

MAINE STATE LEGISLATURE

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March 5, 1942

Henry P. Weaver, Chief
Maine State Police
Augusta, Maine

Dear Sir:

Harry Putnam has asked me to give you a ruling on "the authority and power to order war-time deputies of one county to do service in other counties."

Under Section 1 of the Emergency Defense Act, "The governor may appoint and delegate to such persons as he deems necessary, authority to enforce and carry out or require the carrying out of such rules and regulations as may be promulgated or issued by him under and in accordance with the provisions of this act."

Section 2 provides as follows: "Such members of the said corps as the governor may designate, during the time they are engaged in the carrying out and the enforcement of the rules and regulations promulgated or issued under this act shall have the powers and immunities of constables throughout the state regardless of town or county boundaries."

There is no limit in this statute as to the individuals whom the Governor may designate, and once so designated they "have the powers and immunities of constables throughout the state regardless of town or county boundaries" "during the time they are engaged in carrying out and the enforcement, etc." This applies to sheriffs, regular deputies, special deputies and every other person in the State. The only requirement is that the Governor shall so designate the individual or the class. As you know, he has already designated the Fish and Game wardens, the Sea and Shore Fisheries wardens and the fire wardens.

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While we are discussing the matter, it may be well for me to emphasize that the conferring on a member of the Legislature or a member of the judiciary of the "powers and immunities of constables", apparently sets such persons up as members of the executive, so that membership in the Legislature or membership in the judiciary is terminated immediately by the acceptance of the designation. This is because our constitution has expressly designated three branches, the legislative, the executive and the judicial, and it has provided further that no member of one branch shall possess any of the "powers" of either of the other branches except as expressly provided in the constitution.

Our courts have held that a constable is a member of the executive, and appointment as a constable terminates a commission as Justice of the Peace. The rule applies to every other judicial officer and to members of the Legislature.

Very truly yours,

Frank I. Cowan
Attorney General

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CC: Governor Sewall