

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1918

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except vessels **** in process of construction **** shall be taxed **** etc.”

A careful consideration of the original acts going to make up this paragraph shows that after providing for taxing vessels of non-residents, the legislature exempted “vessels in process of construction” from the law and thus from taxation and that the above quotation is a correct reading of the paragraphs. Hence, “vessels under construction” if owned by non-residents are not taxable under Chapter 10, Section 14.

It is our opinion, therefore, that “vessels under construction” if owned by residents of Maine are taxable under Chapter 10, Section 14, but not, if owned by non-residents.

Yours very truly,

FRANKLIN FISHER,

Asst. Attorney General.

WOMAN'S REFORMATORY—RIGHT OF TRUSTEE TO SERVE AS SUPERINTENDENT OF CONSTRUCTION.

1st March, 1917.

Honorable Governor and Executive Council, Augusta, Maine.

GENTLEMEN:

In re-Employment of Clyde H. Smith as Superintendent of Construction of State Reformatory for Women.

By Section 57, Chapter 206 of the Public Laws of 1915, it is provided that the general superintendence, management and control of the Reformatory for Women, the grounds, buildings, officers and employees thereof and inmates therein, and matters relating to the government, discipline, contracts and fiscal concerns thereof shall be vested in a board of five trustees, inhabitants of the State, of whom at least two shall be women. They shall be appointed by the Governor with the advice and consent of the council for a term of five years.

It is also provided by the same section that any trustee may be removed from office by the Governor and Council for cause.

By Section 58 of the same chapter, it is provided that the board shall appoint from their number a president and secretary; that they may make such rules and regulations as may be

necessary; that the board of trustees shall constitute a board of parole, etc.

By Section 14 of said chapter, the board of trustees, as a board, were authorized to select and purchase a site for the reformatory and by Section 15, erect, furnish and equip suitable buildings and structures to accomplish the objects set forth in this act.

It is provided in Section 16 of said chapter that the trustees shall receive for their services in the performance of their duties connected with the purchase of the site and the construction and equipment of the buildings and for the term of service subsequent to the commencement of the operation of said institution and the receiving therein of inmates committed, the sum of five dollars a day when actually engaged and expenses necessarily incurred by them.

By Section 17, the board of trustees shall have power to appoint a superintendent of construction for the building of the State Reformatory and to employ such other persons as it may deem necessary to secure a speedy and economical construction of the State Reformatory and the improvement of said site.

It appears that Clyde H. Smith was appointed one of the trustees of the Reformatory for Women pursuant to the authority of Section 2 of said Chapter 206 of the Public Laws of 1915 for a term of five years. It also appears that the board of trustees (members of which board including Mr. Smith were all appointed pursuant to the same Section of Chapter 206) as a board appointed Mr. Smith as superintendent of construction and Mr. Smith has rendered to the State of Maine a statement of his charges for services as trustee and also for his additional services supervising building. The question is raised as to whether the appointment of Mr. Smith as superintendent of construction, he then being one of the members of the board of trustees, is valid and whether or not he is entitled to pay for his services as superintendent of construction.

It is a well established and salutary doctrine that he who is entrusted with the business of others cannot be allowed to make such business a charge of pecuniary profit to himself. This rule does not depend on reasoning technical in its character and is not local in its application. It is based on principles of reason, or morality and of public policy. These are the principles of

the common law and of equity and are generally supplemented and made more emphatic by statutory enactment. Such statutes, however, are declaratory of and in aid of the principles of the common law.

It is contrary to public policy to permit an officer having power to appoint to an office to exercise that power in his own interest by appointing himself. It is a principle of universal application as well as public decency that when officers are depositories of a public trust neither of them should be permitted to discharge it for his own benefit or to promote his private interests.

Lesieur vs. Inhabitants of Rumford, 113 Me. 317.

State of Oregon vs. Hoyt, 2 Oregon 246.

People vs. Thomas, 33 Barb. (N. Y.) 291.

Such are the definitions of the common law principles and if we were without statutes upon the subject, these authorities would seem a sufficient basis for an opinion that Mr. Smith's appointment was invalid.

