

MAINE STATE LEGISLATURE

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STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1908.

WATERVILLE
SENTINEL PUBLISHING COMPANY
1909

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

filed the statement made in section seventeen and paid the analysis fee, no agent or seller of said manufacturer, importer or shipper shall be required to file such statement or pay such fee. Said director shall present to the governor and council itemized bills showing the cost of analyzing each sample and on approval by them a warrant shall be drawn on the treasurer for the payment thereof. Such payments shall not exceed in any calendar year the amount of fees received the same year."

This section has also been amended, (see Chapter 18, Laws 1905) but not in any part so far as pertinent to your present inquiry.

Speaking generally of the history of this commercial fertilizer legislation, as I understand it, these matters were overhauled and revised in the year 1893, and the legislature of that year passed an act, Chapter 256, entitled "An Act to regulate the sale and analysis of commercial fertilizer," which was supposed to place matters on either a new or at least, a fixed basis. Under this act and amendments for about ten years, the fees were paid to the director and placed by him in the treasury of the Experiment Station. The expenses of analysis, etc., were paid by the director out of these fees. Some ten years later, in 1903, when there was public agitation over the entire fee system, the law was changed so that these fees, instead of going into the treasury of the Experiment Station, should go directly to the state treasurer, (see laws of 1903, Ch. 217). At the same time, the legislature in its general appropriation bills for the years 1903 and 1904, inserted an item for each of those years as follows: "Analysis of Commercial Fertilizer, \$2,000." See Private and Special Laws for 1903, Chapters 418, and 419. This same item has been inserted in appropriation bills for each year following to the present time. For the years 1905-6, see Private and Special Laws for 1905, Chapters 25, and 396. For the years 1907-8, see Private and Special Laws for 1907, Chapters 21 and 448.

It will thus be noted that standing along with R. S. Chapter 39, Section 19, (as amended) appears the item in general appropriation bills, in express terms, "Analysis of commercial fertilizer, \$2,000," for each and every year, 1903 to 1908 inclusive.

There may be some possible question as to whether R. S. Chapter 39, Section 19, is an "appropriation made by law"

within the meaning of the constitutional requirements above noted. In this connection, I beg to call your attention to the following cases:

Ristine Auditor vs. State of Indiana, 20 Ind. 328. State vs. Moore, 50 Neb. 88.

However, irrespective of whether or not the act in question is constitutional, it will be perceived upon careful examination that R. S. Chapter 39, Section 19, does not expressly provide that the expenses in question shall be paid out of the fees. It is silent as to exactly what money in the state treasury the expenses shall be paid from. It simply provides in substance, so far as this matter is concerned, that the governor and council may draw a warrant on the treasury for the payment of the expenses and adds that these payments shall not exceed the amount of fees. It does not say in express terms that the expenses shall be paid from the fees.

The view of the state auditor is that all these acts shall be construed together and reconciled so far as possible. Considering everything, it seems to him that the state cannot safely expend more than \$2,000, for these expenses, for the year 1908.

In looking at the matter, the auditor perhaps should be upon the safe side in a question of any uncertainty.

In view of all the foregoing, while I must confess there is some uncertainty as to any implied provisions of R. S. Chapter 39, Section 19, and while after much time given in investigation, I am not able to find any authorities clearly and concisely settling every possible question which may be before us in this matter, yet it is my opinion that the auditor is justified in the views he has reached.

INSANE CONVICTS.—SUPPORT AFTER EXPIRATION OF SENTENCE.

H. W. Mitchell, M. D., Supt. Eastern Maine Insane Hospital, Bangor, Maine.

DEAR SIR:—I have the honor to advise you as follows, as to whether the board after expiration of time of sentence of an insane jail convict, regularly and lawfully transferred from the jail, while serving sentence, to the State Insane Hospital and