

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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Act amends a general law, there must be a specific and clear intent of the legislature. That the Private and Special Act under consideration amends the general law of this state regarding exemption can only be argued from inference. There is no straightforward and clear statement in Chapter 199, Private and Special Laws of 1913, stating that it intends to amend a general law regarding exemptions from taxation, and it is the opinion of this office that no such amendment was intended by the legislature.

Very truly yours,

FRANKLIN FISHER,

Asst. Attorney General.

STATE LIBRARIAN—COMPENSATION FOR WORK ON
MAINE LIBRARY BULLETIN.

4th February, 1918.

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

DEAR SIR: We have the order of the Governor and Council dated January 25, 1918, which reads as follows:

“Ordered, That Henry E. Dunnaek be paid the sum of \$7.70 per week from July 1, 1917, to July 1, 1918, for extra work on the Maine Library Bulletin, and that the same be paid from the appropriation for salary of State Librarian.”

together with request for an opinion as to the legality of this order.

The material facts seem to be as follows:

Chapter 117, Section 23 of the Revised Statutes provides that the State Librarian shall receive an annual salary of \$1800. This section also further provides that “the librarian shall also receive in full compensation for his services as Secretary to the Library Commissioners and to cover cost of clerical labor and the necessary expense of said office, such sum not exceeding three hundred dollars a year, as the Governor and Council may determine”.

The legislature of 1917 in the annual appropriation bill appropriated \$2500. for each of the years 1917 and 1918 as salary of the Librarian. There were no special resolves or acts passed

directly authorizing an increase in the Librarian's salary. It is our information that such legislation was presented to the legislature for its consideration but failed to receive passage, therefore such increase of salary is authorized only if we can properly say that the general annual appropriation bill worked an amendment to the existing general law in respect to his salary.

Section 1 of the annual appropriation bills reads as follows:

"In order to provide for the several acts and resolves of the legislature requiring the payment of money from the state treasury **** the following sums are appropriated."

This language is plain, explicit and speaking for itself needs no aid in construction. "The following sums are appropriated" in order to provide for the several acts and resolves of the legislature requiring payment of money from the state treasury and for no other purpose can the money be paid from the state treasury. The appropriation of \$2500. was undoubtedly made through error. The legislature had only in mind the proposed legislation calling for a \$2500. salary and failed to recall the fact that such legislation had not received their approval. The only salary payment to the Librarian provided for by any act or resolve is that appearing in Chapter 117, Section 23, which consists of a fixed salary of \$1800. together with a special extra compensation in the nature of salary which shall not exceed \$300. a year, a total of \$2100.

To construe this appropriation bill as fixing the salary of the Librarian at \$2500. would entitle the Librarian to a possible aggregate compensation of \$2800. and I find nothing to indicate that such was the intention of the legislature.

According to the settled rules of interpretation, a statute fixing the annual salary of a public officer at a given sum is not, unless that clearly appears to be the intention, impliedly repealed or amended by subsequent enactments which merely appropriate a different amount for the services of that officer for the particular fiscal year and which contain no words that expressly or by clear implication modify or repeal the previous law.

Mechem on Public Officers, Sec. 857.

U. S. v. Langston, 118 U. S. 389.

It is my opinion that the appropriation of \$2500. for salary

of Librarian contained in the general appropriation bill passed by the legislature of 1917, contains no words that expressly or by clear implication amend or repeal Section 23, Chapter 117, R. S., and that the aggregate salary, including compensation for services as Secretary of the Librarian Commissioners, etc., to which the Librarian is entitled, cannot exceed \$2100. and the balance of the appropriation provides, for the years 1917 and 1918 for salary of the Librarian, should elapse into the State Contingent Fund.

The Council Order purports to pay the Librarian for extra work on the Maine Library Bulletin. This service is incidental or collateral to the duties of the office to which the Librarian is appointed and properly belongs to and forms a part of his fixed duties. It cannot be said to be outside of the scope of his official duty and not germane or incident thereto. It is part and parcel of the duties he undertook to perform.

“It is a well settled rule that a person accepting a public office with a fixed salary is bound to perform the duties of the office for the salary. He cannot legally claim additional compensation for the discharge of these duties, even though the salary may be a very inadequate remuneration for the service. Nor does it alter the case that by subsequent statutes or ordinances his duties are increased and not his salary. His undertaking is to perform the duties of his office, whatever they may be, from time to time during his continuance in office for the compensation stipulated—whether these duties be diminished or increased. Whenever he considers the compensation inadequate, he is at liberty to resign.”

Evans v. Trenton, 24 N. J. L. 764.

“An officer who accepts an office, to which a fixed salary or compensation is attached, is deemed to undertake to perform its duties for the salary or compensation fixed, though it may be inadequate, and if the proper authorities increase its duties by the addition of others germane to the office, the officer must perform them without extra compensation. Neither can he recover extra compensation for incidental or collateral services which properly belong to or form a part of the main office.”

Meehem on Public Officers, Sec. 862.

The Governor and Council have no power to authorize payment of any extra compensation to the Librarian for the performance of any work or services which are incidental to or a part of his regular duties as Librarian or as Secretary of the Library Commissioners. They certainly have no right or power to usurp the functions of the legislature and divert what pur-

ported, to be an appropriation for salary by Council Order to the payment of extra services, even though it were proper for the Librarian to be compensated for this work which he calls extra services, which are clearly and properly a part of and incidental to his regular official duties.

Very truly yours,

GUY H. STURGIS,

Attorney General.

AUDITING AND ALLOWANCE OF CLAIMS AGAINST
STATE—RELATIVE POWERS AND DUTIES OF
STATE AUDITOR AND GOVERNOR AND COUNCIL—
POWER TO REQUIRE ITEMIZED STATEMENT.

21st November, 1918.

Honorable Governor and Executive Council, Augusta, Maine.

GENTLEMEN: At the last Council meeting you requested an opinion from me as to whether the Treasurer of State can lawfully pay moneys from the State Treasury upon warrant of the Governor and Council in settlement of accounts, claims or demands which have not received the approval and certificate of the State Auditor but have been approved by the Governor and Council.

The history of legislation relating to the auditing of claims against the State and the creation of the office of the State Auditor shows that prior to 1907 all claims against the State were audited by the Governor and Council:

“All claims against the State including those of the State Prison, State School for Boys, Insane Hospital and Land Department, shall be presented to and audited by the Governor and Council and shall then be registered by the Secretary of State in suitable books wherein also shall be entered against said claims all payments made thereon; and the accounts of officers of public institutions, excepting where otherwise especially provided shall be audited by the Governor and Council.”

Chap. 2, Sec. 23. R. S. 1903.

In 1907 by Chapter 147 of the Public Laws of that year the legislature created the office of State Auditor and provided certain rules and regulations as to the conduct of that office.