

# 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

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.

Since Auxiliary Policemen are not actually "exercising any of the powers" of the executive branch, there can be no incompatibility in such individuals retaining their commissions either as Notaries Public or Justices of the Peace.

This opinion must not be considered as an interpretation of the status of Civilian Defense Corps members mentioned in Section 2 of the Civilian Defense Act. Such persons are expressly endowed with "the powers and immunities of constables," and are thereby made a part of the executive branch.

Attorney General

From:  
Frank I. Cowan, Attorney General

July 2, 1942

To:  
William D. Hayes, State Auditor

*In re Port of Portland Authority*

In my opinion the Port of Portland Authority is an agency of the State of Maine, set up in the form of a corporation for greater facility in transacting its peculiar type of business.

All assets of the Authority are property of the State of Maine.

Attorney General

From:  
Frank I. Cowan, Attorney General

July 8, 1942

To:  
Honorable Sumner Sewall, Governor of Maine

I have carefully considered your query as to whether or not as Governor you have the power and the right to use such material forces as may be available for the protection of shipping along the coast of the State of Maine and for the escort of cargo vessels in and out of our ports and along the waters washing our shores.

The Federal Constitution, Article I, Section X, Paragraph 3, provides as follows: "No State shall, without the consent of Congress, . . . . engage in War, unless actually invaded, or in such imminent danger as will not admit of delay." The Constitution of Maine, Article V, Part First, Section 7, provides as follows: The Governor "shall be commander-in-chief of the army and navy of the State and of the militia, except when called into the actual service of the United States; but he shall not march nor convey any of the citizens out of the State, without their consent or that of the Legislature, unless it shall become necessary in order to march or transport them from one part of the State to another for the defence thereof."