

# 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

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.

Thus in *Harrington vs. Fuller*, 18 Maine 279, decided in 1841, our Court has said,

"The sheriff is responsible for all official neglect or misconduct of his deputy; and also for his acts not required by law, where the deputy assumes to act under color of his office. He is not responsible for the neglect of any act of duty which the law does not require the deputy officially to perform."

This broad statement of the liability of the sheriff is certainly embraced in the language of the statute, §1, before quoted, "to answer for all neglect and misdoings of his deputies." The sheriff likewise is bound to "the faithful performance of the duties of his office," and under §18 to answer for his own neglect or misdoings.

In view of what I have said, I don't see how the liability already expressed in the language employed could be enlarged, and any attempt to enumerate the liability would, in my judgment, tend to limit it. Throughout the statutes are to be found official acts which sheriffs and their deputies are required to perform, the "neglect or misdoings" of which would render them liable to the party aggrieved. Sheriffs and their deputies are not only required to serve processes which are the initial stages of bringing a party into court, but when judgment is recovered and execution issues, the writ directs them to satisfy the execution out of the personal or real property of the debtor, and in some instances where such property cannot be found, or the debtor does not direct them to such property, they may arrest the debtor and commit him to jail. In the seizure of personal and real estate, there are certain preliminary proceedings provided by statute which require the posting of notices, the time in which this must be done, the recording of levies in the case of cumbersome personal property in the town clerk's office and in the case of real estate in the registry of deeds, the conduct of the sale, for example in the sale of real estate that each parcel, where there are more than one, be sold separately for a separate price. Any one of these, if done imperfectly, would invalidate the sale and would render the sheriff liable for his neglect.

I have here mentioned just a small part of the duties of the sheriff to illustrate that it would not be feasible to attempt to enumerate every conceivable situation which would create liability and to provide for it by statute. It would certainly be inadvisable, since we already have ample provision to take care of any wrongful act or neglect of the sheriff and his deputies, where they are to act officially in the performance of a duty required by statute.

I return the bond which you submitted.

ABRAHAM BREITBARD

Deputy Attorney-General

April 11, 1944

State Highway Commission

The question presented to this department is whether the Highway Commission may approve a payment out of the general highway fund for repairs necessitated by sudden injury to a county road and bridge