

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

October 6, 1943

Inland Fisheries and Game

Attention—Mr. Malloy

In answer to your inquiry of October 5th, as to whether or not an officer has the right to present the State's case and examine witnesses before a lower Court, my answer is that under our law, only a person duly admitted to the practice of law has that right. However, the Judge or Trial Justice may permit an officer to suggest questions to him which he in turn will ask of the respondent or other witnesses, and in some instances it would not be considered improper for the Judge to permit the officer to ask questions or cross examine witnesses.

There is a rule which is quite carefully adhered to in our courts, that is where even a lawyer is a necessary witness the courts rule that he should withdraw as counsel and appear only as a witness. But even this rule may be relaxed where the nature of the lawyer's testimony relates only to an incident or evidence on a minor issue.

JOHN G. MARSHALL

Deputy Attorney-General

October 11, 1943

Alfred W. Perkins, Commissioner

Insurance

This department has previously expressed an opinion to the State Auditor relative to the bonding covering required, or to be required from the Insurance Commissioner and it is assumed that the contents of that opinion have been communicated to you.

A review of the statutes reveals that you are obliged to execute a bond to qualify for the office of Insurance Commissioner. Another statute makes the officeholder of Insurance Commissioner an *ex officio* member of the Industrial Accident Commission. The latter statute does not specifically require a bond, nor does it exempt the holder therefrom, nor does it read that the bond executed by the Insurance Commissioner covers the *ex officio* position. Consequently, the decisions of our Courts were read as reported in the leading legal digest systems and it was learned that the bond executed by the holder of one office does not cover other offices held *ex officio* by that officer in the absence of statutory expression accordingly.

Under Chapter 320, P. L. 1943, the Legislature has expressed its will to have all officials and employees adequately bonded and to that end, considerable authority is vested in the Auditor and the Commissioner of Finance as follows: "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 either from an official or employee who changes his employment within State departments or from a newly appointed or elected official or employee."

A further provision of this chapter reads as follows: "The state auditor and the commissioner of finance shall select the type of bond, in form prescribed by the insurance commissioner, which shall be

given." This language has been construed to mean that the auditor and the commissioner of finance, after approval by the Governor, shall have the authority to make these designations. Such a list has been submitted to the Governor and his approval has been obtained.

The bond executed and delivered by you to qualify as Insurance Commissioner will remain in effect until its normal expiration date, but that would not comply with the designation now made by the Auditor and the Commissioner of Finance for coverage in your *ex officio* position as a member of the Industrial Accident Commission and to that end, it is our opinion that you should give a bond to cover that position, or have the Bonding Company provide a sufficient rider on your present bond to provide for coverage in that manner. It is the duty of the Insurance Commissioner to prescribe a form of rider in the event that method is used.

JOHN G. MARSHALL
Deputy Attorney-General

October 13, 1943

Hon. Joseph H. McGillicuddy
Treasurer of State of Maine
Augusta, Maine

Dear Sir:

The following questions have been filed in this office:

1. Has the Treasurer of the State of Maine authority to lodge securities belonging to the State of Maine in the Federal Reserve Bank of Boston, or in any other location outside of the confines of the State of Maine?

The answer to this must be in the negative. The Treasurer is the elected custodian of the moneys and funds of the State, and as such he has the authority and responsibility of taking care of them. His general authority under the statutes is cited in R. S. Chapter 2, Section 75, as most recently amended by P. L. 1943, Chapter 192. It will be noted, however, that the statute expressly limits his authority for the deposit of "moneys, including trust funds of the state" to "banking institutions or trust companies, or mutual savings banks organized under the laws of this state, or in any national bank or banks located therein."

P. L. 1943, Chapter 192, cited above, enlarges his authority for the investment of the State's moneys but does not enlarge his authority for making deposits. Since bonds, notes, certificates of indebtedness or other obligations of the United States of America in which he is authorized to invest the State's moneys represent those moneys, and since further they are in such form when purchased by the State of Maine that they are readily convertible into money, it necessarily follows that a restriction on deposit of moneys outside of the State of Maine applies equally to securities purchased with those moneys.

2. The second question that has been asked is whether or not securities purchased under the above cited amendment to the