

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

May 15, 1942

From:
Frank I. Cowan, Attorney General

To:
Sumner Sewall, Governor of Maine

The Secretary of State is a constitutional officer of great importance. Certain essential functions of government are vested in him only and without an officer to perform those functions the government would be severely handicapped.

The Constitution of Maine, Article V, Part 3, provides, in Section 2, that the Secretary of State "may appoint his deputies, for whose conduct he shall be accountable". Section 3 provides that "he shall attend the Governor and Council, Senate and House of Representatives, in person or by his deputies, as they shall respectively require."

Although there are numerous provisions in our statutes in regard to the duties of the Secretary of State, there is but one place in our statutes that I have found where the office of Deputy Secretary of State is mentioned at all, and that is where it provides that the traveling expenses of the Secretary of State and his Deputy shall be paid by the State when they are on official duties.

The Secretary of State of the State of Maine has enrolled in the armed military forces of the United States and has departed from the State of Maine to perform the duties of his new office. Such a departure must necessarily be for an indefinite term and the nature of his duties in his new office are such that it will be impossible for him to perform his functions as Secretary of State. However praiseworthy we may regard his enlistment in the military arm of our government, the fact remains that by so doing he has abandoned the office of Secretary of State and unless all the duties of the office can be carried on by a deputy possessing all the powers and rights of the Secretary himself, such abandonment creates a vacancy.

In general, a deputy possesses all the powers and functions of his principal. This is certainly true when the powers and functions of the principal are purely ministerial, and if the duties of the Secretary of State were purely ministerial, then, since the functions of his office could be fully performed in his absence, such absence need not be construed as an abandonment and so no vacancy would exist.

The Secretary of State, however, possesses various quasi judicial powers. In connection with the handling of violations of the motor vehicle law the Secretary of State sits in a quasi judicial capacity and passes on the evidence and decides whether or not the parties before him shall be adjudged worthy of having the privilege conferred on them of operating automobiles on our highways. This is but one of several quasi judicial functions which he exercises and under the definition of deputy appearing in Bouvier's Law Dictionary, such functions cannot be deputed.

Moreover, a deputy cannot himself appoint a deputy, which is a very distinct limitation on the powers and authority of a deputy.

It therefore seems necessary that we hold that there is a vacancy in the office of Secretary of State.

Attorney General

May 21, 1942

From:
The Attorney General

To:
Dept. Adjutant General—Colonel Hart

Re: *Enlistment in State Guard*

I have your memorandum of May 20th asking if a person must be a citizen of the United States to be eligible for appointment as a commissioned officer in the Maine State Guard. The answer is, "No".

Chapter 312, P. L. 1941, approved January 23, 1942, uses the words, "such able-bodied male citizens of the state and such other able-bodied men who have or shall have declared their intention to become citizens of the United States". The language must be interpreted in accordance with the general military law of the State in view of the fact that it contains no express statement about citizenship of officers.

R. S. Chapter 18, Section 1, provides that the "militia of the State of Maine shall consist of all able-bodied male citizens of the state and all other able-bodied males who have or shall have declared their intention to become citizens of the United States, . . .".

Section 2 of said Chapter 18 provides for commissioned officers without requiring that they shall be full citizens.

As clearly appears from the wording of the general military law of the State, there was no intention on the part of the legislature that a person must be a full citizen in order to be an officer in the National Guard. The language of the State Guard Act being exactly the same, we should put the same interpretation on it. Certainly, if, over a period of many years, the policy of the State has been that a person may serve as an officer in the National Guard without being a full citizen, the same intention is clear when we find exactly the same language in the State Guard Act.

FRANK I. COWAN
Attorney General