

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

June 25, 1940

Mr. Burkett from Mr. Fessenden. Copy sent on July 3, 1940, to the State Auditor, with Mr. Burkett's memo that he had been over the opinion very carefully and agreed with the conclusions therein.

Re: State Auditor's memorandum of June 17, 1940, relative to the duties of the State Auditor and State Controller, as prescribed by subsection 10 of Article II of Chapter 216 of the Public Laws of 1931 and Section 3 of Article VI of said Chapter 216.

In analyzing these sections of the Administrative Code, as well as the context of the Code relative to these two offices, it appears that the fundamental difference between the two offices is that of time of audit. In the case of the Controller, the duties indicate a pre-audit function, and in the case of the Auditor, the duties indicate a post-audit function. It also definitely appears that the Controller's entire duties, as prescribed in the Code, involve, fundamentally, the expenditure of State money. The only reference in connection with the Controller's duties as to State income appears in subsection 5 of Section 10 wherein he is called upon to make a monthly report of receipts. I think that without question this means actual receipts into the Treasury and does not include accounts receivable, etc.

Sections 14 and 15 of the same article of the Code mention collections. In neither one of these Sections is the Controller named, but both Sections refer to the State Treasurer. It is my conclusion that so far as receipts are concerned, the State Controller performs only a bookkeeping function and that his real duty is that of watchdog of expenditures.

A similar analysis of the Administrative Code with respect to the duties of the State Auditor indicates that his function is fundamentally that of post-auditing State expenditures. There is no reference in the Code relative to the Auditor's performing a duty with respect to State accounts receivable.

The provision of subsection 10 of Section 10 of Article II of the Code is not general authority for the transfer of the duties heretofore conferred by law upon the State Auditor to the State Controller, but is merely authority for the transfer of such duties as relate to financial analysis and general accounting and control, the keeping of accounts, auditing before payment, and the authorizing of claims against the State for which appropriations have been made. There is no reference here to the performance of any duty with respect to claims of the State against others.

It is my opinion that when any Specific statute, such as Section 25 of Chapter 28 of the Revised Statutes, prescribes a specific duty upon the State Auditor, which duty does not involve the expenditure of funds, the duty of the State Auditor in this respect is not altered in any way by the provisions of the Administrative Code. The law just referred to imposes a duty, not with respect to the expenditure of

money, but with respect to an account receivable, and calls upon the State Auditor to certify as to the correctness of the amount. As is provided in many other sections of the law, including Sections 14 and 15 of Article II of the Administrative Code, the duty is imposed upon the Treasurer of State to collect accounts receivable.

Mr. Hayes is correct in his opinion that neither the Controller nor the State Auditor should be engaged in the collection of accounts. In so far as any one person has a duty to collect accounts, the laws as at present constituted would seem to place the duty, in the first instance, upon the State Treasurer. Since you have indicated to me that you have some very definite ideas with respect to improving the present system of collecting accounts, I will not go any further into this point, although the State Auditor asks for information on this subject.

John S. S. Fessenden

JSSF:GH

NOTE: See opinion of July 9, 1940, which Mr. Burkett forwarded with a confirmation.