

MAINE STATE LEGISLATURE

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STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1906.

AUGUSTA
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includes only actual cash outlay while in the performance of his official duties.

Section 2: This act shall take effect when approved."

On June 24, 1905, opinion was rendered to the Secretary of State, as follows:

"I have the honor to acknowledge your letter of the 20th inst. referring to me a communication from the adjutant general to the governor of Maine, asking, in substance, if the law of 1905, chapter 49, requiring State officers to render bills of expenses, applies to commissioned officers, non-commissioned officers, and other members of the National Guard.

The words, "State officer," may perhaps be used differently in different statutes. In the statute in question, however, I am inclined to the opinion that the words, "State officer," are intended to include such officers as receive their pay direct from the State, so that when bills are presented against the State, the State shall have the benefit of an itemized statement under oath as provided. If the bills in question are bills which can properly be paid by the adjutant general out of funds properly turned over to him, his itemized account and oath I should think would be practical and sufficient compliance with the law."

BIRTHS. RECORD OF IN UNINCORPORATED PLACES.

In December, 1905, the question was submitted to us by the Department of Vital Statistics as to where the report of a birth in an unincorporated place should be returned under R. S., chapter 61, section 26.

On January 3, 1906, opinion was rendered to the secretary and registrar of vital statistics, as follows:

"When at Augusta, I have tried several times to see you personally with reference to the inquiry made by you as to where the report of a birth in an unincorporated place should be returned, under R. S., chapter 61, section 26. A pressure of other duties has prevented my seeing you as desired.

The question submitted by you has given me considerable trouble, and although I have spent much time in its considera-

tion, am not able, even now, to advise you with absolute certainty.

R. S., chapter 61, section 26, reads as follows:

“When a birth, marriage or death occurs in an unincorporated place, it shall be reported to the town clerk in the town which is nearest to the place at which the birth, marriage or death took place, and shall be recorded by the town clerk to whom the report is made; and all such reports and records shall be made and recorded and returned to the State registrar as is provided herein.”

I understand in the case submitted by you, there is an organized plantation keeping a record of these births which is nearer to the place at which the birth took place than is any town. The question, therefore, appears to be whether the report of the birth should be made to *such plantation*, or to the *town* nearest the place at which the birth took place.

Upon an examination, I do not find that the court has ever construed this statute in question so far at least as the point under consideration is concerned. Neither have I been able to find much in the way of authority which sheds any light upon the question.

Under rules of construction, R. S., chapter 1, section 6, subdivision, XIX, reads as follows:

The word ‘town’ includes cities and plantations, unless otherwise expressed or implied.”

In *Small v. Lufkin*, 56 Me., page 30, our court has held, “the assessors of organized plantations are subject to the performance of the duties devolving on the municipal officers of towns in relation to perambulation.” In this case the court refer to the general rule that the word “town” in our statutes includes cities and plantations, unless otherwise expressed or implied, and refer to the duties and obligations of plantations as almost identical with those of towns.

In *Parker v. Williams*, 77 Me., page 418, which was a case to enforce a lien claim for personal labor on logs, the court held as follows:

“Attachments of personal property that may be preserved by recording as provided by R. S., chapter 81, section 26, when made in a plantation, which is organized and has a clerk's office, should be there recorded.

A plantation which has a clerk and other plantation officers is not an unincorporated place within the meaning of R. S., c. 81, sec. 26."

In this case the court considered the attachment recorded in the organized plantation good under a statute providing, in substance, that attachments (upon bulky property, etc.) made in towns, are to be there recorded, although another provision in the same statute provided, in substance, that when an attachment is made in an unincorporated place, it shall be recorded in the oldest adjoining town in the county.

I have also been informed from your office that as a matter of practice, these organized plantations are in the habit of keeping these records of births and complying with the statutes relating thereto in the same manner as do towns.

Under the foregoing, I would recommend and advise that the report of the birth in question be made to the clerk of the organized plantation. As indicated, I must confess that I am somewhat uncertain as to whether or not this is the correct view. It may be that the court would hold the statute means literally that the report should be made to the nearest *town*, rather than any *organized plantation*. If the matter is of importance, arrangements therefore should be made to have the question raised, and passed upon by the court, or else the statute amended at the coming session of the legislature, so as to be beyond any possible question as to its construction."

ROAD COMMISSIONERS. RIGHT TO TAKE MATERIAL WITHIN THE LIMITS OF HIGHWAY FROM ONE PLACE TO ANOTHER FOR PURPOSE OF CONSTRUCTION AND REPAIR OF WAYS.

In May, 1906, the question was submitted to us by the commissioner of highways as to what right, if any, a road commissioner had to take material opposite one man's land within the limits of the highway and carry it to some other point opposite another man's land for use in the actual construction or repair of the road.

On May 16, 1906, opinion was rendered to the commissioner of highways as follows: