

MAINE STATE LEGISLATURE

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STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1908.

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therefore, appear necessary for you to have a meeting with the selectmen or other local officers having jurisdiction, and if a majority of those selectmen or other local officers, and yourself, agree to reject any or all bids, we think it would be competent for you to so act.

The act for 1907 gives the right to reject any or all bids, "if in their opinion good cause exists therefor." We regard this power as being judicial rather than ministerial, and in the absence of any fraudulent or improper conduct on the part of the persons making the decision, we think that decision would be final. It would only remain for you to form an opinion for good cause and if in your opinion (meaning in the opinion of yourself and a majority of the selectmen or other local officers) a good cause did actually exist, then we think you would have a perfect right to reject any or all of the bids. On the other hand, if in the opinion of the majority of the selectmen or other local officers and yourself, there was not good cause to reject any or all of the bids then the statutes plainly require that you should award the contract to the lowest responsible bidder.

SALARIES OF PUBLIC OFFICERS.

Hon. Charles P. Hatch, State Auditor, Augusta, Maine:

DEAR SIR:—Relative to your inquiry of this department which practically is whether or not the payment of the "salaries of the superintendent, four assistants, the steward and treasurer, chaplain and matron" of the insane hospital can be made from the appropriation for "Salaries of Public Officers," I have the honor to report as follows: It is my opinion that such payment can be made as within the spirit and intent of our existing laws.

In your communication to this department you say:

"It has been the practice heretofore to pay the salaries of superintendent, four assistants, the steward and treasurer, chaplain and matron of the insane hospitals from the appropriation for 'Salary of Public Officers.'"

You further call our attention to section 20 of chapter 2, of the Revised Statutes, which provides that,

"Money appropriated for the various branches of expenditure in the public service shall be applied solely to the object for which the appropriation is made."

You further ask if such persons, (meaning the superintendent, four assistants, the steward and treasurer, chaplain and matron, of the insane hospitals above referred to), "are public officers and thus entitled to receive their compensation from the appropriation for "Salaries of Public Officers," or are they simply employees and entitled to their compensation only from the specific appropriation for the maintenance of each institution?"

The term "public officer" is used in the statutes sometimes in a narrow and sometimes in a very broad sense. Much, therefore, may depend in construing the meaning of these words upon all of the facts and circumstances surrounding each case including various statutes which may have been passed relating to the same.

In the present instance, therefore, the substance of your inquiry, we assume, is not whether the persons in question may be regarded as public officers for all purposes in connection with any and all laws, and public officers within the narrowest and most technical definition of the same, but whether the persons in question are such officers as may be paid out of the appropriation for the "Salaries of Public Officers."

This department has made such examination as time will permit and has attempted to run over legislation with reference to the insane hospitals from the earliest date. In this connection we call your attention to some of the following legislative and historical facts:

The Resolves of 1836, chapter 30, authorized the appointment of an agent who under the direction of the governor and council, should make contracts for material and superintend the erection in Augusta of:

"A hospital and other buildings suitable for the accommodation of a superintendent and of one hundred lunatic persons, furiously mad."

The Resolves of 1838, chapter 49, provided for the additional sum of \$29,500 to complete the outside of the insane hospital.

The Resolves of 1839, chapter 88, provided for the sum of \$15,000 to finish one wing of the insane hospital, with so much of the central buildings as might be necessary for their convenient occupation.

In the Resolves of 1840, the report of the committee on public buildings is found on page 126. This was a report of several pages giving the history of the movement which resulted in the erection of a hospital by public appropriation aided by private subscriptions, and that committee recommended the passage of a resolve which is found in the Resolves of 1840, chapter 32, and which after providing for certain appropriations makes the following provision:

"That the governor and council be authorized to prepare suitable rules, regulations and conditions for the admission of patients and appoint suitable officers and attendants, and fix their salaries, and for such salaries or other necessary contingent expenses, the governor, with advice of council, may draw his warrant *on the treasury* to be paid from any money not otherwise appropriated."

This resolve was approved March 6, 1840.

Note the salaries are to be paid by warrant on the treasury.

In the first annual report of the directors of the Maine Insane Hospital, made in December, 1840, to the governor and council, they report that the building was ready for the reception of patients on the fourteenth day of October, 1840. This report contains a "system of regulations for the Maine Insane Hospital adopted by the governor and council," which sets forth with much detail the duties of directors, superintendent, steward, matron, assistant physicians, and attendants and assistants. The superintendent for that year was Cyrus Knapp, M. D., who was succeeded the following year by Isaac Ray, M. D.

