

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1914.

WATERVILLE
SENTINEL PUBLISHING COMPANY

1915

REGISTER OF DEEDS.—WHETHER A WOMAN IS
ELIGIBLE TO HOLD OFFICE.

29th April, 1914.

Hon. J. E. Alexander, Secretary of State, Augusta, Maine.

DEAR SIR: The question has been submitted to me as to whether or not a woman is eligible to hold the office of Register of Deeds in this State. While the question is not wholly free from doubt, still I am of the opinion that under our statutes a woman is not eligible to hold this office; not because of lack of qualification or fitness, as she is in many cases, at least, especially fitted for this kind of work, but because of her original disqualification under the common law to hold public office.

I have come to this conclusion after a historical examination of the rights of women under the law, and a consideration of the views expressed by our Court in *Opinion of Justices*, 62 Maine, 598, together with certain acts of our legislature as indicating its recognition of the necessity of express legislation to qualify women for public positions, and also the views of the Courts of Massachusetts and New Hampshire upon this question under their constitutions and laws.

In several states, particularly in Massachusetts, New Hampshire, Tennessee and Illinois and in our own state, the question of the rights of women to hold public office has arisen in connection with the office of Justice of the Peace, Notary Public and the right to be admitted to the bar. It has been held that a woman was not eligible to the office of Justice of the Peace and Notary Public, without express authority of the legislature: and in Massachusetts, the court held that even the legislature could not authorize the appointment of women to this office without a modification of the constitution, 165 Mass., 599.

In *Robinson's case*, 131 Mass., 376, is perhaps the best historical discussion of the rights of women to hold public office contained in any judicial decision, where the question under consideration was whether an unmarried woman was eligible for admission to the bar as attorney at law. It is there pointed out that by the law of England which was also adopted in this country, a woman was not entitled to hold public office where the duties would be discharged by the incumbent in person, and it was held that under the statute authorizing admission of

"citizens" to the bar for the practice of law, a woman could not be admitted without further legislative action; and in 1899 the legislature of this State extended our statute and now expressly provides that women are eligible to admission to the bar for the practice of law in this State. This would seem to indicate that our legislature had recognized the necessity of action in order to render the rights of women to hold public office clear.

It is true that under the opinion of the Justices in 62 Maine, 598, there was dissenting opinion by three Justices on the question as to whether or not women were eligible to the appointment of Justices of the peace, but the majority of the Court held, as has been held in New Hampshire, 73 N. H., 621, and several of the other states, 92 Tenn., 531; 55 Ill., 535, that in consideration of the conditions that existed at the time of the adoption of the constitution, in relation to the manner in which political power was then exercised by the male citizens alone, it was not the intention of those adopting the constitution to include women as eligible to constitutional offices unless it expressly appeared in the language of the constitution.

It was intimated, however, that the legislature might create new ministerial offices and authorize the performance of the duties thereof by either sex. However, when the office of Register of Deeds was created in 1821 by Chapter 98 of the Public Laws of that year, nothing is found therein expressly making sex a qualification of holding the office. But in interpreting this statute, it should be borne in mind that women under the common law were ineligible to hold public office; and while the use of the masculine pronoun is perhaps of little weight except in connection with the other considerations; it should be noted that it was therein provided that the register should furnish a bond with sureties in the sum of two thousand dollars, a contract which married women at least at this time were not capable of entering into.

These considerations together with the fact that for ninety years, it has been the uniform practice to elect only males to this office are sufficient in our opinion to warrant you in refusing to depart from this unbroken practice without legislative action or judicial interpretation.

Very sincerely,

SCOTT WILSON,

Attorney General.