

MAINE STATE LEGISLATURE

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PUBLIC DOCUMENTS

OF THE

STATE OF MAINE

BEING THE

REPORTS

OF THE VARIOUS

**PUBLIC OFFICERS
DEPARTMENTS AND
INSTITUTIONS**

FOR THE TWO YEARS

JULY 1, 1926 - JUNE 30, 1928

PUBLIC DOCUMENTS, 1926-28

(Explanatory Note)

Three reports in this volume cover periods in variance with the given biennium. They are as follows:

1. The report of the Attorney General covers the period from 1924 to 1928.

2. The report of the Bangor State Hospital covers the period from 1919 to 1928.

3. The report of the department of Inland Fisheries and Game covers the fiscal year ending June 30, 1928. No printed report was made for the fiscal year ending in 1927.

STATE OF MAINE

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

JUNE 30, 1926

PRESS OF MERRILL & WEBBER CO.
AUBURN, MAINE

Substantially the same provision regarding "net income" appears in paragraph 7, b, 5, of said section relating to "public utility obligations"; and again in paragraph 8, a, 2, of said section 27, relating to obligation of "telephone companies", is contained the same provision.

The legislature having three times in said Section 27 provided how "net income" should be determined, it seems to me to be reasonable to assume that it was the legislative intent to determine the "net income" as it appears in said paragraph 9 in the same manner as is previously provided in paragraphs 6, 7, and 8.

Very truly yours,

SANFORD L. FOGG,

Deputy Attorney General.

July 30, 1925.

Grube B. Cornish, Secretary, State Board of Charities and Corrections, Augusta, Maine.

DEAR MR. CORNISH: Answering your letter of recent date in regard to your guardianship over a ward committed to the School for Feeble Minded, I beg to advise you that the statutes seem to be silent regarding the termination of the guardianship.

It is my opinion that the guardianship does not cease by reason of the commitment, but your control over the ward does cease during the time the ward is an inmate of the School for Feeble Minded.

Yours very truly,

SANFORD L. FOGG,

Deputy Attorney General.

January 29, 1925.

To His Excellency Ralph O. Brewster, Governor of Maine, and the Honorable Members of the Council.

GENTLEMEN: The Board of Prison Commissioners was established April 6, 1917, under Chapter 195 of the Public Laws of 1917, and was given authority to make and establish rules and regulations, not inconsistent with law, for the direction of all officers of the State Prison, and for the government, discipline,

instruction and employment of the inmates. The Commission was further given the general direction and control of the State Prison, and the right to establish compensation of all officers and employees, subject to the approval of the Governor and Council.

On April 1, 1924, an order was passed in Council, which was approved by Governor Baxter, directing the Prison Commission "to establish a system of pay for the prisoners, the said pay not to exceed fifty cents per day the wages herein provided for, are to be paid out of the receipts from the sale of goods, manufactured in said prison." On October 24, 1924, a supplemental order was passed in Council, and approved by Governor Baxter, whereby the Warden was directed "to take from the receipts and income of the Prison a sufficient sum to pay the prisoners" in accordance with the order of April 1st, "the balance of receipts and income to be transmitted to the State Auditor."

This department has been informed that the manifests for the October, November and December "pay rolls" have been forwarded to the State Auditor, designed to allow a check to be passed back to the Warden covering his payments so made. This pay roll appears to be in the following amounts: October, \$1750.00; November, \$1564.65; December, \$1583.40.

The State Auditor has declined to certify these for payment and has sent them to the Governor and Council without approval, on the ground that Section 97, Chapter 2 of the Revised Statutes, requires "all fees, or other income which may accrue to any institution, department, board or commission of the State shall be paid directly to the treasurer of state", and probably on the further ground that Section 13 of Chapter 142, makes the warden accountable for all moneys granted for its maintenance or derived from the manufacturers or other concerns thereof.

These facts evidently give rise to the following questions submitted by Your Excellency and the Council to this department:

QUESTION 1.

May a prisoner be an employee within the meaning of Chapter 195, Section 3, Public Laws of 1917, and receive compensation?

ANSWER 1.

The answer of this department is in the negative. The statute contemplates the employment of the inmates within the limits

of the State Prison, although the Commission may permit certain able bodied prisoners to work in the construction of highways or other public works. The "employees" of the prison, are appointed and commissioned under the express terms of the act, by the Warden, with the approval of the Commission. The only positive existing statutory authority for employment of prisoners within this State with compensation is the authority granted to county commissioners under Chapter 83, Section 19 of the Revised Statutes, where a reasonable sum may be paid, not to the prisoner, but to the dependent family, after deduction for the prisoner's maintenance. If the legislature intended that an inmate of the State Prison should receive compensation for labor performed while serving sentence, it has failed to say so. The Revised Statutes, Chapter 142, Section 2, provides that "punishment in the State Prison by imprisonment, shall be by confinement to hard labor." The Prison Commissioners have been given no authority by the legislature to make any rules or regulations or to do any acts inconsistent with the existing law.

QUESTION 2.

Can the Governor and Council lawfully authorize the Prison Commission to make payments to State Prison convicts as compensation for labor performed?

ANSWER 2.

For the reasons given to the answer to the preceding question, the answer to this question must also be in the negative. The Governor and Council have no legislative powers, and have no power to authorize payments contrary to the constitution and the existing statutes.

Very respectfully,

RAYMOND FELLOWS,

Attorney General.

February 9, 1925.

Hon. Ralph O. Brewster, Governor of Maine, Augusta, Maine.

DEAR GOVERNOR BREWSTER:

In re transferring certain balances from the State School Fund and the State Equalization Fund into the State Contingent Fund.