

# MAINE STATE LEGISLATURE

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September 22, 1943

William D. Hayes, State Auditor

Audit

John G. Marshall, Deputy

Attorney General

**Bond coverage - Insurance Commissioner**

In response to your inquiry under date of September 21st about the amount and form of a bond to be executed and delivered by the Commissioner of Insurance of the State of Maine, your attention is directed to Chapter 320 of the Public Laws of 1943, Section 1 of which provides that the State Auditor and the Commissioner of Finance shall, as of March 31st of each year, prepare a list of all State officials and employees, etc., who handle moneys or other property belonging to the State. From said list they shall designate those State officials and employees who, in their opinion, should be bonded, and the amount of the bond which should be required from each such official or employee.

This would seem to indicate that the list should be prepared as of March 31st of each calendar year; but reading on in that same section we find this language: "They shall further from time to time designate bonds which should be increased or decreased, and shall designate what if any additional bond should be required. . . from an official. . ." and further, "All such designations shall be submitted to the governor for his approval, and within 10 days after the granting of such approval each such designated official. . . shall give a bond as hereinafter provided. . ."

As I understand it, the Auditor and the Commissioner of Finance have received approval from the Governor for the additional bond and additional coverage to be provided by the Insurance Commissioner, and, in view of the clearly expressed authority delegated by the legislature to the State Auditor and the Commissioner of Finance, together with the clear and unambiguous intention of the legislature therein expressed, it is my opinion that the State Commissioner of Insurance is therefore obligated to furnish the additional coverage to the extent designated.

You have further inquired as to whether or not the bond executed and delivered by the Insurance Commissioner would cover the ex officio office held by the Insurance Commissioner as a member of the Industrial Accident Commission in this State; and I am of the opinion that it does not. A rider should be added by the bonding company extending the coverage to this particular office, or a new bond should be executed. In order for the bonding company to be liable for any default or defalcation arising on the part of ex officio members of any commission or office in the State, it would be absolutely necessary for this coverage to be recited explicitly in the bond itself.

46 Corpus Juris 1067, sec. 396: "Where an officer holds two distinct offices, although one is held ex officio, a bond given for the faithful performance of one office does not cover his liability for his acts in the other office. . . "

John G. Marshall  
Deputy Attorney General

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JGM:c