

# MAINE STATE LEGISLATURE

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STATE OF MAINE

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REPORT

OF THE

ATTORNEY GENERAL

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for the calendar years

1941--1942

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

come the property of the State of Maine. The State was not to invest any money whatsoever in the bridge nor guarantee its bonds nor in any other way incur any obligations whatsoever.

This plan was materially altered, and under a constitutional amendment, which appears as Chapter 133 of the Resolves of 1935, and became Section 21 of Article IX of the Constitution, the State issued bonds to assist in the construction of the bridge.

Under the provisions of Chapter 20 of the Private and Special Laws of 1939, the Legislature placed the bridge, after completion, under the complete control of the State Highway Commission, and gave to the Commission the veto on any disbursements and expenses of the trustees. It further provided that leases of the bridge to utilities made prior to the completion of the bridge must be approved by the Commission, and that after such completion, the Commission should have sole power to make leases. The State Highway Commission was given the duty of charging and collecting tolls for the use and crossing of the bridge, acting under the direction of the Public Utilities Commission.

The present statute further provides that all money collected must be deposited in a Bank designated by the Treasurer of the State, and on the first secular day of each month the balance must be transmitted to the Treasurer of State. All rentals must be paid direct to the Treasurer of State, who, on warrants signed by the Highway Commission and approved by the Governor and Council and by the State Controller, pays all bills for maintenance, upkeep, repairs and operation of said bridge, interest on state bonds, and for the retirement of said bonds. These provisions, when read with the original act which makes the bridge absolutely the property of the State when all bonds are retired, in substance makes the State the custodian of the bridge and fully responsible to the people of the State for its permanent preservation as part of our highway system. This is an entire change of position, since the original act made the trustees the custodians.

Under Private and Special Laws of 1935, Chapter 88, Section 9, as amended by Section 4 of Chapter 20 of the Private and Special Laws of 1939, the State Treasurer "shall pay the Bridge District such sums as may be necessary for interest and retirement of bridge district bonds . . . ." I understand from your statement of fact that occasionally there is a technical default due to the fact that you do not get word from the Treasurer of the Bridge District in time to make the payment when due.

The fact that the Highway Commission and the State Treasurer have been charged by the legislature with the responsibility of preserving this bridge as a part of our general highway system puts on them a duty and a responsibility that cannot be avoided. The provision of Private and Special Laws of 1939, Chapter 20, Section 9, above quoted, cannot be regarded as mandatory when an attempt on the part of the state officials to act strictly in accordance with the

language of the statute will serve to defeat the purpose of the legislature. There is nothing in the quoted language to prevent the State Treasurer, when authorized by the trustees, from making payments of interest and for retirement of the Bridge District bonds directly to the National Shawmut Bank of Boston, or such other bank as may be owner of the bonds or acting as trustee or collecting agent for the bondholders.

It will be a wise thing if the legislature be asked to amend the law at the next session so that the payments can be made directly to the bank without having to consider the trustees, but in the meantime, since the administrative departments of the State have been made responsible by the legislature, the method of payment I have suggested above can be put into effect. The law will never permit a thing of great public value to be endangered because of ambiguity in the wording of the statute which has been set up to enhance the value of the object.

FRANK I. COWAN

Attorney General

See Memo of July 16, 1942.

From:

June 24, 1942

Frank I. Cowan, Attorney General

To:

Sumner Sewall, Governor of Maine

In connection with the many inquiries relative to the holding of a commission as Notary Public or Justice of the Peace by a person who is serving as an Auxiliary Policeman under Civilian Defense, you are advised that the discussion and confusion on this subject probably arises from the fact that duly constituted law enforcement officials holding offices which are provided for by statutes of the State, have been held by our Supreme Court to be a part of the executive branch of the government. Justices of the Peace are a part of the Judicial branch. Under our constitution no person belonging to one branch "shall exercise any of the powers properly belonging to either of the others. . . ."

As far as Auxiliary Policemen are concerned, under the present emergency civilian defense activities, these individuals are not, simply by reason of being such auxiliary police, holding public office. That is to say, it is not a public office provision for which is made or created by the statutes or constitution of this State, and they neither possess nor exercise any of the "powers" of the executive branch. When acting as Auxiliary Policemen, such individuals are in fact performing no more than the common law duty of any able bodied citizen of the State who may be required in time of emergency to perform those acts inherently his duty of allegiance to the sovereign State.