

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

From:
The Attorney General's Office

December 11, 1941

To:
LeRoy Folsom, Assistant Attorney General
Counsel Dept. Health and Welfare

In answer to your recent inquiry as to whether the same person can hold the office of Sheriff and be a member of the Old Age Assistance Commission at the same time, I am pleased to inform you that both being a part of the same State department, viz., the Executive Department, there does not appear to be any constitutional prohibition as to a person holding both offices.

It has been held by our Courts that: "Two offices are incompatible where the holder cannot in every instance discharge the duties of each".

Incompatibility comes where the nature and duties of the two offices are such as to render it improper from consideration of public policy, for one person to retain both.

I am unable to find any case where the question of the incompatibility of the two offices mentioned has been passed upon by the Courts, but from all the information I can get, I can see no inherent inconsistency in the two offices, which would exclude a person from holding both under the general rules of law.

SANFORD L. FOGG
Deputy Attorney General

From:
The Attorney General

December 11, 1941

To:
Earle R. Hayes, Director Personnel

I have your memorandum of November 15th, in regard to payment of wages for "vacation earned but not taken prior to date of death" together with your memorandum of December 8th, explaining the meaning of the expression.

My understanding of the vacation rule is that it is for the benefit of the State, the theory being that an employee is of more value if he takes a vacation from his regular labors.

The only employees of the State that I know of to whom the question you have asked can apply are employees who are on a weekly basis. If they were on an annual basis and were receiving 52 weeks pay for 50 weeks work I am inclined to think that, inasmuch as the time of taking the vacation is indefinite, the proper procedure would be to credit 1/14 of the allowable vacation period against 1/14 of the year so that the employee would be rated as accumulating vacation pay. In such case, if the employee died during the year, it would seem proper to allow to his estate so many 1/14s of his two weeks vacation pay as he had accumulated.

Where, however, the employee is on a weekly basis, I do not see how we could properly do it. The time off is not carried in your department as a vacation, but as a leave of absence with pay. It is true that the leave of absence is oftentimes taken in fractions, but as I understand it, leave of absence is not a property right of the employee but is a privilege granted by the State. Under these circumstances I do not see where there would be anything left at the death of the employee that would justify you in directing payment to said employee's estate of any amount except such as might be still due for actual service performed by the employee.

Inasmuch as this query has come from your office instead of from the Controller, I assume that the question is purely academic so I am not sending a copy of this letter either to the Controller or to the State Auditor.

FRANK I. COWAN

Attorney General

From:
Frank I. Cowan, Attorney General

December 12, 1941

To:
E. L. Newdick, Dept. of Agriculture

I have your question in regard to the authority of the Administrator of an estate to protect the land by plowing or by burning cornstalks so as to stop the development of the European corn borer.

It is the duty of an Administrator to take such reasonable steps as will protect the estate of which he is, in a manner, trustee from depreciation. Thus, if a fire started in one of the farm buildings and burned a hole through the roof, it would be the duty of the Administrator to cover that hole so that rain and snow could not come in and cause further damage to the building. So, where a tenant has raised corn and the corn is infested with European corn borers and the tenant has left the premises without either protecting the land or burning the stalks, it is the duty of the Administrator to either plow the land or burn the stalks so that the corn borer cannot infest the land next year.

Any other course could very well result in the land being of very little value to the estate.

Attorney General

From:
Frank I. Cowan, Attorney General

December 17, 1941

To:
George E. Hill, State Tax Assessor

It has been called to my attention that the State is not carrying insurance on school buildings in deorganized areas. While it is true that, technically, the title to public property in deorganized towns falls into the State, nevertheless, the State should be regarded as holding said property as a quasi trustee.