

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

then no longer in force and he could not revive it by resigning from the legislature.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

without relinquishing the former office, hold a seat in either house. The office you hold is an office of profit. See Opinion of the Justices, 95 Maine 585. I have given you the citations as you told me when you were here that you had asked Mr. Dunbar's opinion and he had suggested that you might inquire here. As these are my personal views, you may show this letter to Mr. Dunbar and see if he agrees with me.

Yours truly,

ABRAHAM BREITBARD
Deputy Attorney-General

January 7, 1944

Honorable Sumner Sewall, Governor of Maine

Public Laws of 1943, Chapter 300, providing for the protection of State employees who have entered the military or naval service of the United States while in such employment, is not limited to persons having no definite term of office, but should be so construed as to apply to State officials holding statutory positions. The protection, however, cannot run beyond the date at which their terms of office expire.

The Insurance Commissioner is protected during his present term.

FRANK I. COWAN
Attorney-General

January 11, 1944

Miss Nellie B. Chamberlain
Town Clerk
East Lebanon, Maine

Dear Madam:—

A marriage license is void if not used within one year after date of its issuance. This applies also to a case where the certificate of the physician relative to blood test is submitted.

Very truly yours,

ABRAHAM BREITBARD
Deputy Attorney-General

January 12, 1944

Hon. Robert M. Lawlis
Judge of Probate
Houlton, Maine

Dear Bob,

Mr. Hayes, the State Auditor, has turned over to me your letter of January 7th in regard to the Estate of John Starling and Lyman Willard, the administrator. We have been trying to figure out a proper method of procedure from this point. The statutes are fairly clear, but various sections, as you very well know, are somewhat conflicting in their practical application. However, the burden does seem to rest on the Judge of Probate to cause action to be taken.

It seems to me that the Judge can, sua sponte, issue citations to delinquent administrators and executors. The statutory provisions in