

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

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.

In my opinion, the Park Commission has no authority to maintain any highways except such as may be maintained within the park areas for the benefit of the general public. It would have no authority to maintain a highway to a cemetery. It may be that that is a matter for the Legislature to consider.

Very truly yours,

FRANK I. COWAN

Attorney General

July 25, 1941

George E. Hill, Chairman
Belmont A. Smith, Member
William D. Hayes, Member

Emergency Municipal Finance Board
Augusta, Maine

Gentlemen:

In reply to query of Mr. Hayes in his memorandum of July 24th, concerning the subject of current expense, I beg to answer as follows:

1. What is the status of state taxes assessed prior to December 23, 1937?

Answer: Although the State has a legal right which makes it possible for it to treat these taxes as a debt requiring immediate payment, such an attitude would be unwise. These taxes should not be treated as current expenses but as preferred debts.

2. Status of interest on the above taxes?

Answer: Inasmuch as the interest can be added to the principal and the whole amount enforced at the discretion of the State, this interest also can be treated as a part of a past debt although if the financial situation of the City is such that the interest can be taken care of it certainly should be treated as a current expense.

3. Status of principal of bonds issued prior to December 23, 1937 having current maturity dates?

Answer: The bonds are a debt for a past consideration. The current maturity dates are promises to pay a past debt in installments at certain times. This promise is no more pressing than the expressed or implied promise to pay any other debt. But, the nature of the paper issued and recognition of the obligation is of a higher character than interest in the case of a simple note and, of course, is of a higher legal character than the implied promise to pay any current obligation.