

# 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

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

be injured or suffer damage by reason of the neglect of the sheriff or for the neglect or misdoings of his deputies.

From your memorandum it would appear that the impression you had was that the bond, being written to the Treasurer, protected only the State, and a sheriff handles very little State money, his services being largely employed by private citizens in the county for which he was elected. But the liability under the bond is much broader than that and includes every one who suffers damage through the neglect of the officer.

ABRAHAM BREITBARD

Deputy Attorney-General

May 2, 1944

Harold E. Crawford, Municipal Auditor

In your memorandum of April 29th you inquire, if a judge of a lower court having sentenced a respondent after conviction for drunken driving to pay a fine and costs, which the respondent paid and was then discharged and permitted to go free, but later, and within five days, claimed an appeal, which apparently the judge allowed, is the judge authorized to refund the fine to the respondent or should he turn it over to the county treasurer, as provided by Chapter 269, Laws of 1943?

It is our opinion that the magistrate should pay this money over to the county treasurer and that he has no right to refund it to the respondent. Where a magistrate convicts a person of crime and the respondent pays the fine and costs and is discharged by the magistrate, the function of the magistrate is ended, and his jurisdiction or control over the case and person is surrendered. The magistrate would thus have no jurisdiction to entertain an appeal, even though it is claimed within the statutory period of five days after sentence, because the respondent has abided by the sentence of the court and has been discharged on performance of the sentence. (See *Tuttle v. Lang*, 101 Maine 127.)

Your next inquiry relates to convicts who have been unable to pay a fine imposed in addition to a prison sentence and who have served the prison sentence imposed and then an additional thirty days and have applied to the sheriff to be liberated because of their inability to pay the fine and costs, and who have given a note for such fine in accordance with Chapter 147, Sections 48-50, of the Revised Statutes. Your question is, "Would you consider these notes to be legally collectible and due the county?" There can be no doubt that the note is a valid obligation and should be collected. You will notice that Section 49 provides that,

"Such note continues a lien on all of the maker's real estate until it is fully paid; and if judgment is rendered on it in favor of the treasurer, the same proceedings may be had on the execution as in other cases of contract."

This strongly tends to imply that it is the duty of the treasurer to proceed with the enforcement of the liability on the note, and, if the maker owns real estate, to enforce the lien created on the real estate.

ABRAHAM BREITBARD

Deputy Attorney-General