

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

February 19, 1943

To:

William D. Hayes, State Auditor

Auditor's

From:

Frank I. Cowan, Attorney General

Attorney General

Bond of the Secretary of State

I have your memo of February 13th in regard to the bond of the Secretary of State. I note that Mr. Goss raises a question whether he is properly protected as long as it is, as it now is, the case that the subordinates' bonds run to the State.

I admit that the language of the statute providing for a bond for the Secretary of State is unique. However, the legislature must have had in mind the meaning of the word "appropriate" in using it. I find that Webster's Dictionary gives the following definitions for the verb, "appropriate":

"1. Orig., to make peculiarly the possession of someone; as, to *appropriate* to the Lord; now, to take to oneself in exclusion of others; to claim or use as by an exclusive or pre-eminent right; as, let no man *appropriate* a common benefit.

"2. To allot or attribute as specially belonging. *Archaic.*

"3. To make suitable; to suit. *Archaic.*

"4. To set apart for, or assign to, a particular purpose or use, in exclusion of all others."

The fourth definition, it seems to me, is the only one the legislature can have had in mind in using the particular language, "appropriate according to law all moneys . . . which come into his hands." This seems to set on him the duty of properly directing the course of the moneys belonging to the State which come into his hands or those of his subordinates, and no more.

The question of whether or not he will be personally responsible for misdeeds of his subordinates seems to be answered by the reasoning of the Court in the case of *Cumberland County vs. Pennell*. There the Court very definitely holds that the County Treasurer is not an insurer of the public money that comes into his hands.

The effect of the Personnel Law, P. L. 1937, Ch. 221, must not be overlooked in this connection. The employees in the office of the Secretary of State are in the classified service and are sent to the Secretary by the Director of Personnel. Although he can, as a matter of fact, refuse to accept any person assigned to his department, nevertheless in practical effect, he does take those who are sent there by the Director. Under the circumstances, when we take into consideration the meaning of the word "appropriate" and the reasoning of the Court in the Pennell case, it is difficult to see how the Secretary of State could be regarded as personally responsible for errors of malfeasance or misfeasance by his subordinates, unless he were himself guilty of actual or possibly active negligence in the employment or retention or assignment of duties of employees.

FRANK I. COWAN

Attorney General