

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

require, and may lay out, establish and open a new highway as a state or state aid highway. It may also discontinue a highway as a state or state aid highway and the same shall be thereafter maintained by the town or county originally liable therefor except as herein otherwise provided."

Trusting that the foregoing will give you the information you you desire, I am,

Yours very truly,

SANFORD L. FOGG,
Deputy Attorney General.

June 1st, 1927.

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

DEAR GOVERNOR BREWSTER: I have examined the letter dated May 20, 1927 from Edward P. Warner, Acting Secretary of the Navy, which letter contains offer of disposal to the State of Maine under Act of June 7, 1926, of site of the former U. S. Naval Coal Depot on Frenchman's Bay, containing fifty-five acres, at an appraised value of fifty-seven hundred fifty dollars. Under "An act to authorize the disposition of lands no longer needed for naval purposes" 44 Stat. 700, the state has six months option after said date of May 20, 1927, to acquire this property at the appraised value, or to notify the Secretary of the Navy that the State desires to exercise the option but has not the money available, in which case it would be held for a period of two years to enable the State to exercise the option, and to pay. The property is limited to the use "for public purposes", and "upon cessation of such retention and use shall revert to the United States without notice."

Under Chapter 164 of the Public Laws of 1925, relating to the contingent fund, the Governor and Council have authority "to pay bills arising out of some emergency***not provided for by the legislature", upon warrants drawn upon the contingent fund, duly audited. The question of whether or not this is desirable property for the State to own is a matter for the Governor and Council to decide, and without expressing any opinion as to the legal right under the Laws of Maine of the Governor and Council to acquire valuable property for the State

at a low figure, I call the attention of Your Excellency to the fact that during the previous administration the Governor of this State was notified by the War Department of unused forts which were offered for sale under similar conditions, and the legislature not being in session within the time limit prescribed, the properties were purchased by the then Governor and Council for and in behalf of the State, and the purchase tacitly approved by the legislature in Chapter 183 of the Public Laws of 1925.

Respectfully yours,

RAYMOND FELLOWS,
Attorney General.

June 22, 1927.

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

DEAR GOVERNOR BREWSTER: The jurisdiction of a State bordering on the sea over the waters thereof is that of an independent nation, except so far as it would conflict with that of the United States, and extends for a marine league from the shore and over the bays and arms of the sea within the limits defined by international law.

This principle has been applied to the law relating to fisheries, to the criminal laws, to statutes giving the right of action for death by wrongful acts, to statutes authorizing state authorities to fill in land under water where navigation will not be materially affected thereby, to the building of piers and wharves as authorized by the state legislatures.

It has been held in many jurisdictions, including the Federal Court, that the State has the absolute power to grant its lands under water, unless prohibited by its constitution or some statute. The reason for this is that no title to the soil under navigable waters was conferred by the constitution to the Federal Government so far as the original states were concerned, but the title remained in the respective states. The Federal Government, of course, has the right to regulate navigable waters so far as commerce is concerned and permission must be obtained from it where there is to be a permanent and material obstruction to navigation.

Under Chapter 45 of the Public Laws of 1927, if and when