

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

In other words, only such parts of the property as are occupied and used by the institution itself are exempt from taxation.

Very truly yours,

RAYMOND FELLOWS,
Attorney General.

June 9, 1927.

*Hon. H. H. Hastings, Chairman, Board of Prison Commissioners,
Bethel, Maine.*

DEAR MR. HASTINGS: I am in receipt of your letter of June 3rd, asking for the opinion of this Department relative to the question of time off for good behavior to persons confined in the State Prison.

This is a very important matter and the Department has given the matter serious consideration for a long time as the same question was informally asked some months ago by one of the officers of the Prison.

Section 15 of Chapter 142 of the Revised Statutes, which relates to the duties of the Warden, provides as follows:

"He shall keep a record of the conduct of each convict, and for every month during which it thereby appears that such convict has faithfully observed all the rules and requirements of the prison, the warden may recommend to the executive, a deduction of seven days from the term of said convict's sentence, except those sentenced to imprisonment for life.*****"

which section has since its original enactment in 1866, given the Warden permission to recommend to the executive, a deduction from the term of sentence.

Section 30 of Chapter 137 of the Revised Statutes, passed by the legislature of 1913, as amended by Chapter 59 of the Public Laws of 1919, reads, however:

"Sec. 30. The board of prison commissioners may adopt such rules as it may deem wise or necessary properly to carry out the provisions of sections twenty-five to forty-five, both inclusive, of this chapter and may amend such rules at pleasure. Provided, that prisoners, under the provisions of said sections, shall be eligible to parole only after the expiration of their minimum term of imprisonment."

The Sections 25 to 45 of Chapter 137 above referred to, provide for indeterminate sentences in place of definite terms as formerly, and for paroles to be granted to those who are eligible to be set at liberty upon "parole or conditional release" when such person has kept the rules and regulations established by the Board.

The question that you ask has been answered by the courts of last resort in other jurisdictions where the statute is similar to ours. The question has arisen under mandamus proceedings, habeas corpus proceedings, and in proceedings to hold the warden in contempt of court for allowing a prisoner to be released before the expiration of the minimum term. I call your attention to one case in particular entitled *Rogers v. Board of Prison Commissioners of Kentucky*, reported in 161 Ky. Rep. 612, where W. B. Rogers was confined in the penitentiary for an indeterminate term, and before the expiration of the minimum term for which he was sentenced brought mandamus proceedings to compel the Board of Prison Commissioners to grant him a parole.

Rogers claimed that "as a commutation of seven days in each calendar month would reduce a twelve month term to approximately nine months, it was the intention of the legislature that the commutation for good behavior should be deducted from the minimum sentence." The Court of Appeals of Kentucky, however, said, "The parole act specifically says that no person shall be eligible to parole until he shall have served the minimum term of imprisonment. If it were the legislative intention that there should be deducted from the minimum term provided by law the commutation allowed to persons convicted before the passage of this act, we should expect to find such intent definitely expressed therein. The legislature has not seen fit to make such provision."

The Kentucky court further said that the provision of the statute which was in effect at the time the parole or indeterminate law was passed had no relation to paroles. The old statute affected prisoners who had previously been confined under a straight sentence law.

It is the opinion, therefore, of this Department that the legislature of Maine intended to provide that a prisoner shall

be eligible to parole only after he had served his minimum term of imprisonment, as stated in Section 30 of Chapter 137.

Yours very truly,

RAYMOND FELLOWS,
Attorney General.

June 20, 1927.

G. A. Buker, Warden, Maine State Prison, Thomaston, Maine.

MY DEAR BUKER: Your letter, with reference to road construction crew and the furnishing of extra commissary supplies for the benefit of the men, received.

I do not know of any provision of statutes which authorizes you to furnish such supplies.

Section 2 of Chapter 195, Public Laws of 1917, provides that the Board of Prison Commissioners shall make and establish such rules and regulations not inconsistent with law as it may deem expedient for the direction of the officers of the prison and the performance of their duties; for the government, discipline, instruction and employment of the inmates; for the supply of food, clothing, bedding therein, and have the custody and preservation of the property connected therewith.

Section 5 of said Chapter provides that said Commission may authorize the employment of able bodied prisoners sentenced for any term less than life in the construction or improvement of highways or on such public works within the State under such arrangements as may be made with the State Highway Commission or other department of the State having such public works in charge, and said Commission shall prescribe such rules and conditions as it deems expedient to insure the proper care and treatment of the prisoners while so employed and of their safe keeping and return. Prisoners while so employed shall not be required to wear clothing which will materially distinguish them from other workmen.

There does not appear to be anything in the statute with reference to food and supplies other than the above. Of course, it is understood that the statute provides that punishment in the