

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, 1928

Section 7 of Chapter 117 of the Revised Statutes, as amended by Chapter 47 of the Public Laws of 1923, and by Chapter 55 of the Public Laws of 1927, provides for retirement of Justices of the Supreme Judicial Court upon attaining the age of seventy years, and also for the appointment by the Governor of retired Justices for active service. The manner and amount of service to be performed by such active retired Justice depends entirely upon the order and direction of the Chief Justice of the Supreme Judicial Court.

In view of these several statutes, this Department sees no reason why all the necessary legal expenditures of an Active Retired Justice should not be paid by the State, including reimbursement for clerical assistance under Chapter 71 of the Laws of 1927. The Active Retired Justice is by express statutory enactment made "a part of the Court from which he has retired", and if as a part of the Court he renders service at the direction of the Chief Justice he should be reimbursed for all his necessary legal expenses.

Very truly yours,

RAYMOND FELLOWS,
Attorney General.

January 26, 1927.

Hon. John G. Smith, Bank Commissioner, Augusta, Maine.

DEAR SIR: Answering your letter of November 10th, regarding the amount for which one can charge $3\frac{1}{2}\%$ a month interest under the provisions of Section 8 of Chapter 298 of the Public Laws of 1917, I am pleased to inform you that after some investigation of the matter, I am satisfied that a person making a loan in excess of \$300. is governed by the provisions of the general interest law.

If the loan is for \$300. or less, he can operate under the provisions of Section 8 of Chapter 298 of the Public Laws of 1917, and is limited to the rate of 12% per year unless license is obtained from the Banking Department, which will permit him to charge interest up to $3\frac{1}{2}\%$ per month.

Under the provisions of said Chapter 298, it is not intended that a person can make several loans to the same person aggre-

gating over \$300. and thereby secure 3½% per month on an amount in excess of the express limitation of said statute.

Yours very truly,

SANFORD L. FOGG,
Deputy Attorney General.

January 20, 1927.

To His Excellency, Ralph O. Brewster, Governor of Maine.

DEAR SIR: In answer to your inquiry whether the office of Recorder of a Municipal Court is incompatible with the office of County Treasurer, this department makes the following reply:

The constitution of Maine provides in Section 2 of Article III that no person belonging to any of the three departments of government shall exercise any of the powers properly belonging to either of the others; and Section 2 of Article IX, after listing certain officers, provides that the acceptance of one vacates the other.

The offices specifically mentioned in the constitution do not include either of the offices of recorder or county treasurer, nor are we able to find any decision of our court directly deciding the point in question.

Our court has held, in *State v. Leclair*, 86 Maine 531, that a recorder is not a judicial officer in the sense contemplated by the constitution, and, in the *Opinion of the Justices*, 68 Maine 594, it was determined that a Trial Justice is not to be considered "a justice of an inferior court." In *Stubbs v. Lee*, 64 Maine 195, holding that one who accepts a commission as deputy sheriff thereby vacates the office of Trial Justice, the court say "that two offices are incompatible when the holder cannot in every instance discharge the duties of either:*****as if one be under the control of the other."

Although there does not seem to be a direct constitutional prohibition to hold both offices in question, the matter is not free from doubt in the light of some of the decisions.

The functions of the two offices may be inconsistent, as one may be "under the control of the other", so that the court