

# MAINE STATE LEGISLATURE

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STATE OF MAINE

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REPORT

OF THE

ATTORNEY GENERAL

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for the calendar years

1943--1944

residence; second, the intention of making the place of residence the home of the person. There must be the fact and the intention.

3. Defense workers are temporarily domiciled in the towns where they work, but maintain a permanent voting residence elsewhere. Should the children of these defense workers be enumerated in the town of their temporary residence or in the town where they maintain their voting residence?

*Answer.* The children of workers temporarily residing in towns are to be enumerated for the purpose of the census in the towns where their parents maintain their legal residence, which is the equivalent of the place where the parent maintains a permanent voting residence, as it is put in the question.

4. Should the children of military personnel be enumerated in the town where their parents are stationed, when these military personnel have permanent residence elsewhere?

*Answer.* The answer is in the negative for the reasons above assigned.

ABRAHAM BREITBARD  
Deputy Attorney-General

March 29, 1944

Joseph H. McGillicuddy, Treasurer of State

*Handling of checks*

I have your memo of March 22nd in regard to the handling of checks. P. L. 1931, Chapter 216 (the administration of the State) in Section 15 provides for departmental collections. I refer you to the wording of that section. It provides substantially as follows:

1. Departments receiving funds "shall pay the same immediately into the State treasury."
2. The department or agency may, having been so instructed by the State Treasurer, deposit the funds directly in some State depository.

The fact that this section of the statute is apparently fundamentally unsound and is, as we know now, the result of a study made by persons who were not at the time sufficiently acquainted with governmental matters to make them proper advisors for a State, is beside the point. The legislature accepted the language and put it on the books.

A strict interpretation of the provisions of that section by this department would, I believe, be against the best interests of the State. I believe that the proper procedure is for us to regard this as an administrative question, and that a uniform procedure should be adopted by the department heads, such procedure to be submitted to this office for approval.

As I have told you heretofore, my personal feeling is that once a check has reached your office, whether it comes there through some other department or directly from a debtor, it is in your custody and you are responsible for it. In either case, the better procedure, it seems to me, is for you to notify the department head that you have received payment either from him or from the debtor, so that his records will be complete.

I question the propriety of asking a department head to list on his deposit slip as actually transmitted to you any funds except those which he has transmitted. Whether or not he should report back to you at all in regard to funds received directly by you and concerning which you have reported to him is an administrative matter. Here again I see no reason why he should, because it makes for extra and unnecessary clerical expense; but the bookkeeping system is handled by yourself and the gentlemen in the Finance Department and what safeguards you will put on your handling of accounts is for you to decide.

FRANK I. COWAN  
Attorney-General

March 29, 1944

Francis K. Purinton, Executive Secretary

In answer to your inquiry received by this office on March 27th, 1944, relative to the status of Judge Alton Lessard, Judge of Probate of Androscoggin County, who has joined the naval forces of the United States and your question as to whether his enlistment or induction into the Navy vacated the office he holds:

Section 7 of Article VI of the Constitution relative to judges of probate who are elected by the people of their respective counties provides:

"Vacancies occurring in said office (judges and registers of probate) by death, resignation or otherwise, shall be filled by election in manner aforesaid, at the September election next after their occurrence; and in the meantime, the Governor, with the advice and consent of the Council, may fill said vacancies by appointment, and the persons so appointed shall hold their offices until the first day of January thereafter."

The courts have recently had occasion to pass upon this question and wherever the statute or the Constitution of the State used words similar to that provision in our Constitution, it was held that enlistment or induction into the armed forces does not result in a vacation of the office, since the words "or otherwise" following the word "vacancies" import finality or permanency, the usually accepted meaning of "vacate" being to yield up possession and not merely to leave temporarily. The courts have further held that the words "or otherwise" do not include such acts as voluntary or involuntary service by a public officer in the military forces in time of war.

It would thus appear that there is no vacancy in the office of judge of probate merely by the induction of the judge into the naval forces.

If it be thought that his entry into the naval forces would constitute an abandonment of the office, so as to create a vacancy, I find that our own court has said that

"To establish such abandonment . . . the proof must show a voluntary and intentional relinquishment of the office by the incumbent, for there can be no abandonment of an office or any other right without an intention, actual or imputed, to abandon it. Such intention is a question of fact, and may be inferred from the party's