STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

above quoted provision. The description of the tax lien notice as a "mortgage" does not change its actual nature. It is simply a method provided for collecting a tax and there can be a redemption within any time within 18 months from the time of filing the lien notice, which 18 month period must by statute begin not earlier than 8 months after the date of the assessment of the tax so that the minimum time under the tax lien procedure before any rights to title of the property become absolute, is 26 months. The provision for abatement within 2 years from the time of assessment cannot, then, conflict with any property rights that have been acquired because an abatement within the 2 year period would have exactly the same effect on a buyer under the lien procedure as would a redemption. In either case he would be entitled to have his money back with interest and nothing more.

The same argument holds true if the abatement is made after the 2 year period but before any rights have been gained by reason of the expiration of the 18 month period above referred to.

In my opinion, the assessors have the right to abate at any time within the 2 years on application or after the 2 years if the circumstances conform to the provisions of said Sec. 73, provided the abatement is previous to the expiration of the 18 month period set as a definite term for redemption from the so-called lien mortgage.

Attorney General

October 7, 1942

From:
The Attorney General

To:
Roscoe L. Mitchell, M.D.

I have your query as to whether two osteopaths can sign a commitment of an allegedly insane person to a State Hospital. P. L. 1939, Chapter 267 provides: "No person shall be declared insane or sent to any institution for the insane . . . . unless . . . . examined by two reputable physicians . . . ." R S. Chapter 23, Section 35 defines "physician" as, "A practioner of medicine duly registered under the laws of Maine or of some other state".

R. S. Chapter 21, Section 64, provides that, a person who has been granted a certificate mentioned in section 63 shall be designated as an "osteopathic physician".

R. S. Chapter 21, Sections 60 to 70, inclusive, apply to osteopaths. Section 60 refers to "degrees in osteopathy"; Section 62 uses the expressions, "practice of osteopathy" and "practice osteopathy"; Section 63, having to do with qualifications, refers to "principles and practices of osteopathy". It calls for the issuance of a certificate giving one the right to "practice osteopathy". Section 64 speaks of the rights and privileges the certificate holder has to "practice oste-

opathy" but provides that "no osteopathic physician shall practice major surgery or obstetrics" who has not fulfilled certain qualifications.

P. L. 1939, Chapter 206 refers to persons who "practice osteopathy". In no place do we find an osteopathic physician referred to as one who practices "medicine". However, osteopathy has been defined as, "A method of treating diseases of the human body without the use of drugs by means of manipulation applied to various nerve centers—chiefly those along the spine—with a view to inducing free circulation of the blood and lymph, and an equal distribution of the nerve forces".

In Illinois a person who practices osteopathy without a license was found guilty of practicing medicine without a license. On the other hand, Kentucky has held that the practice of medicine within the meaning of the statutes related thereto, does not include the practice of osteopathy.

North Carolina has held that the practice of osteopathy is not the practice of medicine or surgery as commonly understood. Ohio failed of convicting an osteopath physician of practicing medicine without a license on the ground that the practice of osteopathy is not the practice of medicine.

Texas required an osteopath to obtain a license before practicing on the ground that it was the practice of medicine.

Illinois has held that an osteopathic physician is one engaged in practicing medicine and is required to be licensed therefor.

Alabama has held that the practioners of medicine are not simply those who prescribe drugs or similar substances as remedial agencies, but the term is broad enough to include, and does include, all persons who diagnose disease, and prescribe and apply any therapeutic agent for its use; and thus, one practicing osteopathy, a system of healing by manipulation of limbs and body, practices medicine.

Webster's Dictionary, Latest Edition, defines medicine thus: "The science and art of dealing with the prevention, cure or alleviation of disease. b. In a narrower sense, that part of the science and art of restoring and preserving health as distinguished from the surgeon and obstetrician."

Idaho has defined medicine as the science and art of dealing with the prevention, cure or alleviation of disease

Georgia has declared that "medicine" is an experimental and not an exact science.

West Virginia says that medicine relates to the prevention, cure and alleviation of disease, the repair of injury or treatment of abnormal or unusual states of the body, and their restoration to a healthful condition, and is not confined to the administering of medical substances, or the use of surgical or other instruments.

Utah says that the term "medicine" is not limited to substances supposed to possess curative or remedial properties, but means also

the healing art, the science of preserving health and treating disease for the purpose of cure, whether such treatment involves the use of medical substances or not.

The above shows that there is a very marked difference in the attitude that Courts of different states have taken toward the question of interpretation of the status of the osteopathic physician. All of them, however, show that the osteopathic physician is still, to a certain extent, in a different class from the Doctor of Medicine. We are, therefore, able to apply to this question the distinction which is set up by our own statutes. R. S. Chapter 21, Section 70, declares that: "All laws, rules or regulations now in force in this state, or which shall hereafter be enacted, for the *purpose of regulating the reporting of contagious diseases, deaths or births* to the proper authorities, and to which the registered practitioner is subject, shall apply equally to the practitioner of osteopathy, *and all reports and health certificates* made by osteopathic physicians shall be accepted by the officers of the departments to which the same are made *equally with the reports and health certificates* of doctors of medicine."

It is a well known principle of law that the enumeration of certain powers is held to impliedly exclude powers not expressly given. It is apparent that the Legislature of Maine has not yet gone so far as to give to osteopathic physicians all of the same powers, rights and responsibilities that have been given to Doctors of Medicine, and that the Legislature still maintains a legal distinction between the two classes. We must conclude, therefore, that osteopathic physicians are not qualified under our statutes to serve as examiners on the question of insanity.

FRANK I. COWAN
Attorney General

Oct. 28, 1942

To:
Alfred W. Perkins, Commissioner

From:
The Attorney General

Renewal Certificates on Fire Insurance Policies

I have your inquiry of October 28th, as to whether under our law a renewal certificate can be issued in connection with fire insurance policies. In my opinion it cannot because the renewal certificate does not conform to the requirement in the statute providing for inclusion of the standard form.

An opinion given by me last March in reply to an inquiry from you about renewal certificates in connection with casualty policies must be construed as not applying to fire insurance policies.

FRANK I. COWAN
Attorney General