

# 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

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

in the town of Baring, a deorganized town. This injury was caused by a washout in the spring of 1943. Repairs were made at a considerable cost, the major part of which was incurred in the period from August to October of that year. The county commissioners of Washington County have made an assessment in accordance with R. S. 1930, Chapter 13, §56, as amended by Chapter 51, P. L. 1939 and Chapter 305, P. L. 1943. The latter amendment is the pertinent provision to a determination of the question here involved. It is as follows:

"Provided, however, that in deorganized towns, an assessment may be made of over 2% of the valuation thereof, in which case, the amount over the 2% shall be paid by the state out of the general highway fund on approval of the state highway commission."

Prior to the addition of this provision, as the section then stood, an assessment not exceeding 2% of the valuation on property owners in unincorporated townships and tracts of land in their counties was to be made by the county commissioners, and an assessment on the county for the balance of the amount, if the 2% was not sufficient "for repairs, cutting bushes, maintenance, snow removal and improvements, so as to comply with the provisions of the state highway laws."

By the amendment, however, special provision was made for deorganized towns and here the excess of the cost involved over 2% of the valuation was directed to be paid by the State out of the general highway fund, on approval by the State Highway Commission.

Section 59 of Chapter 13, R. S. 1930, provides for the repairs to be made in case of sudden injury, and the whole expense thereof shall be added to the next assessment to be made by the county commissioners.

We are informed that sometime in March of 1944 an assessment was made by the county commissioners of \$1,744.39. The assessed valuation of Baring for 1944 and previous years was \$55,165. 2% of this would amount to \$1,103.30. The difference is \$641.09.

We advise you that under Chapter 305, Laws of 1943, this sum is properly payable by the State out of the general highway fund and may be approved by the Highway Commission.

ABRAHAM BREITBARD

Deputy Attorney-General

April 18, 1944

Mr. A. Edwin Smith, City Clerk  
51 Read Street  
Portland 3, Maine

Dear Mr. Smith:

I am undertaking to answer your letter of the 17th inst. addressed to the Attorney-General as, with the Special Session of the Legislature here, his time is largely consumed in the matters which this body is considering.

I am likewise involved with this Session, hence I have not had the opportunity to examine the act by which the land comprising Fort