STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

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for the calendar years

1943--1944

also believe that a felony had been committed. A great deal could be written on this last subject, but probably a discussion with the wardens from time to time would serve in better stead to clarify the meaning of "reasonable belief."

Self-defense on the part of the warden. If the officer is assaulted he is not bound to fly to the wall (this means to retreat): but, if necessary to save his own life or to guard his person from great bodily harm, he may even kill the offender; this rule applies, even though the arrest is being made for a misdemeanor.

Aside from the law, in cases involving arrest, the tendency has been to strive to accomplish this end, not by force, but by skill on the part of the officer or investigating authorities. Of course, there have been instances where officers were confronted with dangerous persons, and the danger was so great that all likelihood of arrest was in doubt, to the point that officers knew in advance of the imminent danger occurring when their presence was discovered; but aside from those cases, the officers have been, by constant work and diligent thinking, able to develop and prepare a much better case against the violator than they were with the use of force alone in the first instance.

I realize that this is a very brief discussion of this problem, and, as when we discussed the matter the other day, I believe it would be better to have a discussion with the wardens on this subject at such time or times as small groups of them can get together.

JOHN G. MARSHALL
Deputy Attorney-General

November 3, 1943

Honorable George S. Brown
Brunswick, Maine

Dear George,

I have your letter of October 28th in regard to the Brunswick common. R. S. Chapter 2, section 10, authorizes the federal government to acquire "by purchase, condemnation or otherwise any land in this state required . . . for any of the purposes of government."

It is apparent from this that the government can acquire title to land in the State by condemnation in any case and by purchase where there is authority to give a deed. My feeling in regard to Brunswick Common land is that it has the properties of park land. If so, the Town of Brunswick cannot convey it without specific authority from the legislature, inasmuch as lands dedicated to the public are the property of the whole public, that is, the whole State, and not the exclusive property of the municipality in which they lie.

I find that Ruling Case Law (which is a good law text), volume 20, page 645, section 13, classes squares, parks and commons together and states that they cannot be sold or leased by the municipality, stating further that the legislature has no power "as against the dedicators" to authorize such disposal.

There are a number of cases in the country in connection with which courts have discussed this question. Last January, as you will recall, I had to hold that the deeds given by Houlton and Presque Isle to the United States Government were nullities, since the statute authorized communities to acquire lands for airport purposes but did not give them authority to dispose of those lands. For that reason a special act was passed by the legislature ratifying the sale.

In connection with the Brunswick common, the language of the original proprietors in 1742 is very general. "To lay in general and perpetual commonage to the said Town of Brunswick for ever," does not leave us very much to go and come on in trying to determine whether the proprietors dedicated this land for an express purpose or a general purpose.

In view of the fact that the courts have expressed doubt about the authority of the legislature to authorize the sale of a common against the wishes of the dedicators, it is probable that the safe thing for the Federal Government to do is to condemn the land. That, however, is a matter for the Federal attorneys themselves to decide.

Sincerely yours,

FRANK I. COWAN
Attorney-General

November 5, 1944

J. A. Mossman, Commissioner of Finance

I have examined P. L. 1943, Chapter 349, reading as follows: "The adjutant general shall receive an annual salary of $4,500; he shall receive no other fee, emolument or perquisite."

I have compared this statute with the other salary statutes of the State. I note your suggestion that the clause, "He shall receive no other fee, emolument or perquisite," must mean that "as adjutant general he shall receive, etc." We find in the attorney-general's statute, for instance, the words, "in full for all services and in lieu of all fees." In the statute regarding the treasurer we find the words, "He shall receive no other fee, emolument or perquisite." I find in no other statutes in regard to salaries any suggested restraint on receipt of any additional pay for services outside the duties of his office. This might indicate that the State treasurer and the Adjutant General are prohibited from receiving any additional pay for additional work. However, the whole history of the State is to the contrary. It has always been recognized that if a person could handle matters that did not in any way conflict with his official duties and were not prescribed for him by statute or by a superior (that is, if he voluntarily assumed additional duties, the performance of which did not in any way detract from his handling of his position) there was nothing to prevent his being paid for the extra work. In other words, the apparently restrictive language applies to his own official duties and to nothing else.

The way this has worked out is illustrated in R. S. Chapter 125 in many places. Several of the heads of departments are given salaries