

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

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?"

The answer to this question is to be found by consideration of the nature of the duties of county commissioners. 7 R. C. L., page 938, contains the following language: "The Board of Commissioners of the County is a creature of the statute and is vested with and possessed of just such powers, rights, privileges and franchises, corporate, judicial, legislative and ministerial, as the statute confers upon it, and such as are clearly and necessarily implied to enable it to carry out and accomplish the objects and purposes of its creation." Many cases are cited in connection with the above quotation.

On page 939 we find the following language, "The board of commissioners cannot, unless distinctly authorized by legislation, incur debts or make engagements, except on the basis of benefit to the county it represents. Nor can such board incur for the county any obligation beyond its income previously provided by taxation."

The powers and duties of county commissioners are numerous, and a reference to pages 84, 85 and 86 of the index to the Revised Statutes is about as far as I can go in reciting them. The law court of Maine has several times passed on those duties, and some of the cases are set out on page 281 of the first volume of Lawrence's Digest. Nowhere in the statute or in the decisions of the courts, nor in a textbook, do I recall ever having seen any provision, decision, or opinion under the terms of which the county commissioners are authorized to act as legislative agents for their counties. The statutes provide that each county shall have one or more senators and that every municipality in the State shall be represented in the legislature. Nowhere is it expressly provided that the county commissioners shall act as a steering committee for the legislature, nor that they shall attend on sessions of the legislature, either in their own persons or through an employed agent, for the purpose of influencing legislation. As a matter of fact, their duties are so strictly set forth and are so distinctly marked out as administrative and judicial that it is unthinkable that lobbying could be construed as one of their functions.

Your second question is, "Can the Board of County Commissioners employ a lobbyist under any conditions?" The answer to the first question in large measure carries the answer to the second. If we adopt the broad policy that county commissioners have no authority to take official action for the purpose of influencing legislation, then they have no authority to employ an outsider to act in that capacity. Certainly, if the statutes do not authorize the county commissioners themselves to spend the money of the county in activity to influence legislation, they cannot get around it by paying a salary or a fee to some person other than one of themselves to do the same thing. Inasmuch as I am of the opinion that they have no authority to act officially and at the public expense for the purpose of influencing legislation, I am also of the opinion that they have no authority to employ somebody to represent them in doing the same act.

Very truly yours,

FRANK I. COWAN
Attorney General