

# MAINE STATE LEGISLATURE

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STATE OF MAINE.

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REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1908.

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their duties, to be certified by the clerks of their respective boards, and audited by the governor and council. The secretary of each board may also be allowed extra compensation for books, stationery and postage, and their necessary expenses actually incurred. All sums of money received from applicants for examination shall be accounted for and paid quarterly to the treasurer of the state. But in no event shall the compensation for services and expenses exceed the amounts received by each board as fees from applicants in any one year.

Section 2. This act shall take effect on the first day of July one thousand nine hundred and five."

Under this act express provision appears to be made for the turning over quarterly to the treasurer of State all sums of money received by the board from applicants for examination. This is the later act, and from the time it went into effect it is the opinion of this department that the money received from applicants for examination must be paid over quarterly to the State treasurer. It will be noted by section 2 of said chapter 54, of the laws of 1905, that this act of 1905 takes effect on the first day of July, 1905.

Said act of 1905 from the time it took effect would appear to be thus somewhat inconsistent with the said R. S., chapter 18, section 18, and so far as inconsistent it is our opinion that the later act of 1905 would control. Apparently it was the intention of the legislature that there should be an express change in the administration of these funds; that the administration of the same by the Board of Embalming Examiners should cease; that the funds should be paid into the State treasury and be administered through the governor and council and the State treasurer.

#### VITAL STATISTICS.—FALSE RETURNS.

*Dr. A. G. Young, Registrar of Vital Statistics, Augusta, Maine:*

DEAR SIR:—Your inquiry as I understand it is as to whether or not the last clause of R. S., chapter 61, section 21, making it a misdemeanor for any person to make a false return, applies to town clerks.

Upon an examination and consideration of the statutes pertaining to this question, I am inclined to the opinion that the

clause in question relates to physicians or midwives referred to in section 21, but probably does not apply to a town clerk.

R. S., chapter 61, section 21, reads as follows:

"Section 21. A physician who has attended a person during his last illness shall within twenty-four hours after the death of said person make a certificate stating, to the best of his knowledge and belief, the name of the deceased, his age, the disease of which he died, and the date of his death, and shall either deliver it to the person superintending the burial or leave it with the family of the deceased or at the said physician's office where it may be obtained when called for; and a physician or midwife who has attended at the birth of a child dying immediately thereafter, or at the birth of a still-born child, shall, when requested, forthwith furnish for registration a certificate, stating to the best of his knowledge and belief the fact that such child died after birth or was born dead. It shall be a misdemeanor for any person to make a false return in regard to any birth or death."

Upon investigation it appears that said section 21 had its origin in the laws of 1895, chapter 154, section 7, and that the same appears in its present form after amendment, laws of 1903, chapter 180, section 3.

Chapter 154, section 7, of the laws of 1895, reads as follows:

"Section 7. Said chapter is further amended by adding thereto the following sections.

Section 19. A physician who has attended a person during his last illness shall, when requested, forthwith furnish for registration a certificate stating, to the best of his knowledge and belief, the name of the deceased, his age, the disease of which he died, and the date of his death; and a physician or midwife who has attended at the birth of a child dying immediately thereafter, or at the birth of a still-born child, shall, when requested, forthwith furnish for registration a certificate, stating to the best of his knowledge and belief, the fact that such child died after birth or was born dead. It shall be a misdemeanor for any person to make a false return in regard to any birth or death."

Laws of 1903, chapter 180, section 3, reads as follows:

"Section 3. Section nineteen, additional, to chapter one hundred eighteen of the public laws of eighteen hundred ninety-

one, which was added thereto by section seven of chapter one hundred fifty-four of the public laws of eighteen hundred ninety-five, is hereby amended so as to read as follows:

'Section 19. A physician who has attended a person during his last illness shall within twenty-four hours after the death of said person make a certificate stating, to the best of his knowledge and belief, the name of the deceased, his age, the disease of which he died, and the date of his death, and shall either deliver it to the person superintending the burial or leave it with the family of the deceased or at the said physician's office where it may be obtained when called for; and a physician or midwife who has attended at the birth of a child dying immediately thereafter, or at the birth of a still-born child, shall, when requested, forthwith furnish for registration a certificate, stating to the best of his knowledge and belief, the fact that such a child died after birth or was born dead. It shall be a misdemeanor for any person to make a false return in regard to any birth or death.'

It will be noted that the statute in question from its origin has been divided into practically two parts, one relative to the physician who has attended a person during his last illness, and the other to a physician or midwife attending at the birth of a child dying immediately thereafter, or at the birth of a still-born child. In all these sections in question the last clause remains practically the same and makes it a misdemeanor for any person to make a false return in regard to any birth or death.

The only return provided for by the section of the statute under consideration is the certificate to be prepared by a physician attending the person during his last illness or the certificate prepared by the physician or midwife attending at the birth of a child dying immediately thereafter or at the birth of a still-born child. No other return of any kind is specified in the statute in question.

The town clerk, to be sure, is required to make return to the State registrar under R. S., chapter 61, section 32, as to births, marriages and deaths, but a penalty for his neglect of duty may be found in R. S., chapter 61, section 337. Upon consideration I am inclined to the opinion above expressed that the last clause

of said R. S., chapter 61, section 21, does not apply to the official duties of the town clerk.

### FERTILIZER INSPECTION.—AVAILABLE APPROPRIATION.

*Charles D. Woods, Director, Maine Agricultural Experiment Station, Orono, Maine.*

DEAR SIR:—In answer to your inquiry as to the ruling of the state auditor, in substance, that \$2,000 is the limit which can be expended by the state for fertilizer inspection during the year 1908, I have the honor to report as follows:

The Constitution of the State of Maine, Article V, Section 4, Part Fourth, provides as follows:

“Section 4. No money shall be drawn from the treasury, but by warrant from the governor and council, and in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money, shall be published at the commencement of the annual session of the legislature.”

This section was amended, (see amendment xxiii) when we changed from annual to biennial sessions of the legislature, but not in the parts pertinent to this inquiry. It will be noted by this section of the Constitution that in order that the money shall be drawn from the state treasury, it must be *in consequence of appropriation made by law*.

R. S. Chapter 39, Section 19, reads as follows:

“Section 19. Any manufacturer, importer, agent or seller of any commercial fertilizer, who shall deposit with the director of the Maine Agricultural Experiment Station a sample or samples of fertilizer under the provisions of section seventeen, shall pay annually to the treasurer of state an analysis fee as follows: Ten dollars for the phosphoric acid, and five dollars each for the nitrogen and potash, contained or said to be contained in the fertilizer, this fee to be assessed on any brand sold in the state, and upon receipt of the treasurer's receipt for such fee and of the certified statement named in section seventeen, said director shall issue a certificate of compliance with this chapter. Whenever the manufacturer or importer of a fertilizer shall have