

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

November 9, 1943

William D. Hayes, State Auditor

Audit

I wrote to Judge Chaplin, Judge of Probate for Cumberland County, on November 2nd, asking for his interpretation of the statute re public administrators. He has had the Register of Probate reply under date of November 5th, and the interpretation of the law which appears in Mr. Peabody's letter is exactly in accordance with the construction which this office had already put on it. I quote from the letter:

"We construe this Statute to give the Public Administrator the sole right to take out administration except where the widow, widower, or next of kin files a petition for administration prior to the issuing of letters to the Public Administrator, as set forth in the latter part of this section. The creditor has no standing to petition or be appointed administrator.

"It will be noted, however, that the authority of the Public Administrator only extends to the estates of persons who die intestate in the County, that is, resident or domiciled therein, and not to cases where a non-resident of the State leaves property within the State of Maine. In the latter case, we construe the law to be that a creditor may petition for administration under the facts stated in section 30 even though he leaves no widow, widower or next of kin in the State of Maine."

FRANK I. COWAN

Attorney-General

November 10, 1943

Harrison C. Greenleaf, Commissioner

Institutional Service

I am returning herewith your proposed Executive Order in regard to the use of inmates of institutions. The only change I have suggested is in Paragraph 3, where I have substituted the word "permitted" for the words "required of the inmate."

I have added a fourth paragraph which should receive further thought, but in its present form reads as follows:

"Inmates of institutions shall not be permitted to be so employed against the objection of other persons employed on the same job, nor shall any persons convicted of homicide or offences of a flagrant nature or of sex offences be permitted to avail themselves of the privilege of such employment."

We have persons who are incarcerated in our prisons and others in corrective institutions who are potentially dangerous. The law does not permit us to keep them there indefinitely, but we would be properly subjected to severe criticism, if we released them for outside work under any except the gravest emergency. Such emergency cannot be regarded as existing as yet. I presume that the regulations which you contemplate in sections 1 and 2 will be sufficiently firm so that only those persons could be released for this activity (which is, after all, a great benefit to them) whose crimes are of a minor nature.

In section 1 the words "they deem" in the next to the last line are ambiguous, in that they seem to refer back to the inmates, and I suggest that you edit the language somewhat.

I have added sections 5 and 6 to the Order. As I have written them, they read as follows:

"5. The time spent by the inmate, as herein provided, outside the confines of the institution shall be included in the time spent in serving his sentence, but any violation by the inmate of the terms of this order or any rules or regulations issued hereunto shall forthwith terminate the privileges extended to the inmate under the terms of this order.

"6. A failure of any inmate employed as herein provided to return at the required time to the institution to which he was sentenced (or in which he was being confined when he was extended the privilege of outside work under this order) shall be regarded as an escape."

Inasmuch as the State is endeavoring to assist in meeting an alleged man-power shortage, I cannot conceive that the question of union membership will be raised. Certainly the State cannot consent to the attaining of rights to control the activities of the inmates by any person except the duly constituted officials under whose control they are.

Inasmuch as union membership is in itself a special privilege and applies only to a very small part of the population of the State and to very few industries, I believe the question should not be raised in connection with these inmates who are loaned to industry by the State. We can very easily find ourselves getting into a situation where we seem to be taking other than an impartial attitude. Such a position is one that we, as State officials, should be careful to avoid, lest we be embarrassed later in our dealings with the people of the State.

I presume that inmates will be so employed that it will be unnecessary to hire extra guards to watch them. If such guards are necessary, there can, of course, be no advantage at all in issuing the order.

FRANK I. COWAN
Attorney-General

November 10, 1943

Harrison C. Greenleaf, Commissioner Institutional Service

In this same cover you will find comment on the proposed Executive Order. There is a possible objection to your farming out inmates of institutions, even when they sign a waiver of their rights to serve their sentences in jail and expressly ask for transfer to another place or another method of treatment. The State Prison, the State Reformatory for Men, and the State Reformatory for Women are penal institutions. In the absence of express statute, there is a very real doubt in my mind whether the Governor, under the terms of the Civilian Defense Act, can authorize a change in the place where a prisoner shall serve his sentence. Chris Roberts is very eloquently and forcefully calling to our attention the fact that penal statutes must be strictly followed.