

MAINE STATE LEGISLATURE

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August 28, 1941

To the Attorney General from Assistant Attorney General Fessenden
and Robert B. Williamson, Esquire
Re: Bonds of State Inspectors of Motor Vehicles

We are advised by the Secretary of State that he has agreed with the Sheriffs of the various counties that the State Inspectors are to be appointed as Deputy Sheriffs. The only bond of which he has knowledge is whatever bond is given by such Deputy to the High Sheriff. We have reached the conclusion that a bond should be given by such a State Inspector to the State of Maine.

We are of the view that a State Inspector is a person employed in a state department who handles public moneys and should be bonded.

Revised Statutes Chapter 125, Section 36 provides that such persons "shall give bond in such form as may be fixed by the Governor and Council to properly account for all funds coming into their hands." The statute also provides that the premiums on such bonds shall be paid by the state.

The State Code (Laws of 1931, Chapter 216) is as follows:

"Sec. 5. Bonds. Each department head or any subordinate officer under same, who may be required to handle moneys, shall give bond executed by a surety company authorized to do business within the state in such sum as shall be fixed by the governor and council, and as shall be deemed to be adequate by the state auditor to safeguard the state's funds. Such bonds shall be filed in the department of audit."

In Article 1, Section 1, of the State Code Act, it is provided "all other departments and agencies except as modified by this act shall continue as at present constituted."

It is not clear whether or not the State Code supersedes the provisions of Revised Statutes Chapter 125, Section 56. The statutes, however, are substantially the same except that in the State Code provision is made for determination of adequacy by the State Auditor and for filing of the bond in the department of audit.

In our opinion a surety company bond to the state to properly account for all funds coming into the hands of such Inspector and with the amount fixed by the Governor and Council and deemed adequate by the Auditor will be in compliance with the provisions both of the Revised Statutes and of the State Code above noted.

We are of the view that a State Inspector is primarily an employee of the state. In carrying out his work he is not performing the usual duties of a Deputy Sheriff. He is given the additional authority as Deputy Sheriff in order that he may have police powers not directly connected with his work. For example, a watchman employed in a factory

May well be a Deputy Sheriff but we do not believe it would be considered that his bond to the Sheriff would cover defalcations arising in the course of his normal employment.

For the above reasons, we are of the view that the Deputy Sheriff's bond does not cover state moneys in the hands of the State Inspector and under both Revised Statutes Chapter 125, Section 56 and under the State Code Act (Laws of 1931, Chapter 216, Article 1, Section 5) a bond should be taken running to the state.

It is, therefore, our opinion that the Deputy Sheriffs so employed by the Secretary of State should give the statutory bond required of Deputy Sheriffs of their duties as law enforcing officials and should also give bond to the state with respect to their duties as inspectors in the department of the Secretary of State. In the bond to the state their office should be described, not as Deputy Sheriff but as State Inspector or whatever title may be given to the office.

John S. S. Fessenden

Robert B. Williamson