

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA

December 14, 1933

Hon. William A. Runnells  
State Controller  
Augusta, Maine

Dear Sir:

You have this day asked my opinion concerning the effect of the third paragraph of section 10 of chapter 126 of the Revised Statutes which reads as follows:

"When an extra session is called by the governor, the members of the senate and house of representatives shall each be paid two dollars for every day's attendance, and mileage as aforesaid."

Especially you desire to know whether the members of the legislature may lawfully receive a per diem of \$2.00 for each day from the commencement of the session until final adjournment, or whether the members are entitled simply to \$2.00 for each legislative day.

This question has never been passed upon by the courts of our own state, but from consulting the decisions of other states I am of the opinion that the members may lawfully receive \$2.00 per day from the day the legislature convenes up to and including the day of final adjournment, deducting, however, for protracted periods of adjournment during the entire session.



STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA

December 14, 1933

Hon. W. A. Runnells, Page 2.

I find that the question has been raised in four other states and that they are unanimously in accord on the above proposition. The findings of the court and the reasons therefor seem, perhaps, best expressed in an opinion found in 24 Ala. 91 Ex parte Pickett. I herewith quote such portions of that opinion as seem to be pertinent:

"A member may be in attendance on the General Assembly during periods of temporary cessations of legislative functions by the respective bodies; and the per diem compensation was intended as a remuneration for the services of the members, as well as to provide for their expenses from their homes during the period they were required to be absent from their homes in attending to the duties of legislation as those duties are reasonably and ordinarily performed.\*\*\*\*\* It was never intended that the members of the legislature should not receive pay for Sundays, or pending temporary adjournment upon holidays or on occasions of the death of a member.\*\*\*\*\* These are not regarded as permanent cessation in the business of legislation, but in the nature of adjournment from day to day when, in legal contemplation, the business is progressing. Indeed it may often happen, that a temporary adjournment for a few days may tend to facilitate the business, since the committees may thus be afforded time to consider of an mature the matters of legislative bills and resolves referred to them."



STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA

December 14, 1933

Hon. W. A. Funnells, Page 3.

Quoting further from a decision of the same court, in Loran v. Blue, 47 Ala. 709,--

"Where the general assembly adjourns for a few days, for some special reason or purpose, both the members and the officers of the two houses are entitled to their per diem compensation, but when the adjournment is, say, for a month, longer or shorter, and the object is, that the members are to return to their homes, and the labors of the session are to cease; in such a case, neither the members nor the officers of the two houses are entitled, during the period of such an adjournment, to their per diem compensation."

The opinion of the Alabama court is shared by the courts of Missouri, Oklahoma and Wisconsin:

Morgan v. Buffington, 51 Mo. 549

State v. Thompson, 37 Mo., 176.

Shay v. Carter, 148 Okla., 57.

State v. Eastings, 16 Wis., 358.



STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA

December 14, 1933

Hon. W. A. Funnells, Page 4.

In view of the decisions of the above named court, and because the reasoning of the courts appear sound, I am of the opinion that the legislators are lawfully entitled to \$2.00 per day for each day of the session including days of temporary recess, but excluding adjournments for periods of such length as to indicate that members were expected to return to their homes during such recess.

Respectfully yours,

Attorney General

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