However, declaratory of and emphasizing the common law principles, Section 11 of Chapter 122 of the Revised Statutes provides that no trustee, superintendent, treasurer or other person holding a place of trust in any state office or public institution shall be pecuniarily interested directly or indirectly in any contract made in behalf of the State or of the institution in which he holds such place of trust and any contract made in violation hereof is void.

In *Lesieur vs. Inhabitants of Rumford*, 113 Maine 317, the Court says that this statute "clearly indicates that it is the policy of the State that persons whom the law has placed in position where he may make or be instrumental in making the superintendent of contracts in which others are interested should not themselves be personally interested in such contracts." In the same case the Court further says, "It is well established as a general rule that one acting in a fiduciary relationship to others is required to exercise perfect fidelity to his trust and the law to prevent the neglect of such fidelity and to guard against any temptation of service in his own interest to the prejudice of his principles disables him from making any contract with himself binding the principal. In this case, the plaintiff was a member of the board of health and was employed to care for persons suf-

fering from contagious diseases. The argument was made that the plaintiff acted openly and avowedly for himself, that there was no dishonesty on the part of the board or himself and that the other members of the board represented all others interested in the contract. There was no statute forbidding a contract by a member of the board of health with the board but the Court held that the contract of employment must be regarded as violating the well established principle of law, one of which it is the policy of the law not to have violated as is evidenced in uniform judicial decisions and recognized by legislative enactment, namely, against public policy.

In my opinion the contract of employment with Mr. Smith to act as superintendent of construction was absolutely void and is binding neither on the board of trustees nor on the State.

By the provisions of Section 16, Chapter 206 of the Public Laws of 1915, however, he is entitled to five dollars a day for services as trustee and for such time as he actually spent in the performance of his duties connected with the purchase of the site and construction and equipment of the building and for the term of service subsequent to the operation of said institution and receiving therein the inmates, and his bill should be audited on that basis and paid accordingly.

I would further say that it seems to me that the plain intent of Chapter 206 is that the trustees shall serve as a governing and superintending board and that every appointment of subordinates including the superintendent of construction must be necessarily of persons other than members of the board. The language of the statute would seem to indicate this. So clearly are their duties set forth in detail that it does not seem possible that it should have been intended that one of the members of the board might assume the duties of the superintendent of construction and thereby bring himself into direct conflict as to duty with his personality as trustee. His personal interest in making the contract and its performance was antagonistic to a proper performance of his duties as trustee. As to the price to be paid for his services, as to the length of time they should continue, as to the manner in which they should be performed, in respect to all this, his personal interest was naturally and necessarily in conflict with his duty as a member of the board.

In referring to the statute early in the opinion, I called atten-

tion to the fact that the appointment was for a period of five years and that removal was by the Governor and Council for cause. In my opinion the attempt on the part of Mr. Smith to act as superintendent of construction is not sufficient cause for removal and unless some sufficient cause appears he is entitled to serve out the balance of his term of appointment.

Yours very truly,
GUY H. STURGIS,
Attorney General.

ARMORY AT UNIVERSITY OF MAINE—VALIDITY OF
RESOLVE APPROPRIATING FOR AS WAR MEASURE.

13th April, 1917.

Hon. Carl E. Milliken, Governor of Maine, Augusta, Maine.

DEAR SIR: In my opinion the legislature of 1917 overstepped its power, in the Resolve to Provide for the Building of an Armory at the University of Maine passed by both branches of the legislature under date of April 7, 1917, in appropriating from "the funds to be derived from the loan authorized by the legislature at this session for the purpose of suppressing insurrection, repelling invasion or for purposes of war, such sum or sums as may be necessary for the purpose of building an armory at the University of Maine."

The loan authorized by the legislature for the purpose of suppressing insurrection, etc., will create a debt against the State in excess of the general Constitutional limitation of the State debt and is permissible only by virtue of the exception appearing in Section 14 of Article IX of the Constitution of Maine permitting the creation of debt or debts by the State without limit as to amount "to suppress insurrection, repel invasion or for purposes of war." This exception must be strictly construed and any debt created thereunder must be contracted and the proceeds of any loan negotiated therefor must be expended and applied only for such purposes as are expressly or impliedly within the terms of this Constitutional provision.

It cannot be questioned that this loan was authorized to suppress insurrection, repel invasion or for purposes of war which might or would occur or exist in the war between the United