

# MAINE STATE LEGISLATURE

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January 7, 1944

To Honorable Sumner Sewall, Governor of Maine

From Frank I. Cowan, Attorney General

Re: Judge of Hallowell Municipal Court

*no*  
*Wrong*  
*see pg 29*  
*create office*  
*see pg 29*

I have had the statutes checked, and the records in the office of the Secretary of State, and apparently there is no Recorder for the Hallowell Municipal Court. Under the circumstances, if the Judge leaves his Court for an indefinite period of time, whether voluntarily or involuntarily, the Court cannot function. There are certain matters over which that Court has exclusive jurisdiction, and such matters would, in the absence of the Judge, stand continued until such time as he might return.

It may seem a hardship on the Judge to say that he can abandon his position through operation of law, but such must be the necessary conclusion in the case of the Hallowell Municipal Court when the Judge goes into military service, whether he goes voluntarily or involuntarily. In either case, he loses the power to function as a Judge, and the length of time that he would be entitled to function cannot be determined by himself but by others. His absence differs from absences we would ascribe to "acts of God." It follows, then, that we must conclude Judge Naiman abandoned his office when he went into the Army.

The State Constitution, Article VI, Paragraph 8, provides that the Executive shall appoint Municipal Judges and that the term of office shall be four years. The Executive cannot issue a commission on any conditions, because those conditions would be an invasion of the necessary prerogatives of the judiciary. Therefore, when, after Judge Naiman's induction into the Army, the Governor appointed Mr. Peirce as Judge of the Municipal Court at Hallowell, and Mr. Peirce was confirmed by the Council and qualified in that position, he became the Judge of the Court with the right to serve in that capacity for four years from the date of his commission.

The fact that Judge Naiman was mistaken in his belief that he was obtaining a leave of absence cannot alter the case. He might be held by the Army for one month; he might be held for several years. His letter asking for leave of absence was not a letter of resignation, but his going away and leaving his Court vacated his office just as completely as if he had resigned.

This opinion does not necessarily apply to any other Court. Every case must be treated individually, due to the difference in the charters of the various Courts and the fact that some are set up in such fashion that a Judge can be protected under Public Laws of 1943, Chapter 300, while others are not.

Frank I. Cowan  
Attorney General

cc: Governor Sewall  
Judge Peirce  
Judge Naiman  
Council of State Governments