

# 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

point under any circumstances and no amount of pressure will ever succeed in making him lower that standard and certainly we have no wish to quarrel with him about that. You have a problem and it is a ticklish one, but as I said before, I see no reason for considering it insurmountable.

FRANK I. COWAN

Attorney-General

April 27, 1944

Earle R. Hayes, Secretary, Employees' Retirement System

I have your memo of April 18th in regard to employees of the legislature. The Secretary of the Senate and Clerk of the House of Representatives are, it is true, provided for in the Constitution; but there is no constitutional limitation on their terms of office. Being elected, they continue in office during the life of the legislature which has elected them, unless in the meantime the legislature sees fit to elect somebody else, or unless there is a vacancy created by removal or resignation. These offices differ from the positions of certain town officials who, the courts have stated, cannot resign without permission from the town that has elected them, due to the fact that people are just as much subject for draft to perform civilian service as to perform military service.

The most recent statutory enactments in regard to the Secretary of the Senate appear in P. L. 1931, Chapter 256. This amends the Revised Statutes and changes the period for which the Secretary shall receive a salary. As you will note, the language of the amended R. S. Chapter 125, Section 11 (the last sentence of the first paragraph thereof) is as follows:

"He shall receive a salary of \$2,000 in full for all official services by him performed during the regular session of the legislature."

Said section, as amended, contains the following sentence at its end:

"The above salaries shall be in full for all official services performed during the regular session of the legislature and no other compensation shall be allowed them, except in case of adjourned or special session of the legislature."

This seems to change the status of the Secretary of the Senate, because before the amendment said Section 11 contemplated the possibility of his having to perform services for an indefinite period throughout the term of his service. It is my opinion that in view of the language of the revision, the time credited for the Secretary of the Senate should be based on four things: (1) the entire month of December prior to the convening of the legislature in regular session; (2) the length of time that the legislature is in regular session; (3) the length of time that the legislature is in special session, and (4) any additional time that the Secretary has actually put in, in preparing for special sessions or in clearing up the work of the office after the adjournment of any session.

In regard to the Clerk of the House, we find statutory provisions in R. S. Chapter 125, Section 12, as amended by P. L. 1931, Chapter 254. Here, again, we find a change in the language which seems to be a

change of the attitude of the legislature toward the office of clerk, and instead of salary provisions that contemplate the possibility of extensive service beyond the regular session we find that the legislature is apparently treating him on a more temporary basis, while at the same time substantially increasing his rate of pay. I believe that in this case also the proper procedure for crediting time is to give him credit for: (1) full time for the period during which the legislature is in regular session; (2) full time for the period during which the legislature is in special or adjourned session; and, (3) such further time as he may show he is entitled to by reason of his services being required to prepare for a general or special session, or to clean up the work after a general or special session.

Inasmuch as all other employees of the legislature are, strictly speaking, on a purely temporary basis, it seems to me that they should be given credit for the time that they actually function, rather than for the full period over which they might be called upon to function.

The clerks and employees of the legislative committees are certainly on a temporary basis and in my opinion should be given credit only for time actually served; that is, (1) full time for any general or special or adjourned session of the legislature at which they are present; (2) full-time credit for any time that they can establish as having been spent by them in service for a committee when the legislature was not in session. For instance, there may be employees of a recess committee of the legislature who function as full-time or part-time employees of the State. They should be given credit for time put in in connection with the job, whether they are technically carried as full-time or part-time employees.

FRANK I. COWAN  
Attorney-General

May 1, 1944

William D. Hayes, State Auditor

A sheriff in the enforcement of the laws of the State has, from early times, been considered as a part of the executive branch of the government and probably for that reason it was provided by statute that the bond which qualifies him for the office should run to the Treasurer of the State (R. S., c. 94, §1.) The security afforded by this bond was not wholly for the benefit of the State, however; you will observe by the provisions of §§18-22 inclusive of that chapter that any person who is injured by the neglect or misdoings of a sheriff and who has first ascertained the amount of his damages by judgment in a suit is allowed at his own expense, in the name of the Treasurer, to institute a suit on this official bond and to prosecute it to final judgment and execution. The person who brings such suit is to endorse on the writ his name and place of residence, or that of his attorney, and a judgment is rendered in favor of the Treasurer, the execution being for the benefit of the party who brought the action. By §19, any other person having a right of action on the bond may join in that suit and file an additional declaration, setting forth his cause of action. From this brief resumé you will notice that this bond is for the benefit of all persons who may