

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

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."

Section 9, Chapter 94, provides as follows: "Whenever a state of war shall exist or be imminent between the United States and any foreign country, sheriffs may appoint special deputies who shall have and exercise all the powers of deputy sheriffs appointed under the general law, except the service of civil process. Such special deputies shall be personally responsible for any unreasonable, improper, or illegal acts committed by them in the performance of their duties, but the sheriffs shall not be liable upon their bonds, or otherwise, for any neglect or misdoings of such deputies."

In my opinion, any deputy appointed for service in one of the offices of the Secretary of State must be appointed under Section 8. Since the sheriff is himself the official to whom is intrusted the protection of lives and property in the county, it is his duty to protect the office which the Secretary of State may establish in that county, just as it is his duty to protect any other office or the contents of any other office which exists in his county. The deputy appointed to that particular duty should, therefore, give a bond to the sheriff in sufficient amount and with sufficient sureties, but since it is a special appointment requested by the State, it is perfectly proper for the State to pay the expense of the bond.

I understand that the Secretary of State is requiring that said deputies shall also give a bond to him. This at least is safe practice on the part of the Secretary of State. There is, of course, a question whether or not the sureties on such a bond would be liable in case of a default, since there is no statutory provision for such a bond and it would be given for the faithful discharge of duties as a deputy sheriff. However, in view of the fact that the cost of such a bond is very little, I think the Secretary of State is wise to require it. I will give more thought to the question of the legality of this bond when I get more time, and if I finally conclude that it is not a bond that would bind the bondsmen, I will let you know.

You asked about the constitutional provision for approval by the Legislature of the bonds of the Treasurer of State, and whether Sections 70 and 71 of Chapter 2 of the Revised Statutes, fully interpret the provisions of the constitution. That question I prefer to hold in abeyance until I have had the opportunity of giving it more extensive thought and study.

F. I. C.

July 24, 1941

Harold E. Kimball, Sec'y
State Park Commission
Augusta, Maine

Dear Sir:

I have a letter dated July 21st from Charles P. Bradford, Field Man for the Commission, asking about the maintenance by the Park Commission of a highway to Foster Cemetery located in the Frye mountain area in Montville, Maine.