

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

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

statute are subject to the individual order or request of Joseph H. McGillicuddy, Treasurer of State?

The answer to this must be in the affirmative. The Treasurer of the State of Maine is sole custodian of its funds. He has the power and responsibility of depositing said funds, and of changing such place of deposit as his judgment dictates.

Very truly yours,

FRANK I. COWAN
Attorney-General

October 14, 1943

Hon. Sumner Sewall, Governor
Attention: Miss Whelpley

Executive

Incompatibility of Certain Offices

Question. Is the office of deputy sheriff incompatible with the holding of a commission as notary public, under the Constitution of the State of Maine?

Answer. It is.

The office of deputy sheriff is a part of the executive division of our government. The holder of a commission as notary public exercises some of the functions of the judiciary under the judicial branch of our government. Therefore, it being expressly stated in the Constitution of Maine that there shall be separate and distinct branches of government, the exercise of the functions of more than one branch of our government by one individual is incompatible.

JOHN G. MARSHALL
Deputy Attorney-General

October 29, 1943

Daniel T. Malloy, Chief Warden Inland Fisheries and Game

You have inquired about the rights of the wardens to use certain methods to stop cars on the highways, the owners, operators or occupants of the same being under suspicion of having violated the fish and game laws of the State. The officers would be taking considerable personal risk if they undertook to obstruct the highway by placing any object in the highway which might be struck by a person, and particularly a person who himself had not violated any law.

At the outset, it should be stated that the officer is always liable for civil wrong committed in exceeding his authority in making arrests, whether it be for making the arrest in the first place, without the use of force, or in making a perfectly proper arrest, but in the latter instance, of using excessive force. In a government of this kind in which we live, the rights and liberties of citizens are jealously guarded, and one court has written that it is better that a hundred culprits escape than that the rights and liberties of one individual should be illegally abused. Yet officers of the law are charged with the specific duty, and of course, they must take some risks themselves in the exercise of this duty. The manner in which they attempt to enforce the law is dependent, in the first instance, on whether the offense committed is a misdemeanor or a felony.