As touching the question of payment of salaries out of any contingent fund or from any other sources available from the income of the hospital, it is interesting to note that the *second annual report*, 1841, of the directors of the Maine Insane Hospital contains the first report of the treasurer and steward of that institution. He charged himself with \$5,000 drawn from the State treasury and \$4,558.78 from towns and individuals for the support of patients, and small sums received for articles sold. The entire sum with which he charged himself was expended and more than expended, for the total expenditures were \$9,928.69. The items of expenditure are for provisions and groceries, fuel and lights, wages and labor, improvements, furniture, medical supplies, hay and straw, clothing,

stationery, and miscellaneous, but no where does it appear that the *salaries of the superintendent, or other officers* of the institution were paid out of any *income* of the institution.

The reports of the treasurer and steward of the institution have been examined for several years and in no instance did we find any payment of the officers of the institution out of the income of the same.

The management of the hospital as provided for in 1840 seems to have been continued until 1843, when by the Public Laws of that year, chapter 19, provision was made for the "Government of the insane hospital and for other purposes." This act provided for the appointment of trustees and prescribed the duties of those trustees. In section 3 of the act it was provided that:

"The trustees shall appoint a superintendent, and they shall also, in conjunction with the superintendent, appoint a steward, and such other officers as in their opinion may be necessary for conducting efficiently and economically the business of the institution; and all appointments made by them shall be made in such manner, with such restrictions and for such terms of time as the by-laws may prescribe; and the salaries of all the officers so appointed shall be determined by the trustees, subject to the approval of the governor and council."

The chapter from which we have just quoted also makes extended provisions relating to the duties of the officers and prescribed the method of procedure on the part of the mayor and aldermen to obtain commitment to the insane hospital, also for the appointment of guardians of the insane and many other interesting facts.

The first mention that we find of a chaplain of the insane hospital is in the Resolves of 1855, chapter 233, where there is an appropriation that there should be "paid out of the *state treasury* \$100, to be expended under the direction of the trustees of the insane hospital for services of chaplain therefor."

An examination of the *Private and Special Laws*, as well as of the Resolves of the various legislatures from 1840 to the present time show that nearly every legislature has been called upon to make some appropriation or to prescribe some method of committing the insane or in some way dealt with this ques-

tion, but we do not find in any instance where it was even suggested that the superintendent or any of the officers of the institution should be paid out of any income of the institution, but always from the State treasury. In fact, under the laws of 1847, chapter 33, section 6, it is distinctly provided:

"That the governor is hereby authorized to draw his warrant on the *state treasury* for the amount due to the trustees and *other officers* of the institution, the attendants on the patients and laborers on the premises not included."

As showing who are meant by "officer" we would refer to section 3 of the same act, wherein the trustees are directed to appoint a superintendent, steward "*and such other officers*" as may be necessary, etc.

This provision of 1847 finds its place in the revision of the statutes of 1857, chapter 143, section 4. The same provision is found in the statutes of 1871, chapter 143, section 4.

In the Public Laws of 1879, chapter 150, is to be found:

"An Act establishing the salaries of certain state and county officers, fixing the number and regulating the pay and compensation of certain state employees."

Section I of that act provides as follows:

"The following *public officers* are entitled to receive salaries from the *treasurer of the state* in quarterly payments on the first day of January, April, July and October of each year as follows:"

Section II of that act enumerates the public officers and among them are:

"The superintendent of the insane hospital, two assistant superintendents, one steward, who shall perform the duties of treasurer, a chaplain and a matron and fixes the salaries of each."

In the revision of 1883, chapter 115, we find the same provision which is just quoted from the act of 1879. This provision finally takes its place in the revision of 1903, chapter 116.

It will be observed, therefore, that the legislature has provided for the payment of the superintendent, etc., of the insane hospital out of the State treasury ever since 1840, a period of sixty-seven years and that the superintendent, two assistant superintendents, steward, chaplain and matron have been desig-

nated as public officers ever since 1879, a period of nearly forty years.

The first legislation with reference to the insane hospital at Bangor was in 1895, when, in chapter 18 of the Resolves of that year, a commission was appointed to erect buildings. The legislature of 1899, chapter 3, of the Resolves of that year made an appropriation for the completion of the buildings. In the Public Laws of 1899, chapter 75, we find a provision as follows:

"Sec. 2. The government of the Eastern Maine Insane Hospital at Bangor is hereby vested in the trustees of the Maine Insane Hospital who are authorized to organize and prepare it for the reception of patients, to appoint a superintendent, treasurer, steward and other necessary officers, whose salaries they shall fix and to perform such other acts as are necessary to properly care and provide for patients therein. The action of said trustees to be subject to the approval of the governor and council.

