable to companies doing what is known as health insurance.

August 15, 1902.

To Hon. Stephen W. Carr, Insurance Commissioner, Augusta, Me.:

My Dear Sir: I herewith submit to you my opinion in relation to the question whether or not health insurance companies so called, are controlled in the matter of giving notice of sickness by chapter 46 of the Public Laws of 1895.

The opinion which I have reached by a careful examination of chapter 46, Public Laws of 1895 and of other sections of the insurance law, is that said chapter 46 does not apply to health insurance companies in name, and since it does not then the time specified in the policy of a health insurance company as to notice, must be taken as binding upon the party insuring, and for the following reasons:

First. The question raised might turn on the meaning of the words "casualty and accident." What is meant in said chapter 46 by "casualty and accident insurance companies?" It might appear on first reading that these words could be enlarged in their meaning so as to cover health insurance companies and