

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

See also *State ex rel. Davis v. Hunter*, 124 Iowa, 569. In the same volume of *American Jurisprudence*, at page 919, Sec. 45, it is said,

"Where the right to, or privilege of obtaining, good conduct allowances has fully accrued, it is not subject to withdrawal, modification or denial except as clearly authorized by statute."

It therefore appears from the statutes in existence at the time, that they did not authorize the forfeiture of good conduct allowances that had fully accrued to the prisoner. Consequently, any law which would retrospectively withdraw, modify or deny credits already accrued for good conduct would be violative of the constitutional provision prohibiting *ex post facto* legislation. *Murphy v. Commonwealth, supra*. See also *Re McKenna*, 79 Vt. 34.

After due consideration of the problem here involved, I advise you:—1. That as to prisoners paroled prior to July 9, 1943, Chapter 201, P. L. 1943, is inapplicable and that they do not forfeit the credit allowed for good behavior during the period prior to the parole and while on parole.

2. That as to prisoners paroled after July 9, 1943, such time as accrued and was credited up to that date would not be subject to forfeiture.

ABRAHAM BREITBARD

Deputy Attorney-General

March 1, 1944

Philip D. Stubbs, Esq., Commissioner, Inheritance Tax Division

Re: Government Bonds payable to two or more beneficiaries

P. L., Maine, 1933, Chapter 148, Section 2, as amended, reads as follows:

"The following property shall be subject to an inheritance tax for the use of the state: (a) All property within the jurisdiction of this state and interest therein belonging to inhabitants of this state . . . which shall pass . . . 3. By survivorship in any form of joint ownership including joint bank deposits in which the decedent joint owner contributed during his lifetime any part of the property held in such joint ownership or of the purchase price thereof."

Government bonds payable to two or more persons constitute a joint ownership and the amount which a decedent has contributed in the purchase of said bonds is a part of his estate and is subject to the State Inheritance and Estate Laws.

FRANK I. COWAN

Attorney-General

March 2, 1944

J. Elliott Hale, Acting Director, Division of Sanitary Engineering

I have your memo of March 1st asking whether hot-water storage tanks come within the definition of fixtures which appears in Section 175 of Chapter 1, Laws of 1933, so that a city or town can require inspection and the issuing of a permit before such a tank can be installed. The purpose is to prevent the installation of tanks not equipped with the proper safety valves.

The wording of the statute is:—

“Fixtures for the purposes of this chapter shall be defined as: Receptacles intended to receive and discharge water, liquid, or water-carried waste into a drainage system with which they are connected.”

A review of the history of the legislation shows that this definition was placed in the section in order to protect the rural householder who might need to put a new washer in a valve or do some simple piece of repair work which would not justify the expense and trouble of calling a plumber. Apparently the language used was a little more restrictive in appearance than was intended.

In every section of the long chapter containing the codification of the health and welfare laws there is apparent intent to protect the public. The plumbing code which appears as Sections 171-179 has definitely in view the protection of the health and safety of the people of cities and towns where there is a system of water supply or sewerage. Certainly, in view of the history of destruction caused by improperly installed hot-water tanks, there can be no doubt that when the legislature used the expression, “receptacles intended to receive and discharge water,” the apparent modification contained in the words “into a drainage system with which they are connected,” was an oversight, pure and simple. No such restriction could have been intended.

It therefore becomes necessary for me to state that in my opinion a hot-water storage tank comes within the intent of the definition of fixtures as contained in said Section 175.

FRANK I. COWAN
Attorney-General

March 6, 1944

Oscar L. Whalen, Esq.
Eastport, Maine

By Chapter 269, P. L. 1943, Section 3, the law was amended as to State police officers and provides:

“As arresting officers, or aids, or witnesses in any criminal case, they shall be entitled to the same fee as any sheriff or deputy. Such fee shall be taxed on a bill of costs and shall accrue to the treasurer of the state.”

By the same chapter, Section 6, the law was amended relating to fish and game wardens in the enforcement of the fish and game laws, and this also provides that

“All fees, penalties, officers' costs and all other moneys recovered by the court under any provision of this chapter shall accrue to the treasurer* of the state and shall be paid into the treasury of the county where the offence is prosecuted.”

With regard to the other inquiries I have got in touch with the various departments, that is, Inland Fisheries and Game and State Liquor Commission, and in each instance I was informed that where a warden or an inspector for the Liquor Commission is a witness in a case outside the scope of the act which he is enforcing, he is required by rule and regulation of that department to receive the witness fee