Sec. 3. The provisions of chapter 143 of the Revised Statutes shall control the government of the Eastern Maine Insane Hospital so far as they may be applicable, and the board of trustees are charged with the same duties towards and given the same authority over the Eastern Maine Insane Hospital, at Bangor, that they now exercise in relation to the Maine Insane Hospital, at Augusta."

The chapter last referred to is the chapter entitled "The Insane Hospital" and contains in section 4 of chapter 143 (revision of 1883) the provision instituted in 1847 that the accounts of the trustees shall be audited by the governor and council who shall draw their warrant on the *treasury of State* for the amount due them and the *other officers* of the institution.

While we have referred to but a portion of the legislation relative to the insane hospitals in this State, we have not found in our examination any legislation of any kind providing in terms that the officers are to be paid out of any fund other than that provided for "Salaries of Public Officers," or at least, out of the treasury of State.

Calling your attention expressly to the present statutes now in force, you will perceive that R. S., 1903, chapter 116, is entitled "Salaries of public officers and compensation of members

of the government," that section 1 of that chapter begins with the following language:

"The *following officers* are entitled to receive annual salaries from the treasurer of state in quarterly payments on the first days of January, April, July and October as follows:"

The list begins with the governor and proceeds until we reach the following language:

"Superintendent of the Insane Hospital at Augusta, two thousand dollars; four assistants, one of whom shall be a female, such sum as the trustees may from time to time vote, not exceeding thirty-five hundred dollars a year for the four; the steward, including his services as treasurer, such sum as the trustees may from time to time vote, not exceeding sixteen hundred dollars in full for all services; chaplain, three hundred dollars; matron five hundred dollars."

In view of all the legislation in this State and of the express language referred to in said R. S., 1903, chapter 116, it seems to this department as above indicated, that the salaries in question may properly be paid from the treasury of the State and out of the appropriation for "Salaries of Public Officers." This would seem to be the intention of the legislature under said R. S., chapter 116. It certainly could not have been the contemplation of the legislature that the persons in question should serve without pay and the legislature appears to have made no other provision for their payment.

This conclusion seems to be in harmony with the fact that as we are informed the various legislatures, through their proper committees, in making up their estimates for the sum total for the salaries of public officers have included in their totals the salaries due the officers in question. Various acts have been passed from time to time increasing the salaries of the officers in question. We are informed the amounts of these respective increases have doubtless been carefully included. This conclusion is also apparently in harmony with the line of conduct existing for substantially more than half a century. We are informed that under the custom so long observed, the salaries of the officers in question, so long as the respective offices have been created, have been paid from the treasury of the State and out of the appropriation for "Salaries of Public Officers." It

would seem as if this custom, so long established, must have been so well known to the legislatures that their various acts have been passed upon the implied understanding, at least, that the custom should so continue. We believe that the salaries may be properly paid in accordance with the advice herein given.

DEPUTY FISH WARDEN.—FORM OF OATH.

Hon. James Donahue, Commissioner Sea and Shore Fisheries, Rockland, Maine:

DEAR SIR:—Your inquiry is noted as to the form of oath of a deputy warden, appointed under chapter 41, R. S., (relating to sea and shore fisheries).

The statute in question requires said deputy wardens to be "sworn." Turning now to R. S., chapter 1, section 6, paragraph XXII, I quote as follows:

"The words "sworn," "duly sworn," or "sworn according to law," used in a statute, record, or certificate of administration of an oath, refer to the oath required by the constitution or laws in the case specified, and include every necessary subscription to such oath."

Under all the circumstances I should recommend that the oath noted in the constitution be taken as provided in the paragraph just quoted. As doubtless you are aware the oath can be taken and subscribed before a magistrate in your county, commissioned by the governor for the purpose of taking such oaths. See R. S., chapter 57, sections 37-40.

FORTNIGHTLY WAGES.—ENFORCEMENT OF STATUTE.

Hon. George E. Morrison, State Factory Inspector, Biddeford, Maine:

DEAR SIR:—I have the honor to acknowledge receipt of your favor making inquiry as to the enforcement of the law against persons for failure to comply with R. S., chapter 40, section 57, requiring the payment of wages fortnightly.

R. S., chapter 40, section 57, reads as follows: