

MAINE STATE LEGISLATURE

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April 14, 1941

To William D. Hayes, State Auditor
Re: Unethical Conduct

I have examined with a great deal of interest your letter of April 11th, addressed to Mr. Barrows, Chief Engineer, State Highway Department.

I note in the fourth paragraph, in the third and fourth lines, you use the following language: ". . . which I interpreted as a tacit acknowledgment that he appreciated that I was correct."

I respectfully suggest that you use the same caution in interpreting the language of people with whom you enter into conversation that you use in interpreting figures when you have them before you.

Frank I. Cowan
Attorney General

April 15, 1941

From the same to the same.

I have been giving further thought to your letter of April 11, addressed to Mr. Barrows, the Chief Engineer of the State Highway Department, and feel that the mild reproof which I gave you in my memorandum yesterday is not sufficient. If it were a personal matter, I could view your conduct with the attitude of detached amusement which is expressed in that memorandum. Here, however, the interests of the State are involved and I must treat your conduct seriously. I shall point to three acts of yours.

1. In January, you asked for a written opinion on a certain matter. After it left this office, new information came to my hand which would make a difference in certain conclusions contained in that opinion. I therefore notified you immediately and requested you to return the letter so it could be modified to fit the facts. I happened to step into your office the next morning and one of your stenographers, at your suggestion as you admitted to me, was starting to make a copy of the original opinion. Your explanation was that you wanted to see how they differed. It was a childish act on your part and because I did not know you very well, I overlooked it although there were certain sneaky qualities about the act that made it unforgivable.

2. A short time after the episode set forth above, you had a long conference with me regarding certain matters. A few hours later you sent to this office a written opinion with a request that I sign it, it being, as you said, the statement of the law as I had given it to you. This was such an astoundingly insolent act that I set it up among my list of anecdotes to relate at after-dinner speeches. The stuff you had written down was partly right and partly wrong. I made some corrections and, because there was nothing in the statement

to cause loss to the State of Maine, I then let the thing go through. At that time I was still unacquainted with you and regarded this act as the naive conduct of a precocious child. I did not, at that time, suspect you of dishonesty of mind.

3. I dictated a rough draft of a Carlton Bridge Bill at the request of Governor Sewall. I didn't have all the facts before me and it was necessary to get something in under the wire, as that was the last day for entering Bills. I requested you to take the Bill and correct the facts. You saw fit to draft a Paragraph 2 that apparently would have surrendered the rights of the State of Maine, and the Governor said that if the Legislature passed the Bill in that form, he would feel under the necessity of vetoing it. I was embarrassed because I had accepted the responsibility of draftsmanship and I had trusted you to correct the errors in fact which I knew existed. Now you have confessed to me that you deliberately planned on deceiving the Legislature. That was an evidence of dishonesty of mind that would soon bring a lawyer up before the Bar Committee for disbarment. The proponents of the Bill told me what they wanted in the Bill and I put them in as well as I could hastily, with the facts I had at hand. You were the man whom I trusted to check those facts and, wherein they were incorrect, make them right. I gave you no authority to change or insert any words that would alter the meaning of the Bill. When I explained the Bill to the members of the Legislature, I explained it exactly as the proponents desired it to be. I saw that you had used the word "during" instead of "for", but the Bill was taking such a difficult course that I thought it wisest not to suggest an amendment, because there was no doubt at all as to what the Legislature believed the word meant.

The courts have, from time to time, had occasion to pass on the work of men who have attempted to deceive the Legislature. For evidence of the way in which the court has treated childish attempts to deceive the Legislature, I would refer you to the case of Harkness v. Waldo County Commissioners, 26 Maine 353.

You are the State Auditor. As such you have important duties. One of those duties is not the passing of legislation. That is solely the function of the Legislature. If, when you were called in to furnish information on certain factual matters, you deliberately, as you confess, attempted to put in some language that would itself be legislating, you overstepped your function. The court, presented with the evidence in this case, would, in my opinion, very certainly interpret the word "during" to mean "for".

Frank I. Cowan
Attorney General

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cc to Lucius D. Barrows