

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

percent of the gross direct premiums collected by any fire insurance company of whatever type collecting advance premiums on policies written in the State of Maine, and that there should be no such tax placed on deferred premiums, commonly called assessments.

I believe that the error in the opinion which I am told was issued from the Attorney-General's office was due to the fact that the Deputy in rightly construing an assessment as a deferred premium failed to note that the Statute in question as worded can refer only to advance premiums.

FRANK I. COWAN
Attorney-General

February 2, 1944

J. A. Mossman, Commissioner of Finance

Funds of State Liquor Store in Madawaska

I have your memorandum of January 31st. Although technically the funds of the State Liquor Store in Madawaska become subject to the control of the State Treasurer at the moment they are received in the store, the practical matter of transmission must be considered in applying the provisions of Chapter 192 of the Public Laws of 1943. Under the circumstances existing, the Royal Bank of Canada, Edmundston, New Brunswick, may be regarded as one of the essential steps in transmission of funds so as to place them directly under the control of the State Treasurer. My understanding is that the money will be deposited during banking hours in the Royal Bank of Canada, there to be credited to the Northern National Bank of Presque Isle, which, according to the manager of the Edmundston Branch of the Royal Bank, is carrying an account at said branch in U. S. dollars. Presumably, the ideal method of procedure would be for the manager at Edmundston to wire the Northern National Bank at Presque Isle as soon as the cash is received in the branch bank, so that the entry in favor of the State of Maine could be made on the books of the Northern National Bank on the same day that the money is desposited. The wire, of course, should be sent collect, and the receiving bank should deduct the charge therefor from the deposit. If a wire report is impracticable, you will be justified in approving a report by mail from the branch of the Royal Bank of Canada to the Northern National Bank, which is to have the effect of setting up the account as at the earliest practicable moment as a deposit in the Northern National Bank.

FRANK I. COWAN
Attorney-General

February 2, 1944

F. K. Purinton, Executive Secretary, Executive Department

I have your memo of January 28th inquiring whether the members of such boards as the Maine Military Defense Commission must qualify by taking oath and filing certificates with the Secretary of State. The provision in regard to this is found in R. S. Chapter 2, Section 56:—

“Every other person elected or appointed to any civil office shall take and subscribe the oath before any one member of the council,

or before any magistrate commissioned by the governor for that purpose, except when the constitution otherwise provides."

The meaning of the words "civil office" has in general been defined as a grant and possession of a portion of the sovereign power and the exercise of such power within the limits prescribed by the law. The courts have distinguished generally between a "civil office" and an employment. A salary is regarded as a mere incident to the office and is not a determining factor in deciding whether or not an incumbent holds such an office.

It is impossible to lay down a general rule that will absolutely cover all cases. The law is not mathematics. The statute creating the State Military Defense Commission imposes on it certain duties which seem to be a part of the governmental function. Under the circumstances the members of that Commission should qualify by taking the oath prescribed by the statute above quoted.

I assume that it is customary to issue commissions to all persons appointed to such positions and I have taken as a matter of course that they are customarily recorded in the office of the Secretary of State. If no such record has been kept, it seems to me that it is a wise procedure to keep one.

FRANK I. COWAN
Attorney-General

February 7, 1944

Harry V. Gilson, Commissioner of Education

A ruling has been requested by you as to the propriety of the payments by the Commissioner of Education from the apportionment of the State School Fund of Eagle Lake, which indebtedness accrued as of June 30, 1939, for secondary tuition to the following towns and academies:—

St. Joseph's Academy	\$400.00 plus \$6. int.
Mt. Merici Academy	200.00 plus \$3. int.
Town of Fort Kent	412.83
Town of Caribou	138.10
Town of Houlton	127.83

\$1,287.76

As we understand it, the affairs of the town were taken over by the Emergency Municipal Finance Board on August 3, 1939. In December of that year the Commissioner of Education made the payments above set forth and deducted the same from the apportionment of the School Fund to that town and remitted the balance.

The Emergency Municipal Finance Board then brought the matter to the attention of the Commissioner of Education and suggested that these payments were not properly made, as prior thereto, the town was taken over by the Board; and at the request of the Commissioner the receiving academies and towns returned the money, and the same was paid over to the Emergency Municipal Finance Board.