

# 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

"The indivisible unity between the members of a corporation of this kind in respect of the fund from which their rights are to be enforced, and the consequence that their rights must be determined by a single law, is elaborated in Supreme Council R. A. v. Green, 237 U. S. 531, 542, 59 L. E. 1089, 1100, L. R. A. 1916 A, 771, 35 sup. cit. 794. . . . We need not consider what other States may refuse to do, but we deem it established that they cannot attach to membership rights against the company that are refused by the law of the domicile. It does not matter that the member joined in another State."

The petitioner, Modern Woodmen of America, is a fraternal beneficiary society incorporated in Illinois. The by-law referred to "has been held valid and binding upon the members of a corporation by the Supreme Court of Illinois, although they had become members before the change. Steen v. Modern Woodmen, 296 Ill. 104; 17 A. L. R. 406; 129 N. E. 546."

The Courts of Maine would feel themselves bound by the decision above cited of the U. S. Supreme Court, inasmuch as it involves a conflict of laws between States. Therefore, I believe that if an action were brought in the courts of this State on a policy of the Modern Woodmen of America, which policy contained the cited Article 17, the courts of Maine would follow the rule laid down in the Mixer case.

Your second question, to wit, "If this Department can require the elimination of the disappearance clause as being unfair to the beneficiary," is more difficult to answer. Modern Woodmen of America is a fraternal beneficiary association, the provisions concerning which are covered by chapter 61 of our Revised Statutes. Section 9 provides, among other things, that "If he (the Insurance Commissioner) deems it expedient, he will license such associations to do business in this state in accordance with the provisions of this statute." This language is very broad and apparently gives the Insurance Commissioner great power of control over such associations. That control, of course, must be used in a reasonable fashion. If, in your opinion, the disappearance clause as provided in Article 17 of the policy is "unfair to the beneficiary," it is my opinion that you have the right to require that that clause shall not be attached to policies used in the State of Maine.

FRANK I. COWAN

Attorney General

To:  
A. L. Kane, Controller

January 14, 1943

From:  
The Attorney General

I have your memorandum of December 30th asking whether or not the Controller is vested and imposed with direct responsibility and authority with respect to items 1 to 11 inclusive under Section 10, Chapter 216 of the Public Laws of 1931.

The Bureau of Accounts and Control is a part of the Department of Finance. The Controller, as chief of the division, is, under Article I, Section 3 of the Act, under the immediate supervision, direction and control of the head of the Department and shall perform such duties as this officer shall prescribe. However, there are duties definitely assigned to the Controller which cannot be performed by his superior, the State Finance Officer. One of these duties is set out in Article II, Section 8 of the Act, and reads as follows: "The State Controller shall thereupon authorize all expenditures to be made from the appropriations on the basis of such allotments, and not otherwise."

Article II, section 10, provides further specific duties which are to be performed by the Controller and, in general, cannot be exercised by anybody else.

Sight must not be lost of the fact, however, that Article II, covering the Department of Finance contemplates such a close interrelation of the three bureaux with the Commissioner of Finance that in so far as is humanly possible, no possibility of friction can arise. The duties of the Controller, the State Purchasing Agent, and the State Tax Assessor, are entirely distinct; but the Assessor has the duty of determining the source of funds as provided by statute; the Purchasing Agent has the duty of spending a large part of those funds (such as are not governed by salaries and wages and contracts or special services); and the Controller has the duty of checking all expenditures for all purposes and determining whether or not they are properly made from appropriations set up for that purpose. On the shoulders of the Commissioner of Finance falls the burden of general responsibility for the conduct of all three bureaux; and it is probably in part to make sure that there shall be no question as to the location of that responsibility that the language above referred to in Article I, section 3, is used.

I have replied to your query in very general language. This must necessarily be so when the question presented is more or less academic in form. If a specific question were to be asked in regard to a particular duty, a definite answer could be given.

FRANK I. COWAN  
Attorney General

January 14, 1943

R. C. Masterman, Esq.,  
County Attorney,  
Bar Harbor, Maine.  
Dear Ralph,

I have your letter of January 13th in regard to County Commissioners' lobbying at the expense of the county.

Your first question is, "Can the Board of County Commissioners deputize one of their members to go to the legislature for the purpose of lobbying for a bill and charge the expense to the county?"