

# 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

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."

On the statement of fact which you have given me, merchant vessels entering and departing from our ports are being met by enemy submarines and sunk. The people of the State of Maine are lacking in necessary oil and coal for the coming winter. The navy of the United States is not yet in a position to give that shipping the protection which we have a right that it shall have. The Secretary of the Navy of the United States has been quoted several times recently by the newspapers as saying that in case of invasion, the States may very well have to look after themselves for the time being.

The Constitution of the United States was never intended to deprive a State and the people thereof of the right of defense against any enemy, private or public. The right to repel invasion or to act in a case where the State was "in such imminent danger as will not admit of delay" is expressly recognized as I have quoted above.

The word "invasion" is not limited to mean solely the crossing of our boundaries by foreign armies. "Invasion" may be by airplane coming over a portion of the land included within the boundaries of the State of Maine with hostile intent on the part of the operators, whether actual immediate damage is done to any of the people or property of this State or not. An invasion of the rights of our people to food and fuel and to the usual necessities of life is just as much an "invasion" as is a crossing of our frontiers, although if that invasion of rights occurs at a great distance, the question of practical repulsion arises and, in general, will prevent action by a State. However, the right of the Governor of the State to protect the people of the State from an invasion of our rights to have fuel and food is not limited to the actual dry land boundaries of the State. A submarine that lurks off one of the ports of the State for the purpose of depriving our people of food and fuel is "invading" the State of Maine just as much as if it landed armed troops to seize or destroy one of our food or fuel storehouses.

I understand that you can buy and equip airplanes and can offer escort to ships entering and leaving our harbors. This is a power that you possess under the Constitution of the State in time of crisis even without statutory authority, but the Civilian Defense Act (Chapter 305 of the Public Laws of 1941) in Section 1 states as follows: "The governor is hereby *empowered and directed* to provide for the *security, health and welfare* of the people of the state,". For that purpose the Legislature at its Special Session, authorized a bond issue of \$1,000,000 for you to use in case of emergency, but even without that the authority given to you under Sections 5 and 6 of the Civilian Defense Act is ample to provide the funds for this activity and to authorize the use thereof.

It is not necessary that you set up this air unit under the State military law. It can be either independent as far as the State military law is concerned and responsible only to the Executive under the Civilian Defense Act, or it can be organized as a part of the State Guard, or it can be organized as a part of the naval militia

as provided in Chapter 18, Sections 32 to 35, inclusive, of the Revised Statutes. As you will note, Section 33 of Chapter 18 provides as follows: "The commander-in-chief may organize the forces prescribed in the preceding Section as he may deem proper; and when in his judgment the efficiency of the naval militia will be increased thereby, or whenever public interest may demand it, he may alter, reorganize or disband any or all of the organizations therein; . . . no part of the naval militia shall be attached to the organization of the national guard except when especially ordered by the Governor, in which case the senior officer present shall command the whole, unless the commander-in-chief shall direct otherwise."

You have asked the question in regard to the extent of the jurisdiction of the State of Maine into our coastal waters. Some two hundred or more years ago, a "three-mile limit", so-called, was adopted because that was in excess of the range of any cannon. The courts generally construed the three-mile limit as meaning a line drawn from headland to headland. This three-mile limit has become ineffective due to the longer range of guns and during the prohibition era you will recall that the United States declared that the limit would be twelve miles. This twelve-mile limit was not universally adopted.

Some two or three years ago at the Pan-American Congress the American nations adopted a three hundred mile limit. This three hundred mile limit was not accepted by some European nations with whom we are now at war, but it is a part of the declared policy of this country. What the effect may be on the extent of the jurisdiction of a State government over its coastal waters is a question for the courts to decide, but until such decision, it is proper to accept the national policy as governing the extent of the jurisdiction of this State.

The Supreme Court of the United States has recognized the right of the State to set its own territorial jurisdiction in the following language, as appears in the case of *Manchester v. Commonwealth of Massachusetts*, 139 U. S. 240:

"The extent of the territorial jurisdiction of Massachusetts over the sea adjacent to its coast is that of an independent nation; and, except so far as any right of control over this territory has been granted to the United States, this control remains with the State."

"Within what are recognized by the law of nations as the territorial limits of states, a state can define its boundaries on the sea and boundaries of its counties; Massachusetts can include Buzzard's Bay within the limits of its counties."

Attorney General