

# MAINE STATE LEGISLATURE

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STATE OF MAINE

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REPORT

OF THE

ATTORNEY GENERAL

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for the calendar years

1943--1944

Section 81 provides that when the clerk knows of any birth, marriage or death which is not reported in his office, he shall collect the facts and record them. Here again there was apparently no error. The marriage of Mr. Feinstein was correctly recorded according to law and needs no correction.

This question is, of course, not a new one. We have women getting married every day and assuming for purposes of convenience the family names of their husbands. If they have been voters under their maiden names, they usually notify the board of registration of voters that they have changed their names, and the board makes the appropriate change on its voting list. Attention is called to the numerous instances that occur of women obtaining divorces with permission from the court to resume their maiden names. The fact that this permission is unnecessary under our laws is beside the point. The reason I speak of this is because there is no record kept of this change in the town or city clerk's office.

FRANK I. COWAN  
Attorney-General

December 28, 1943

Hon. Sumner Sewall, Governor

*Subject: Reappointment of State Humane Agents*

With regard to your inquiry of December 23rd, I beg leave to advise that I find no provision in the statutes relative to the reappointment of a State Humane Agent. The only provision is Section 70 of Chapter 135, which is the one you are familiar with and refer to in your inquiry as the "original application for a first appointment."

I am of the opinion that when the term of a humane agent expires his reappointment can be made only under Section 70, upon application by the officials of a city or town, the commissioners of any county, or the officers of any Society for the Prevention of Cruelty to Animals.

ABRAHAM BREITBARD  
Deputy Attorney-General

January 5, 1944

F. K. Purinton, Secretary

Executive

With reference to your memo of December 30, 1943, relative to the status of Mr. .... who held a commission as Trial Justice issued in 1939 and, while holding said commission, qualified as a member of the 1943 legislature.

He had already been advised by this department that by qualifying as a member of the legislature he simultaneously vacated the office of Trial Justice. His inquiry now is whether his resignation from the legislature would reinstate him to the office of Trial Justice which he had vacated.

Such would not be the effect of his resignation from the legislature. By the act of qualifying in that body he surrendered his office as Trial Justice just as completely as if he had resigned. His commission was

then no longer in force and he could not revive it by resigning from the legislature.

The office is now vacant and the Governor may appoint him or anyone else as a Trial Justice. . . .

ABRAHAM BREITBARD  
Deputy Attorney-General

January 5, 1944

Harrison C. Greenleaf, Commissioner      Institutional Service

I have your memo of January 4th in regard to the reduction of sentence of convicts in the State Prison at the rate of seven days per month. Curiously enough, the case of Avis Clark came in for a very considerable discussion at the time she was sentenced. It was my belief, and is now my belief, that a sentence in a manslaughter case to the State Reformatory is not a proper sentence. I believe that manslaughter is not within the provisions of the general statute providing that a woman may be sentenced to the Reformatory in any case except murder, where she would otherwise be sentenced to the State Prison. The judge agreed with me and sentenced her to State Prison.

Technically, she was then "confined" in the State Prison. Under the provisions of P. L. 1935, Chapter 92, she was transferred from the State Prison to the Reformatory. The court has not seen fit to take into consideration departmental procedure under such circumstances. The theory of the court is that the person is taken to Thomaston and there "confined" and transferred thence to Skowhegan. I believe, under your departmental procedure, you have the woman taken directly from the court where she is sentenced, or from a local jail, to Skowhegan, without detouring through Thomaston. We still feel that she has been "confined" in the State Prison and is therefore entitled to the credit of seven days per month.

FRANK I. COWAN  
Attorney-General

January 7, 1944

Mr. Maurice E. Worcester  
Columbia, Maine

Dear Mr. Worcester,

With reference to the question you put to me, whether you may become a member of the legislature while holding the office of probation officer in Washington County, I have come to the conclusion that you cannot hold both.

Under the statute, a probation officer is appointed by the Governor and Council and his duties primarily relate to the enforcement of State laws in aid of the courts administering and enforcing State laws. You are thus a State officer, although your compensation is paid by the county wherein you reside. See *State Treasurer vs. Penobscot County*, 107 Maine, 345, at page 348.

Under Article IV, Part Third, Section 11, of the Constitution of Maine, a person holding an office of profit under the State may not,