

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, 1930 - JUNE 30, 1932

STATE OF MAINE

REPORT

OF THE

Attorney General

for the calendar years

1931-1932

It is my opinion that in the event of such a deadlock, and in the absence of any affirmative action by the Governor and Council as a result of the recount, the original tabulation stands unaffected by the petition for a recount and the recount itself. In such case the Governor and Council have not "found . . . erroneous" the original return, and no correction has been made therein.

I am further of the opinion that the person shown by the original tabulation to have been elected is accordingly entitled to a notification thereof by the Secretary of State in accordance with the next to the last sentence of the first paragraph of section 55, and that the Governor may properly direct the Secretary of State to issue this notification.

To be sure, this sentence says that the successful candidate "shall be declared elected." It has been and is the very proper practice for the Governor and Council to declare the election of the successful candidate at the conclusion of a recount, or at the expiration of the twenty days' period for filing petitions, in case no petition has been filed. This formal declaration by the Governor and Council is, however, it seems to me, merely a ministerial duty which does not affect the right to the office, and to a notification thereof by the Secretary of State to the person who was elected on the face of the returns as at first tabulated, if the tabulation stands unchanged.

Any other candidate has his recourse thereafter to other tribunals for the purpose of establishing his own right to the office as against the person who thus obtains the prima facie right to it on the basis of the original tabulation, and the Secretary of State's notification thereof.

FEES, FINES AND FORFEITURES

December 4, 1931

To Sumner P. Mills, Esq.
Judge Municipal Court
Farmington, Maine

You inquire with reference to the interpretation of P. L. 1931, ch. 189 and 252, which relate to the disposal of fines, forfeitures and costs in certain criminal cases in which the state highway police and inspectors are concerned. Your particular inquiry is as to what should be paid over to the State Treasurer when a member of the highway police accompanies the sheriff as a aide. Two objects were sought by the legislature in passing these acts, which were before the legislature in several drafts and redrafts at various times, and were the subject of some controversy both in committee hearing and in the senate.

One of these objects was to assure the county of one-half of the fines and forfeitures in certain cases which had previously been collected wholly by the state.

The other object was to assure the payment direct to the State Treasurer from the court of such sums as belong to the state by way

of fine or forfeiture, or are awarded for costs in favor of highway police officers. It seems to me that the two statutes were fairly adequate to accomplish these objects.

First, as to Chapter 189. By this chapter in the case of a complaint under ch. 29 of the Revised Statutes, viz.: the motor vehicle act, where the arrest has been made by a state highway policeman or inspector one-half of any fine or forfeiture collected shall be paid forthwith to the State Treasurer, together with that part of the costs which the court has taxed "for such member or inspector"; e. g., the fee for the arrest, and the witness fee.

The statute cuts out one definite kind of case for special treatment, viz.: motor vehicle cases where the arrest is made by a state officer. In these motor vehicle cases, and only in these motor vehicle cases, the chapter operates to give the state the foregoing; all the rest goes to the county in such cases, and as far as ch. 189 is concerned the whole goes to the county in motor vehicle cases when a state highway policeman or inspector has not made the arrest.

This chapter 189 makes definite, affirmative and explicit provision regarding a certain class of cases, and only a certain class of cases, viz.: cases under the motor vehicle act where there is a state arrest. To all other cases only a general reference is made. The one definite object of ch. 189, viz, dividing certain payments between state and county, is accomplished.

Secondly, as to ch. 252, this is a general statute passed the same day. If there are any inconsistencies between the two statutes ch. 189 should prevail within the definite territory which it aims to cover, viz.: certain motor vehicle cases. On the other hand, ch. 252 should prevail within the territory with which it is particularly concerned, viz.: assuring the payment direct to the state of any sums belonging to the state, including especially costs in favor of state officers, as costs in any cases whatever. The general provisions in each statute would be interpreted as being subject to and limited by the more explicit provisions of the other chapter if there were any inconsistency, but I doubt if there is. Ch. 252 is concerned to make sure that such costs as are awarded with respect to highway policemen and inspectors shall be paid to the state and not to the individual. Ch. 189 has adequately covered cases under the motor vehicle act where the policeman or inspector has made the arrest. This statute is consistent with ch. 189 in those cases, and covers to a certain extent some cases under the motor vehicle act where the arrest was made by some other person, and also covers all other criminal cases.

If the actual arrest in a motor vehicle case is made by someone other than a member of the state highway police or inspector, but costs are taxed in favor of such policeman or inspector as aide, or otherwise, and also if costs are taxed in favor of such highway policeman or inspector in any capacity in any case not arising under the motor vehicle act, then the money representing these costs so awarded should go into the state treasury.

The last sentence of ch. 252 requires in effect the payment "forthwith to the treasurer of state" of all sums coming into court "except those payable by law to the county." These sums, awarded in favor of state highway policemen or inspectors, are, by this very chapter, not "payable by law to the county," but belong to the state. Were they paid to the county the state would, of course, have its claim against the county contrary to one object which the statute sought to accomplish, and contrary, it seems to me, to the wording as it reads in the light of this legislative purpose.

It seems to me, therefore, that these costs now under discussion should be paid directly to the State Treasurer.

FEES, FINES AND FORFEITURES

April 5, 1932

To Hon. E. D. Hayford
State Auditor

Whether one-half or all the costs in favor of state highway policemen are to be paid to the state was not the primary inquiry in my letter of Dec. 4, 1931, to the judge of the municipal court at Farmington. On further consideration of that problem I am of the opinion that all these costs and not merely one-half of them belong to the state. The legislature was not concerned with dividing costs between state and county, but with dividing fines and forfeitures, and assuring the state treasury of getting the sums awarded for state police costs.

It seems to me that bail is a forfeiture and when collected in any case within the context of P. L. 1931, ch. 189 and 252, half belongs to the county and half to the state.

Under the law it is for the prosecuting attorney to collect defaulted bail. Unless and until he has collected it the liability of the county to pay over a portion of it to the state has obviously not accrued.

Similarly, there is no liability on the part of a judge or trial justice to pay over fines or costs imposed until they have been collected and paid to him. The payment of fines and costs is sometimes suspended under probationary arrangements.

I find no provision of law for the payment by the county to the state of costs assessed in favor of state officers which have not been collected by the county. As between a county and a city within its territory costs assessed in favor of city police officers are sometimes credited to the city in adjusting accounts between the county and the city, but I do not find any legislative intention that costs assessed in favor of state highway police are to be paid to the state by the county unless these have been paid in to the county treasury.

Fees of witnesses and officers who are entitled to receive for their own use costs assessed in a criminal case, are properly paid to them