

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

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

welfare of the people during this emergency, but the Legislature has placed that power solely in the hands of the Governor and there is in the emergency, no justification for breach of the laws by unauthorized persons. If the Legislature had felt it wise that every man could in his judgment decide what laws he should and what laws he should not obey, it would have said so. We must maintain our governmental functions even in time of war insofar as possible. The very purpose of the war is to protect our form of government.

Attorney General

March 19, 1942

The State Liquor Commission
Augusta, Maine

Gentlemen:

Sometime ago I gave an oral opinion in regard to the appointment of liquor inspectors.

Public Laws of 1937, Chapter 227, Section 6, provides as follows:

"The classified service shall consist of all persons holding offices and employments now existing or hereafter created in the State service, except persons who are holding or shall hold offices and employments exempted by section 7 of this act."

This was approved on April 23, 1937 and took effect ninety days after adjournment of the regular session of the Legislature. The Legislature adjourned on April 24, 1937 so said act took effect on July 23, 1937.

At a special session of the Legislature held in October, 1937 an emergency act was passed, which was approved on October 28, 1937 and became effective that day. It provided as follows: "The liquor commission shall appoint, subject to the approval of the governor and council, a chief inspector and as many inspectors as may from time to time be found necessary to serve during the pleasure of the liquor commission, whose compensation shall be fixed by the liquor commission, subject to the approval of the governor and council."

This is found in Chapter 247, Public Laws 1937 and, by implication, repeals so much of Section 6 of Chapter 221 of the Public Laws of 1937 as applies to the appointment of liquor inspectors.

Very truly yours,

FRANK I. COWAN
Attorney General