

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

---

REPORT

OF THE

ATTORNEY GENERAL

---

for the calendar years

1941--1942

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-

eral wage and salary freezing law. At the meeting of the National Association of Attorneys General in St. Louis on November 24th, the matter was brought up for discussion and it developed that the Attorney General of Maine was the only one who had at that time been called upon to define the position of a State. I was requested by the Attorneys General present to inform them for the record what the attitude of the State of Maine is to be, and I did so. The National Association thereupon instructed President Tom Herbert, Attorney General of Ohio, to lay the record before Director Byrnes. He requested me to go to Washington with him, but I told him I was too busy here in Maine and that I felt the record would speak for itself.

He laid the record before the Director and, it is my understanding, informed the latter my statement expressed the ideas of the several Attorneys General. Director Byrnes thereupon renounced his demand that the States ask his permission to make changes in salary wage schedules and I have today received a letter from Frank Bane, the Executive Director of the Council of State Governments, in which he says: "State and local governments are no longer asked to certify salary adjustments to the Board or the Commissioner."

You should, therefore, hereafter withhold any certification to the National War Labor Board in regard to changes in wages or salaries of State employees.

Attorney General

January 5, 1943

From:

Frank I. Cowan, Attorney General

To:

Hon. Sumner Sewall, Governor

Section 227-N of the Jointly-Contributory Retirement Act provides that pensions granted prior to July 1, 1942 shall be continued and paid from the Pension Accumulation Fund provided for in the new law. The question as to what shall be done about pensions for persons retired since June 30, 1942, is not clearly covered by the Act. However, Section 227-C (3) extends the "rights and benefits" of the old Act to persons who will become eligible prior to July 1, 1945. It seems proper to me to regard this provision as a modification of Section 227-N and to extend to persons who will have fulfilled the qualifications before July 1, 1945 the protective provisions of Section 227-N.

It seems to me further proper that we should accept the use of the word "right" as used in Public Laws 1941, Chapter 328 (Jointly-Contributory Retirement Act), as a definition by the Legislature of the status of the pensioner under the old system, thus avoiding the embarrassment in which we might find ourselves if we clung to the common law definition sometimes laid down by text writers that a