

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)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

Over-night camps are dwellings devoted to business and so would be a store, an eating house or any other permanent structure erected for the handling of any kind of mercantile or financial transactions. It is possible, of course, for a pig pen or a hen house or a barn or garage to be a place of business as contemplated in the statute, but where they are merely accessories to the farm or the dwelling house, they cannot be so considered.

In considering the matter of distance, the Legislature has not expressly stated that distance must be considered along any one street or road. Therefore, if buildings devoted to business or dwelling houses are situated less than 150 feet apart for a distance of at least $\frac{1}{4}$ of a mile in any direction, that area is to be interpreted as a compact or built-up section.

FRANK I. COWAN

July 15, 1941

John G. Marshall, Esquire
33 Court Street
Auburn, Maine

Dear Sir:

I have your letter of July 10th, in regard to Dr. Arthur Werner, and note your two questions.

1. Query: "Whether or not the executors on the one hand can contract with an optometrist to continue in the business." In answer to this I will say that optometry has been recognized as a profession by our legislature, and we have a Board of Optometry set up to assist the members of the profession in their activities and to try to suppress improper practices. The legislature has said that members of this profession cannot be hired and exploited like day laborers. Since an optometrist is a professional man the right to practise his profession must, of course, die with him and the executors of his Will, unless themselves licensed optometrists, cannot be regarded as persons upon whom his mantle will fall.

If an optometrist is a professional man as distinguished from a business man, there is no "business" to continue. There is, however, a certain amount of good will that goes with the work of any professional man and that good will has a sale value which may be slight, or may be large. There can be no objection to the executors selling that good will to Mr. Werner, or to any other optometrist whom they can induce to purchase. But since it is not a "business", Mr. Werner must carry on the profession in his own name although I see no objection to his calling attention to the fact that he is "Successor to" so long as he does not violate professional ethics in his advertising.

Your second question was "Whether or not the Supreme Judicial Court in Equity can empower a trustee to contract with an optometrist to continue with the business." It would be presumptuous on my part to give an opinion on this subject inasmuch as you say the question is now pending before the Supreme Court.

Very truly yours,

FRANK I. COWAN
Attorney General

July 18, 1941

From:

Frank I. Cowan, Attorney General

To:

William D. Hayes, State Auditor

R. S., Chapter 125, Section 34, provides as follows: "Each member of the State Highway Commission shall receive an annual salary of \$3500; they shall also receive their actual expenses incurred in the performance of their official duties."

In my opinion, this last clause means that wherever they are in the performance of their official duties, whether in Augusta or elsewhere, they are entitled to travel and the expense they incur. This even means that if they perform official duties in their home towns, they are entitled to travel between Augusta and those home towns. Their official office, without doubt, is Augusta, and if they reside in Augusta, of course, the statute doesn't cover their living expenses. If, however, their homes are elsewhere, they are entitled to their travel and living expenses while on official duty away from home.

You have asked whether or not a town can pay more than 6% interest on a note. R. S., Chapter 57, Section 142, reads as follows: "In the absence of an agreement in writing, the legal rate of interest is 6% a year". Money is a commodity and must be paid for like other commodities. There is no question but what a municipality can pay whatever wage is necessary to employ labor and pay whatever price is necessary to purchase materials. If it needs to borrow money, there is, in my opinion, no lawful objection to its paying whatever price it has to to get that money.

You have asked, in regard to a bond, as to whether or not a treasurer of a so-called "deorganized" municipality, or the manager of such a community, needs to give a special bond to the State Treasurer in connection with money advanced by the Treasurer under the Food Stamp Plan. In my opinion, such a special bond is necessary.

You have asked whether a deputy sheriff especially appointed to serve at an office of the Secretary of State should give bond to the sheriff or to the Secretary of State, or both. R. S., Chapter 94, Section 8, as amended by Public Laws of 1937, Chapter 220, provides as follows: "Every sheriff elected or appointed, may appoint deputies for whose official misconduct or neglect he is answerable, etc."