STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

Chapter 131 has to do with larcenies. The first thirteen Sections of Chapter 136 have to do with gambling and search for implements of gambling.

(2) An insurance inspector has no authority to make arrests. The sole authority in his case is Chapter 35, Section 52, authorizing the Commissioner to have investigations made and using the following language: "If he shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson or incendiarism, he shall cause such person to be arrested and charged with such offense . . . ."

Attorney General

February 20, 1942

From:
Frank I. Cowan, Attorney General

To:
George E. Hill, State Tax Assessor

In re Payment of Fire Bill in Deorganized Township

I have your memo of January 26th in regard to the Plantation of Concord. The State Tax Assessor, in my opinion, has authority to use funds in his hands belonging to the former Plantation for payment of the bill rendered by the Town of Bingham for aid in putting out a forest fire. It is a current item and as such should be paid if there are funds available.

You say that Concord is not a part of the Maine Forestry District. If this is correct the Public Laws of 1939, Chapter 211, provides for its being placed in the Forestry District. Thereafter, the Forest Commissioner can act to protect the property under the terms of Public Laws of 1939, Chapter 224, and taxation is assessed accordingly under the provisions of the Forestry District law, which appears in Revised Statutes, Chapter 11, Section 68ff.

Attorney General

February 24th, 1942

W. Mayo Payson, Esq.
Corporation Counsel
City Hall
Portland, Maine

Dear Mayo:

I have your letter of February fourteenth in regard to special deputies and police, and I agree with you that designations by the Governor of persons with the powers and immunities of constables will, in many cases, be much wiser than to put in additional special police and deputies.

I have been thinking about the provision in Section 2 of the Defense Act to the effect that certain designated members of the Corps, while engaged in certain activities, "shall have the powers and immunities of constables". I have been mulling that over in connection with Article III of the State Constitution, which reads as follows:

"ARTICLE III

"Distribution of Powers.

"Sec. 1. The powers of this government shall be divided into three distinct departments, the Legislative, Executive and Judicial.

"Sec. 2. No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted."

Stubbs vs. Lee, 64 Maine 197, uses the following language:

". . . . The appointment of a person to a second office, incompatible with the first, is not absolutely void; but on his subsequently accepting the appointment and qualifying, the first office is ipso facto vacated. The People v. Carrique, 2 Hill, 93. A vacancy may arise in an office from an implied resignation; as by the incumbent's accepting an incompatible office. Van Orsdale v. Hazard, 3 Hill, 243. The acceptance of the office of constable of a town by a person holding at the time the office of justice of the peace, is of itself a surrender of the latter office. Magie v. Stoddard, 25 Conn., 565. In 3 Maine, 486, this court, in their answer to the senate say, "that the office of justice of the peace is incompatible with that of sheriff, deputy-sheriff or coroner."

In drafting the original defense act, I used much more detail, but I believe you have included all the meat of it in the language of the last sentence in the first paragraph of section 2. I never anticipated that there would be a rush of lawyers to become constables or deputy sheriffs. From my point of view, membership in the bar, and the power to exercise the multitudinous prerogatives that are appurtenant to that membership, is such a great position that I can't conceive of a member of the bar desiring to be a policeman or a deputy sheriff.

However, it seems that many members of the bar do not regard their membership in the same light that I do, or that you and the other members of the research committee and the judiciary committee do, for were it otherwise there would be no such desire on the part of the lawyers to get badges so that they could exercise authority as subordinates.

Of course there is the possibility that the courts will hold that these persons endowed with the "powers and immunities of constables" are not members of the executive at all but are simply persons temporarily designated to have certain authority. It is true that they take

no oaths, sign no pledges and give no bonds. The oath, it may with propriety be argued, is a very important part of the qualification of a member of either the executive or judicial branch. All deputy sheriffs take oaths and regular deputies give bonds. Constables take oaths and give bonds. It is very possible, as I suggested above, that the courts may hold that these persons designated with the power, during certain limited times, to do the things that constables can do, are not really members of the executive branch and so do not, by the acceptance of such designation, vacate their offices as Justices of the Peace and Notaries, but I am strongly of the opinion that the court will not so hold. The courts, throughout the history of this nation, and before that in England, were very careful to maintain the distinction between the executive and judicial branches. I feel that for any Justice of the Peace or Notary to accept a commission or authorization as special deputy or special police officer, with constable powers, vacates his office as Justice or Notary immediately. I believe the courts will insist on the distinction being very carefully preserved.

I am glad you wrote me and I will have a talk with the Governor about this matter.

Sincerely yours,

FRANK I. COWAN
Attorney General

March 5, 1942

From:
Frank I. Cowan, Attorney General

To:
Henry P. Weaver, Chief
Maine State Police

In re Leland L. Nelson, Towle St., Auburn, Maine

The act of Mr. Nelson was in direct violation of the provisions of Chapter 164 of the Public Laws of 1937 which reads as follows:

> " 'And provided further that no motor vehicle, including trucks, combination of tractor and semi-trailer, passenger buses and passenger cars shall exceed in length 40 feet over all and no trailer attached to a motor vehicle shall exceed in length 26 feet over all.' "

In authorizing the release of this particular load, I was thinking about the load and not the driver. Whether or not authority could have been given to Mr. Nelson under Chapter 305 of the Public Laws of 1941 (the Emergency Defense Act), such authority was not previously given nor, as far as I have heard, was any such authority ever asked for until after this episode had occurred. There is no reason at all why you shouldn't prosecute this man Nelson.

Under the emergency powers, the Governor may authorize the doing of many things if, in his opinion, it contributes to the safety and