STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

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for the calendar years

1943--1944

> to a favorable record. Such a record the law contemplates to be made at or soon after the end of each month."
>
> 15 Gray's Reports (Mass.) 618.

As I have already indicated, our first enactment on the subject was Laws of 1858, Chapter 16. According to this act, the warden was required to keep the monthly record and make his recommendation to the executive. But instead of the 7-day per month allowance on all sentences, there was a scale of deductions monthly, depending upon the length of the sentence, and the longer the sentence, the more days per month the prisoner was allowed. This first enactment was changed from time to time, first by Chapter 235, Laws of 1864, and then by Chapter 20, Laws of 1866. In each of these the scale of deductions was changed by increasing the number of days monthly, depending on the term of the sentence. No material change was made in the Revisions of 1871 and 1883. In 1889, however, by Chapter 184 the statute was amended. This time the scale was eliminated, and a deduction of 7 days was to be made in all cases except imprisonment for life. The first sentence of this section reads substantially as it did until the change in 1933, before noted. The second sentence of this section contained this proviso,

> "Provided, however, that this act shall not be construed as lessening the deduction, to which any convict under sentence when it takes effect, would otherwise be entitled."

This referred to the scale contained in the previous enactment, wherein 8 days to 10 days per month were allowed on long-term sentences.

This would clearly tend to indicate that the legislature had in mind that the deduction was a matter of right and not one of grace, and something to which the prisoner was entitled, if he earned it by good behavior. It also had in mind, no doubt, that any law which would affect the term of those then serving by increasing the sentence (which would be the effect of it, if they reduced the number of days per month as a deduction) might contravene the Constitution and be invalidated as an *ex post facto* law.

ABRAHAM BREITBARD
Deputy Attorney-General

April 6, 1944

Mrs. Katherine T. Bennett
Norway, Maine

Dear Madam:—

I have your letter of April 5th in regard to Mr. Whitman, chairman of the school board of Norway. You say, "He has moved to California." The statute reads:

> "In case any member of the superintending school committee *shall remove from the town* or be absent for more than 90 days a vacancy shall be declared to exist and the remaining members shall within 30 days thereafter choose another member as hereinbefore provided. Whenever the remaining members fail to appoint

a person to fill a vacancy the same may be filled by election at a town meeting called for the purpose."

See Public Laws of 1933, amending R. S., c. 19, §35.

On your statement of fact, the remaining members of your board should meet, elect a chairman of your meeting, adopt a resolution declaring that there is a vacancy in the board, and either at the same or at some subsequent meeting, to be within 30 days after Mr. Whitman's removing from the town, you should elect another member to fill the vacancy.

Very truly yours,

FRANK I. COWAN
Attorney-General

April 10, 1944

William D. Hayes, State Auditor

Subject: Bonds of Sheriffs and their Chief Deputies

In answer to your memorandum of March 31, 1944, relating to the subject of bonds of sheriffs and chief deputy sheriffs.

I have read the sections of the statutes to which you directed our attention and the form of bond which you submitted therewith and which you say is typical of the various individual bonds filed with the Treasurer of State. I have read these provisions and others which I believe are pertinent to the inquiry, and have reached the conclusion that no changes in the statutes are necessary or advisable. Section 1 of Chapter 94, in so far as the condition of the bond is concerned, provides that the bond shall be "conditioned for the faithful performance of the duties of his office, and to answer for all neglect and misdoings of his deputies." I have found this same provision in the Revision of our Statutes for 1841. Consequently it would appear that this statute has been in effect in its present form for upwards of a hundred years. The language employed is comprehensive and includes every form of malfeasance, misfeasance or nonfeasance by the sheriff or any of his deputies.

This section should be read also with §18 of said chapter, which provides for a remedy on the bond by "any person, injured by the neglect or misdoings of a sheriff," providing that person has brought the preliminary suit to ascertain the damages.

The form of bond submitted by you has been used, I find, for upwards of fifty years. Perhaps, if records were available, we should find that this form was used when the statute on the subject first went into effect. In the many decisions which I have examined, going back a hundred years, no suggestion has been found in any of the cases brought against the sheriff or his deputies of an attack on the form of the bond. In most of these cases the question has arisen whether the deputy was performing some act which he was required to perform in his official capacity, or whether it was for neglect of some undertaking with the party or his attorney and were not official acts which the statutes required him to perform.