

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

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 * * *"

Every public record, however, is not subject to inspection by all citizens, unless expressly made so by statute. In this State we have no statute which confers upon the general public the right to inspect prison or other institutional records, nor have custom and usage, so far as I can learn, established the right. The right, therefore, to inspect the records at these institutions is to be determined by the common law.

"At common law a person may inspect public records in which he has an interest or make copies or memoranda thereof when a necessity for such inspection is shown and the purpose does not seem to be improper, and where the disclosure would not be detrimental to the public interest; but the gratification of mere curiosity or motives merely speculative or the creation of scandal will not entitle a person to inspection or to make copies or memoranda." 53 C. J., page 624. Section 40.

I would thus advise you that the records of the State Prison or any institution of which you are the departmental head are not subject to inspection by the public generally or by an attorney who represents no one having an interest in the particular record that he wants to examine. An attorney representing a prisoner as his agent would be entitled to inspect, for example, the book, card, or however the record may be kept, of the prisoner's monthly behavior and the allowance monthly for "good time," so that he may know how much time has been served and how much more time he will have to go in order to be entitled to parole or to his ultimate discharge. On the other hand, no attorney would be entitled to examine and inspect the envelope in which are kept certain memoranda relating to the prisoner which I saw in the possession of the warden on various occasions when I attended court which dealt with the history of the prisoner.

In other words, no attorney has the right to make a general inspection of the memoranda kept by the warden except those which the Statute specifically requires him to keep as a record such as those relating to the time the particular prisoner is to serve; his conduct and behavior; the time that he would be eligible for parole or discharge; and also any record which dealt with his application for parole and the decision of the Parole Board thereon. In these records he would have an interest as it is defined by the common law. In other records, he would not have.

ABRAHAM BREITBARD

Deputy Attorney-General

N. B. See previous opinions of this department as to the right of the general public to examine the records of:

- a. State Treasurer
- b. State Auditor
- c. Inheritance Tax Commissioner

FRANK I. COWAN

Attorney-General