

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

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REPORT

OF THE

# ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1918

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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.

By Section 3 of that Act it is provided,

“The State Auditor shall examine all accounts and demands against the State including all matters requiring the payment of money from the state treasury. In the examination of claims, accounts and demands he may require affidavits that articles have been furnished, services rendered and expenses incurred as therein specified and the affidavit for articles furnished, services rendered and expenses incurred for or by any officer, institution, commissioner or board of trustees may be made by disbursing agent or any officer thereof having special knowledge of the matter. All accounts filed with the Auditor shall be fully itemized. He shall in all cases, if he has approved a claim, account or demand, make a certificate specifying the amount due and allowed thereon, name of the party to whom such amount is due or payable, the law authorizing the same and the particular head, expenditures, department or appropriation to which it is chargeable.\*\*\*\*\*”

In this section provision is made as to the method and manner in which the Auditor shall make his examination and if a claim is approved make his certificate.

By Section 5 of the same Act, the duty of the State Auditor to examine all accounts and demands against the State is repeated and provision is made that if the amount demanded seems to be excessive or improper the Auditor shall so report in his certificate to the Governor and Council.

“He (State Auditor) shall investigate all accounts, demands, bills, vouchers or claims against the State including those made by any State officer, department, commissioner or trustee, and if after such investigation the amount demanded seems to be excessive or improper, he shall so report in his certificate to the Governor and Council.”

Section 5, Chapter 147, P. L. 1907.

By Section 6 of the same Act, it is provided:

“He (State Auditor) shall comply with all regulations in relation to the duties of his office which may be transmitted to him by the Governor and Council which are consistent with the provisions of this Act.”

In Section 3 of this Act it is also, provided:

“He shall record all certificates issued by him in a book kept for that purpose and shall transmit such certificates to the Governor and Council.”

By this original Act, a part only of the ministerial duties of the Governor and Council in the matter of receiving and auditing claims against the State, was transferred to the Auditor. The auditor is to examine or investigate, and if he approves a claim make his certificate accordingly. If he disapproves a claim, the

amount demanded seeming to him to be excessive or improper, he shall still issue his certificate to the Governor and Council, but in such certificate report the fact that the amount demanded seems to him to be excessive or improper. The power and duty of actually allowing or disallowing a claim is still left with the Governor and Council. The auditor does the receiving, and the auditing to the extent of examining, investigating and reporting his approval or disapproval to the Governor and Council who complete the audit by allowing or disallowing the claim in part or in its entirety. The old duty and power of the Governor and Council to receive and audit was taken away only to the extent outlined and retained in the full measure stated.

Further the provision that the Auditor shall comply with the regulations promulgated and transmitted to him by the Governor and Council consistent with the provisions of this Act, emphasizes and makes certain the construction which I have given to the Act, namely, that now the Governor and Council *and* the State Auditor constitute the auditing board, each performing their respective parts of the complete audit as above set forth.

This original Act appears in its revised form as Chapter 2, Sections 81 to 104 inclusive, R. S. 1916, and investigation shows that some amendatory modifications of the original Act have taken place in the Revision which are the result of the suggestions of the Commissioner on the Revision and Consolidation of the Public Laws of the State of Maine.

The original provisions as to the certificate of approval of a claim or demand by the Auditor appear in the Revision in language identical with the original Act.

In the Revision, however, the duty of the Auditor to forward to the Governor and Council certificates of disapproval has been changed. In the original Act it was provided in Section 5 that if after investigation of claims, etc., presented, the amount demanded seemed to be excessive or improper,

“He (State Auditor) shall so report in his certificate to the Governor and Council.”

In the Revision, R. S. Chapter 2, Section 84, it is provided that, after investigation, if the amount demanded seems to be excessive or improper,

“He (State Auditor) may reject the amount of claim in whole or in

part and if the person presenting such an account or claim is dissatisfied therewith, the Auditor shall report the same to the Governor and Council with a separate certificate therefor."

The duty of the State Auditor to comply with all regulations in relation to the duties of his office which may be transmitted to him by the Governor and Council and which are consistent with the Act creating the office appear modified only to fit the sectional arrangement of the Revision in Chapter 2, R. S. 1916.

