

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

R. S. Chapter 75, Section 42, provides that the Registers of Probate "shall account quarterly under oath to the county treasurers for all fees received by them or payable to them by virtue of the office, specifying the items, and shall pay the whole amount of the same to the treasurers of their respective counties quarterly" Under the provisions of Chapter 75, Section 42, a Register of Probate who gives credit, does so at his peril, since all fees, either received by him or which should have been received by him because of papers filed, must be paid to the County Treasurer.

There is nothing in the law to prevent a Register of Probate from earning an honest dollar outside of his duties, any more than there is anything to prevent any other man from earning an honest dollar outside of his duties, so if a Register of Probate prepares documents that are not provided for either by direct reference or by implication, he is entitled to keep any money he is paid for them, providing the work is not done on the County's time.

Inasmuch as the statutes are very general in regard to copies and the charges to be made for said copies, and the statute further declares that the "whole amount" of "all fees received by them or payable to them by virtue of the office" shall be payable to the County Treasurer, I am unable at this moment to cite an instance where a Register of Probate would be entitled to retain any fees paid for any copies made of documents in his official office. Moreover, there is no justification for any Register charging more for a document than the statute provides.

If you will take this letter in combination with the second paragraph of Mr. Burkett's letter of February 5th, 1940, I think you will have about as clear a statement of the law as you can be given.

Attorney General

January 28, 1942

From:

Frank I. Cowan, Attorney General

To:

Homer M. Orr, State Purchasing Agent

Under the Public Laws of 1931, Chapter 216, Section 18, Paragraph 4, the Department of Finance, through the Bureau of Purchases, has authority: "To lease all grounds, buildings, office or other space required by the state departments or agencies;"

We find no statutory authority for the Secretary of State to execute leases, although the Revised Statutes, Chapter 29, Section 30, puts on him the burden and duty of selecting "convenient places within the State to receive application for registrations and licenses, etc."

The Secretary of State is under the necessity of moving his Portland office immediately due to the fact, so I am informed, that the United States Navy is taking over his present quarters. He has arranged to lease certain property on St. John Street and corner of Danforth, which, in his opinion, is a good location, and he is prepared to move immediately.

I have approved the form of the lease but the lessor requires a certificate of authority in the Secretary of State to execute the lease for the State. I cannot certify that he has this authority, but I can certify that you have the authority.

Attorney General

January 29, 1942

From:

Frank I. Cowan, Attorney General

To:

J. A. Mossman, State Controller

I have been considering the wording of P. L. 1941, Chapter 325, Section 2 of the salary adjustment act. This law expressly uses the word "employees of the State government". Three times in the single sentence that makes up the body of the act the word employee occurs. In no place does the word "officer" or "official" occur.

There is a marked distinction between an officer and an employee. The Law Court of the State of Maine in Bowden's case, 123 Maine, page 363, speaking of a certain section of the Workmen's Compensation Act, uses this language:

"Primarily, it was intended for employees, as distinguished from officials, employees directly employed by our officials authorized to act for the State, or persons employed or in the service of any department without such official or authorized sanction."

Again, on Page 366, the Court says:

"In addition to the statutory definition of 'employee' it is well settled that an officer is distinguished from the employee in the greater importance, dignity and independence of his position, in being required to take an official oath and perhaps to give an official bond, in the more enduring tenure, and in the fact that the duties of the position are prescribed by law."

The New York court has defined employee and officer thus:

"An employee is one who works for an employer; the person working for salary or wage. The words apply to anyone who works, but usually only to clerks, workmen, laborers, etc., and but rarely to officers of a government or corporation."

Under the circumstances it is my opinion that the word "employee" as used in the statute, does not cover heads of departments nor, as a matter of fact, any elected or appointed official, but only persons employed as illustrated by the New York case cited.