

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

(P. L. 1943, Chapter 358) is separable from the rest of said act. Its declaration that certain diseases are infectious and communicable is not in any way to be modified by the language of the remaining paragraphs of said Section 37, nor by the provisions of Sections 38 and/or 39.

Section 38 is a method provided for determining whether a suspected person is or is not suffering from certain infectious and communicable diseases. The person may not willingly submit to examination. The legislature has furnished authority for making such an examination against the will of the suspect. Whether or not Section 38 is an unconstitutional invasion of the rights of the person examined is for the Supreme Court to say. Once the legislature has spoken, the statute is presumed to be valid till the Supreme Court has declared otherwise, and it is our duty to carry out the legislative provisions.

Section 39 provides for treatment of a person found infected. The remarks above in regard to Section 38 apply equally to Section 39.

There is nothing in Chapter 358 that limits in any way the duties of the Bureau of Health in its war on infectious diseases. The statute simply adds four diseases to those previously declared infectious and communicable and tries to furnish an additional method for suppressing them.

FRANK I. COWAN
Attorney-General

December 8, 1943

Hon. W. Mayo Payson
Corporation Counsel, City of Portland
Portland, Maine

Dear Mayo,

I have your letter of December 6th in regard to the venereal diseases statutes. Dr. Mitchell of the State Bureau of Health has consulted with this office frequently in regard to the above statutes.

The doctor's difficulty, and the difficulty of this office, has been in devising a way of using P. L. 1943, Chapter 358. Apparently, it ties in with Chapter 330 and with the 1933 laws. I cannot believe that Chapter 358 must stand alone. It is a rewriting of certain sections of the 1933 laws. Moreover, the wording of the first paragraph of the rewritten Section 37, which provides that the four diseases therein named "are hereby declared to be infectious and communicable diseases, dangerous to the public health," cannot, to my mind, be other than an addition of those diseases to the list heretofore declared infectious and communicable.

Whether or not the machinery set up in Chapter 358 is to some extent unworkable does not, it seems to me, detract from the authority of the State Bureau of Health to act in the protection of the public from all diseases declared by the legislature to be infectious and com-

municable. The machinery in Chapter 358, I believe, is simply an addition to procedure already covered by our statutes.

I have given Dr. Mitchell an opinion on that subject, a copy of which I enclose herewith.

Sincerely yours,

FRANK I. COWAN
Attorney-General

December 9, 1943

Harold E. Crawford, Municipal Auditor

I have your memo of December 8th in regard to the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. I have been studying the Act off and on for the last two years and have discussed the tax phase of it somewhat with Bank Commissioner Robinson. Yesterday I discussed it with Mr. Stevens, the State Assessor.

In the first place, I want to call your attention to the fact that in our earnest desire to assist the municipalities we are in danger of going the way of all bureaucrats. The totalitarianisms of Italy and Germany are the direct result, not of a deliberate plan by the dictators to impose themselves absolutely on their fellow citizens, but because they sensed a real or fancied weakness in local affairs and insisted on helping out localities, whether the latter really wanted it or not. As a result of this interference by the central government in local matters, the localities quickly lost their identities, and the central government became supreme. The individual who was directing matters from the central government then found himself with absolute responsibility and began enforcing government by direct decree. The words of the poet that the road to hell is paved with good intentions are still sound philosophy.

It is not the duty of the Attorney-General to act as adviser to the towns, nor for the local collectors. Not only that, but he has no right to do so, and that duty and that right cannot be given to him by any department of the State attempting to advise the officials of the towns. It is not the duty of the Department of Audit to be public adviser for municipal officers. You have no responsibility there, and you have troubles enough of your own without volunteering to take on the troubles of others. Local officials have no less intelligence than State officials; but it is a human trait to pass on problems that seem difficult to somebody else, who, we think, has had more experience. It is also a human trait to dodge responsibility. Some town officials, I am sure, occasionally attempt to dodge responsibility by tossing their problems into the laps of the members of the State Department of Audit. You must not let them do it. You are stepping outside your proper function. Your job is to suggest a uniform method of bookkeeping and to conduct your audits. Your job is not to act as adviser for tax collectors or anybody else.

The above is not written in a spirit of adverse criticism. The State Department of Audit is doing a wonderful job; but for that very reason some of the town officials are likely to try and shrug off on to your shoulders burdens which they should carry themselves.