All accounts or demands against the State approved by any board, commission or public officer authorized by the legislature by express statute to so approve and for which an appropriation has been made, the Auditor, by Section 3, of the original Act, and by Section 82, Chapter 2, R. S. 1916, shall, promptly audit and certify, if he deems the same correct and not exceeding the appropriation therefor. By the original Act if it appears to the Auditor that there are improper charges in such accounts or demands so approved, it is his duty to report the same to the Governor and Council with a separate certificate therefor. In the Revision, if the Auditor shall reject or reduce in amount the claim or demand and the person presenting the same is dissatisfied therewith, it is the duty of the Auditor to report the same to the Governor and Council with separate certificate therefor.

In the original Act, the Auditor had no authority whatsoever to make any final decision upon any claim, his only function being to examine or investigate and report his approval or disapproval. In the revision, the Auditor is given the additional power of rejecting or reducing a claim excessive or improper in amount, but such reduction or rejection is not final, but in case of dissatisfaction by the claimant, is to be reported by certificate to the Governor and Council; the only effect of the Revision being, that if a claimant will accept the decision of the auditor as to rejection or reduction, such claimant thereby waives his right to have the Governor and Council pass upon the claim, and the Executive is relieved from the duty of giving consideration to the demand. The final power of approving or disapproving the account still remains in the Governor and Council.

But the Auditor must have the claim before him for consideration. It must be filed with him, and until filed, he has no duty in respect to the same.

"All accounts filed with the Auditor must be fully itemized."

## Section 82, Chapter 2, R. S. 1916.

Unless the claim is fully itemized the Auditor has no legal right to receive it for auditing, and is not required to express any approval or disapproval of it, nor to issue any certificate concerning the same.

“To ‘itemize’ is to state in items, or by separate particulars, the claim, demand or account.”

“An ‘itemized’ account is one which states the items making up the aggregate of the demand.”

“The term ‘item’ means the particulars or details, the distinguishing and severable parts.”

“To ‘itemize’ an account \*\*\*\* (is) to state in detail the particulars of the claim so that the account may be examined and its correctness tested.”

4 Words and Phrases, 3798.

2 Words and Phrases, (2nd Series, 1223)

Webster's Dictionary.

The statute requires all accounts filed with the Auditor to be “fully itemized.” Itemized is not sufficient. Fully itemized is required. And of the above definitions the last one approaches nearer to an expression of a full and complete meaning of the term “fully itemized” than any definition I might as my opinion give. All accounts filed with the Auditor should state in detail the particulars of the claim so that the account may be examined and its correctness tested. An account so stated will permit of verification as to current charges for the particular services rendered and the particular expenses incurred, and the Auditor should require such an itemized statement that he may test its correctness before receiving it upon his files for examination or investigation.

The undoubted purpose of the legislature in enacting this provision requiring that accounts should be “fully itemized” was to prevent the allowance of a false or fraudulent claim against the State and an unwarranted payment from the public treasury. It was to be a safe guard of the public rights and the Act falls in the well known legal rule that when public rights are concerned, the Act should be construed as mandatory. A duty to the public is imposed which must be performed.

Opinion of the Justices, 70 Maine 561.

In this connection attention should be called to Section 11, Chapter 114, R. S. 1916.

“Every state and county officer whenever required by law to render a bill of expenses shall itemize the same \*\*\* before presenting it for auditing or payment.\*\*\*\*\*”

Here is another mandatory provision which must be obeyed and while in its language it casts the duty of itemizing upon the state officer, it cannot be construed otherwise than that the Auditor is prohibited from receiving it for preliminary audit until it is itemized and an unitemized bill cannot be lawfully deemed before the Auditor for action and of course never before the Governor and Council for completion of the audit.

The act in force provides in Section 82,

“The State Auditor shall examine all accounts and demands against the State.”

Section 84 provides,

“He (the Auditor) shall investigate *all* accounts, demands, bills, vouchers and claims against the State including those made by any state officer, department, institution or trustee.”

