

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

From: June 12, 1942
John S. S. Fessenden, Ass't Attorney General

To:
Governor Sumner Sewall

RE: Authority to Grant Permissive Use of Fort McClary, at Kittery Point

You are advised that under Section 54, Chapter 18, of the Revised Statutes of Maine, as amended by Chapter 308 of the Public Laws of 1939, you, as Chairman of the Military Defense Commission, have authority to grant the right to the Harbor Defense Command of the United States Army, at Portsmouth, to use Fort McClary, Kittery Point, for the purpose of establishing a searchlight position. Since this use does not involve a leasing or ceding of buildings, or of any of the other properties, but is merely to be a temporary use, it is not necessary for any action to be taken either by the Council or by the full membership of the Maine Military Defense Commission.

Accordingly, I have prepared, for your signature, a letter which will grant the authority which has been requested by Colonel Pendleton, Commanding, Harbor Defense of Portsmouth.

JOHN S. S. FESSENDEN
Ass't Attorney General

From: June 17, 1942
The Attorney General

To:
Harold I. Goss

Under the Constitution of Maine the Secretary of State is elected by joint ballot of the two Houses of the Legislature. No provision is made for filling a vacancy in the office. The Legislature, however, has provided that in case of a vacancy the Governor and Council shall appoint "a suitable person to act as Secretary of State".

The proper designation of the person so appointed is "Acting Secretary of State" since there is no authority in the Governor and Council to appoint a "Secretary of State".

FRANK I. COWAN
Attorney General

From: June 19, 1942
Frank I. Cowan, Attorney General

To:
William D. Hayes, State Auditor

Re: Town Clerks' collecting dog taxes—Your memo of May 22nd.

Public Laws of 1941, Chapter 278, Section 1, amending R. S. Chapter 5, Section 157, puts the burden on the municipality to make a correct report to the Commissioner of Agriculture of all dogs owned

or kept in the municipality on April 1st. On the basis of that return, or on the basis of any other information he may have, the Commissioner of Agriculture shall report to the State Treasurer the number of dogs, as provided in the second paragraph of Section 1 of Chapter 278, whereupon the Treasurer of State shall notify the municipal officers of each city or town of the amount due for dog licenses. Failure of the municipality to pay the amount due on or before October 15th will result in the amount so due being added to the state tax of the delinquent municipality for the following year.

Failure of the local assessors to file a list that would be substantially correct would constitute either non-feasance or mal-feasance, according to the circumstances, and could be so treated.

The wording of Section 3 of said Chapter 278, amending Chapter 5, Section 159 of the Revised Statutes, creates an ambiguity. Section 1 puts the duty absolutely on the municipality and makes the municipality responsible to the State for the payment of the money. Section 3 says that the clerk shall issue the licenses and receive the money therefor and pay the same to the Treasurer of State. This, it seems to me, is simply a ministerial act on the part of the clerk and may have been deliberately designed by the legislature to save book-keeping or to save the money from going through unnecessary hands.

The logical method would seem to be for the clerk to pay the money over to the Town Treasurer, and the Town Treasurer pay it to the State Treasurer. Section 3 simply shortcuts that operation, and sends the money directly from the Town Clerk to the State Treasurer. It does not, however, in any way lessen the responsibility of the Town to see that the money is properly paid over.

In your third question, you ask whether the clerk would get the extra eighty dollars in case one hundred twenty dogs were licensed, of which only forty had been committed by the assessors. The answer is that all dogs shall be reported and any such problem as you suggest would be considerable evidence of a criminal conspiracy for which the law provides a severe punishment.

FRANK I. COWAN

Attorney General

From:
Frank I. Cowan, Attorney General

June 19, 1942

To:
William D. Hayes, State Auditor

Re: Deer Isle-Sedgwick Bridge District

I have your memo of May 8th.

The Deer Isle-Sedgwick Bridge District started out as a quasi-municipal corporation, the purpose of which was to handle and operate the Deer Isle-Sedgwick Bridge until such time as all debts should be fully paid. The bridge, under the original plan, would then be