

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

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.