The statute is mandatory. Any and all accounts, demands, etc, against the State must be presented to the Auditor in order to become a lawful claim or demand authorized for payment from the moneys of the State.

As I have said, under the Statute the Auditor and the Governor and Council constitute the auditing board, and in my opinion the final completion of the audit cannot be made by the Governor and Council until the preliminary part of the audit has been lawfully completed. No account or demand is lawfully before the Governor and Council for final audit until it has been presented to the Auditor and transmitted by certificate of approval by the Auditor to the Executive, or reduced or rejected by the Auditor or certified by separate certificate because of dissatisfaction of the claimant.

It is my opinion that an audit is required of all claims and until the complete audit by the co-operative acts of the State Auditor and the Governor and Council have been accomplished no warrant of the Governor and Council can be lawfully issued calling for payment of such account or demand.



By Section 4 of Article V of the Constitution of Maine, it is provided,

“No money shall be drawn from the treasury but by warrant of the Governor and Council and in consequence of appropriations made by law.”

Of course, it would be absurd to even suggest that this constitutional provision contemplated an unlawful or unjustified warrant. It must be inferred that the makers of the Constitution intended to provide that no money shall be drawn from the treasury but by *lawful* warrant of the Governor and Council. There can be no lawful warrant of the Governor and Council until a just claim properly presented and audited in accordance with law is the object of the payment authorized by such a warrant and it is my opinion that no warrant can be lawfully issued by the Governor and Council calling for the payment of money from the state treasury in satisfaction of any account or demand against the State unless preliminary foundation and authority for the same, namely, an audit has been lawfully effected.

Unless some special legislative provision is in force limiting the general authority given in the Constitution, the Treasurer is fully protected and will incur no liability if he complies with the warrant. The legislature can place all the safe guards around its financial machinery which it, as a representative of the people, may deem necessary for the safety of the public funds. In the case of a bill of expenses of a State officer such a safe guard has been erected.

“Every state and county officer whenever required by law to render a bill of expenses shall itemize the same \*\*\*\* before presenting it for payment.”

Sec. 11, Chap. 114, R. S. 1916.

This mandate extends not only to the state officer but to the state treasurer and forbids him to make the payment unless the bill is itemized. Here the general provisions of the Constitution is supplemented by a further limitation which must be obeyed by the Treasurer.

“The Governor \*\* with the Councilors or a majority of them may from time to time hold and keep a council for the ordering and directing the affairs of State according to law.”

Article V. Section 1, Constitution of Maine.

The ordering and directing the affairs of the State include

the issuance of warrants authorizing the payment from the State Treasury and must be "according to law."

The law requires an audit. The law requires that the account be itemized. The law prohibits the payment of an unitemized bill. The Governor and Council are not ordering and directing the affairs of State "according to law" when they issue a warrant directing the payment of a bill, account or demand which has not been audited or which has not been itemized and in the case of a bill of expenses of a state officer, payment prohibited unless itemized.

Yours very truly,

GUY H. STURGIS,

*Attorney General.*

STATE AID TO FAMILIES OF VOLUNTEERS UNDER  
LAW OF 1917—DUTIES AND POWERS OF MUNICI-  
PALITIES—PERSONS ENTITLED TO BENEFITS.

10th July, 1917.

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

DEAR SIR: Chapter 276 of the Public Laws of 1917 entitled "An Act to Provide for the Support of Families of Volunteers" must be construed liberally and in accordance with the spirit that promoted its enactment. It was to the cities, towns and plantations that this law was directed. The municipalities under the direction of their officers are to make the "suitable provision." They are to raise the money therefor by taxation or otherwise, and they are to expend it; and for such part of the money as is expended in accordance with the provisions of this Act, upon presentation of proper accounts, at the times specified, reimbursement shall be made from the State Treasury. The legislature anticipated that the provisions of this Act might not be broad enough to cover all cases of need and by Section 2, the municipalities are further authorized to raise additional sums of money to provide for such support as may be deemed necessary for dependent families in cases not adequately provided for by this Act.

Cities, towns and plantations can tax only for such purposes as are specifically authorized by Statute. By this Act