

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

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

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and it is also provided that they shall be paid traveling expenses when they are on State business. With some other officials there is provision of a salary, but no mention of traveling expenses; yet it is very apparent that if the State sends one of its officials or employees on an errand in connection with his duties, and the performance of that errand requires the payment of railroad fares or hotel bills in a place other than that where his office is located, the State must pay those extra expenses. It is contrary to sound public policy for the State to refuse to pay them.

You are therefore justified in assuming that your interpretation of Chapter 349, P. L. 1943, is a reasonable one and that there is nothing to prevent an Adjutant General from receiving compensation for services outside of his official duties, if those services are voluntarily assumed by him and the performance thereof does not in any way interfere with the functioning of his official position.

FRANK I. COWAN
Attorney-General

November 9, 1943

Jacob Philip Rudin, Chaplain, USNR
Navy No. 128
c/o Fleet Post Office
San Francisco, California

Dear Sir:—

I have your communication of October 21st asking whether a marriage by trans-Pacific telephone would be recognized as legal in the State of Maine. You do not state whether both parties to the marriage would be together at one end of the telephone wire and the clergyman performing the ceremony at the other end, or whether one of the parties would be in this country and one over on the other side of the ocean, so I cannot answer your question quite as asked.

It is the general opinion in this State that a marriage by proxy of residents of the State of Maine is not a valid marriage under our laws, although it is possible that such a marriage, which was valid under the laws of the jurisdiction in which the parties lived at the time of the marriage, would be recognized as valid in this State. I don't know that the question of a marriage where the parties are out of sight of one another and where the only means of communication during the ceremony is by telephone would be recognized by our courts or not. I would consider it extremely doubtful. The actual physical presence of the official performing the marriage ceremony in the company of both the contracting parties would, I believe, be considered a requirement by our courts.

Very truly yours,

FRANK I. COWAN
Attorney-General