

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

Your questions to this department are as follows:—

1. Should these bills have been included in the moratorium declared on all bills payable when the Emergency Municipal Finance Board assumed control?

It is the opinion of this department that under Section 206 of Chapter 19 of the Revised Statutes, the Commissioner of Education could properly pay the "receiving" towns the accounts for tuition, the same having remained unpaid on September 1st of that year, and deduct the same from the "next regular annual apportionment" as provided in said section, and this payment was proper, notwithstanding the fact that on August 3rd previous the town was placed under the control of the Emergency Municipal Board. As we view this section, the Commissioner of Education is directed to pay such accounts when the sending town has not paid them, and we consider that the accounts due for tuition become a charge upon the annual apportionment distributed by the Commissioner of Education, who by this section is directed to pay it and deduct it from the apportioned fund. It is to be noted, however, that this section specifically provides for payment by the Commissioner only to the "receiving city, town or plantation." No provision is made for payment to academies. Hence, the only payments that could be justified under this section would be to a city, town or plantation.

2. Has the Department of Education had authority at any time since 1939 to withhold these amounts from the apportionment of funds to Eagle Lake?

We must answer this in the negative. Section 206 expressly provides that the Commissioner of Education shall pay such accounts

"at the next regular annual apportionment, together with interest on such accounts at the rate of 6% annually computed from the first day of September."

Payment by the Commissioner of Education may only be made from the next regular annual apportionment and not after that. And particularly is this true under the circumstances of this case, where the town was thereafter under the control of the Emergency Municipal Finance Board.

ABRAHAM BREITBARD

Deputy Attorney-General

February 9, 1944

Guy R. Whitten, Deputy Insurance Commissioner

With regard to your memo of February 7, 1944, it is quite clear to me that under Section 83 of Chapter 60 of the Revised Statutes, you, as Deputy Commissioner, in the absence or disability of the Insurance Commissioner, or when a vacancy exists in that office, are a member *ex officio* of the Industrial Accident Commission and the Teachers' Retirement Board.

This section provides: "In the event of a vacancy in the office of the insurance commissioner, or during the absence or disability of that officer, the deputy commissioner, shall perform the duties of the *office*." Membership *ex officio* of the boards above mentioned is part of the

duties of the office of Insurance Commissioner imposed upon him by the various statutes creating these boards. By the sentence just quoted (Section 83) the duties of the office devolve upon the Deputy Insurance Commissioner in the event of a vacancy or the absence or disability of the Insurance Commissioner; and among the duties of that office is the ex officio membership in these various boards. Hence, you may perform these duties.

I understand from the Auditor that you already are under bond in the sum of \$5,000. It is his intention to certify under Chapter 320 of the Public Laws of 1943 that this bond be increased to the amount of the bond that the Insurance Commissioner is now required to give. Hence, this disposes of your inquiry with relation to whether you are to be bonded in lieu of the Insurance Commissioner.

ABRAHAM BREITBARD
Deputy Attorney-General

February 9, 1944

Harrison C. Greenleaf, Commissioner of Institutional Service

In your memorandum of February 8, 1944, you ask to be advised with regard to the following question:

Will you please define for me the rights of an attorney to examine records of the State Prison, or of any of the state institutions, and specifically, whether or not an attorney has any right to have access to the records?

The statute imposes upon the warden of the State Prison, for example, the duty of keeping a record of the conduct of each convict; and for every month during which it appears that the prisoner has faithfully observed the rules of the prison the warden may, with the approval of the Commissioner, make certain deductions from the sentence. (Chapter 152, Section 20, as amended by the Laws of 1933 and the Laws of 1943.) Then again, by Chapter 147, Section 38, the warden is required to keep in the prison a book containing a full and accurate record of each and every transaction had under the provisions of the chapter relating to paroles. Under Section 37 of the same chapter, prisoners on parole are required to furnish the warden on the last day of each month a written report showing the conduct of the parolee during the current month, his employment, and other information which the warden is required to tabulate and make report thereof to the Parole Board. This information also is used by the Parole Board in an annual report which the Board is required to make to the Governor. Included are violations by paroled prisoners. I have not attempted to refer to all records required to be kept by the warden. I have merely referred to these for the purpose of making clear the views which I shall express.

These are all public records. A public record has been defined as one "required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law * * * made by a public officer authorized to perform that function * * *"