

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

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