

# 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

December 30, 1942

From:  
Frank I. Cowan, Attorney General

To:  
A. L. Kane, State Controller

I have purposely withheld reply to your memo of November 20 in regard to the legality of making payroll deductions covering War Bond sales, insurance premiums and the victory taxes, for the reason that there is a very serious question of policy of the States involved. Deductions for War Bond sales and insurance premiums can be made by the State if the employee authorizes the State to make them. However, there should be an Order of the Governor and Council authorizing you to perform this service because the matter of expense to the State in performing the extra work must be given consideration.

The victory tax is a different matter. The tax is imposed by the Federal Government under such circumstances as apparently constitutes a direct tax against the States. It would be our duty, if we were not at war and if the victory tax were not an apparently highly commendable method of obtaining funds for pursuing the war, to object to the wording of this Act of the Congress and to contend that the Congress has not the right, under the Federal Constitution, to impose this burden on a State. However, since we are at war and since the burden of collecting the tax from State employees and paying it over to the Federal Government is not a relatively heavy one, we are fully justified, for the time being, in proceeding as though we fully admitted the validity of the Act of Congress.

In my opinion, you may make the deductions in accordance with the Federal law, although I believe you should do it under authority of an Order of the Governor and Council, to be passed at the first meeting of the new Council, in which Order the Executive may see fit to include a recital of the contention of the State that by going along with the program of the Federal government, the State of Maine is not in any way waiving any rights it may have to raise objection to the procedure if, at a later date, it sees fit to do so.

Attorney General

December 31, 1942

From:  
Frank I. Cowan, Attorney General

To:  
William D. Hayes, State Auditor

I have your memo of December 30th, asking whether or not a public administrator is a State official whose acts are subject to audit under the Public Laws of 1931, Chapter 216, Article VI, Section 3.

The duties of a public administrator, as set out in the Revised Statutes, Chapter 76, Sections 30 to 34, inclusive, distinctly deter-

mine that he is a State official to the extent that his acts are subject to such audit. It is his duty under the law to accept administration in all estates where a person has died intestate "not known to have in the state a widow, widower or any heirs or kindred who can lawfully inherit such an estate". In his official capacity (subject, of course, to the jurisdiction of the Judge of Probate of the County) he gathers in the assets of the estate, pays the debts, makes sure that the State receives its inheritance taxes, if any, and deposits with the Treasurer of the State any residue that shall remain unclaimed. He is, in my opinion, acting as an "agency" of the State Government, and, as such, his acts are subject to post-audit. No new legislation is, in my opinion, necessary.

Attorney General

January 5, 1943

From:

Frank A. Farrington, Deputy Attorney General

To:

William D. Hayes, State Auditor

*Subject: Sustenance of Prisoners Previous to Conviction*

Reference is to your memorandum of October 26, 1942.

It is the opinion of this department that charges by an officer for keeping the prisoner or for employment of an aid in criminal cases are legitimate charges under Section 4, Chapter 126, R. S. 1930, when it is necessary for the officer to keep the prisoner or to provide for his keep. The propriety of such a charge is not contingent upon subsequent conviction and sentence.

The Fort Kent situation, as outlined in Mr. Ellis' letter and the correspondence attached, is confused. Apparently, the officers use a lock-up provided by an individual. This constitutes employment of an aid and may be included in the bill of costs at the rate prescribed by the statute, and would, of course, eliminate the officer's fee for keeping the prisoner.

The papers enclosed with your memorandum are returned herewith.

Deputy Attorney General

January 5, 1943

To:

Earle R. Hayes, Director of Personnel

From:

Frank I. Cowan, Attorney General

In November I gave you an opinion to the effect that the State of Maine cannot accept the theory that a subordinate Federal official can make rules and regulations having the effect of law over the internal affairs of a State. This was because of the attempt by James Byrnes to force the States to accept the provisions of the Fed-