

# MAINE STATE LEGISLATURE

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February 4, 1908

To William T. Cobb, Governor of Maine  
Re: Inquest on Insane Convict

Will you please pardon my delay in answering your favor of January 29th, relative to the payment of the costs of the inquest held upon the body of the murdered insane convict at the State Prison at Thomaston. I have been obliged to be out of the state for a day or two and other matters which could not admit of postponement have been the cause of the delay.

From such investigation as I can make, I cannot believe that the fact that the homicide occurring in the state prison made any difference in the question of who should pay the bills.

At the risk of wearying you, may I be allowed to recite briefly the following facts:

The legislature of this state by resolve passed February 2, 1822, directed the governor to appoint a committee of three persons who should "collect information and investigate the subject of the punishment of convicts and to establish a state prison or penitentiary." Prior to this, by virtue of an act approved March 19, 1821, jails were erected and kept in repair "in each town where a court by law is to be holden". Provisions also existed for jails or prisons within the several counties of the state to be supported by the county in which they were located.

The committee appointed under the resolve of February 2, 1822, made a very lengthy report to the Senate and House of Representatives under date of January 13, 1823, in which report they recommended Thomaston in the county of Lincoln as a suitable place in which to locate the new state prison. By virtue of an act passed February 8, 1823, land was purchased in this town from Hon. William King at the price of three thousand dollars. I have personally examined the original deed and find it to be in the ordinary form containing metes and bounds but with no reference to the purpose for which the land was to be used.

The act of February 8, 1823 which provided for the purchase of the land and the erection of the prison, also authorized the governor to make and establish such by-laws, orders and regulations for the government and direction of the state prison and for the employment and management of the convicts as he might think proper which by-laws were to be enforced until provisions were made for the government of the prison by the legislature. Under the authority of this act, the governor might possibly have prescribed some kind of exclusive domain over the territory occupied by the state prison, but it does not appear that he ever did so. The legislature made its provisions by an act approved February 25, 1824 and among the interesting things are to be found the provision for a special militia

company of not more than forty persons to be raised in the immediate vicinity of the prison who should at all times in case of alarm or insurrection at the prison forthwith appear armed and equipped to assist "in quelling any insurrection of the convicts and assisting in apprehending any prisoners who may have escaped therefrom."

Regulations governing the management and control of the prison and prisoners from that early day down to the present time have been examined and I do not find any attempt on the part of the legislature or the governor and council to set up exclusive domain over the territory known as the state prison nor do I discover any law by which the County of Knox lost any jurisdiction except the early provision by which the warden was directed to serve, execute and return all process within the precincts of said prison.

I do not find, therefore, either by provisions of the act authorizing the purchase of the land and the erection of the prison, or the provisions of the deed by which the land was acquired, or by legislation subsequent to the acquisition of that land anything which would prevent a coroner from holding an inquest within said prison nor excusing him from doing so, if the circumstances of the case were such as to warrant an inquest within any other part of the County of Knox.

Turning now to R. S. Chapter 140, Section 11, we find the following:

"Every coroner within his county, after the return of an inquisition of the jury upon view of the dead body of a stranger, shall bury it in a decent manner; and all the expenses attending the burial and the expenses of the inquisition shall be paid to the coronor out of the state treasury, if the coroner certifies under oath that the deceased was a stranger not belonging to the state, according to his best knowledge and belief; otherwise, the expenses of burial shall be paid to the coronor by the town where the body was found, and be repaid to such town by the town to which he belonged; and the expense of the inquisition by the county."

You will notice by these provisions that if the inquisition concerns the dead body of a stranger, then the coroner shall bury the remains and the expense attending the burial and the expense of the inquisition shall be paid out of the state treasury, but this only applies to cases where the coroner has certified under oath that the deceased was a stranger not belonging to the state according to his best knowledge and belief. In all other cases the expense of burial is to be paid by the town where the body was found and repaid by the town where the deceased belonged and in this latter instance the expense of the inquisition is paid by the county. This part of the statute would seem to apply only to inquisitions over the bodies of strangers. The general provisions for fees for taking inquests on dead

bodies is to be found in R. S. Chapter 117, Section 7, which fees are to be "paid out of the county treasury".

From all this I am led to the conclusion that in cases of ordinary inquest all the fees are to be paid out of the county treasury; that any inquest over the dead body of a stranger but who may belong in the state, the expense of burial is to be paid ultimately by the town in which he belonged and the expense of the inquisition by the county; that in the case of a stranger not belonging in the state and so certified by the coroner the expenses of burial and inquest are to be paid out of the state treasury.

Warren C. Philbrook  
Attorney General