

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

the evidence submitted to you shows that the applicant was a licensee in 1942, but was in the armed forces during 1943 and is still in the armed forces, you may, in my opinion, renew the 1942 license without the payment of any fee. The same argument applies with equal merit to a 1941 license.

FRANK I. COWAN

Attorney-General

See also Council Order No. 149

July 15, 1944

William D. Hayes, State Auditor

Audit

Bond of Deputy Insurance Commissioner

Your memo of June 12th relates to the bond of the Deputy Insurance Commissioner which came up for renewal April 30th last, and the question for decision is whether this may be included in a schedule bond or whether the bond in force on April 30, 1943, shall be continued and renewed annually.

I understand that the contention has been advanced that qualifying bonds given by State officials in compliance with the statute continue in force for the term of the appointment; and that qualifying bonds are so written that by their terms there is a continuing liability from the day the bond is written until the term of office of the official expires under the statute, or the term of office is otherwise terminated prior to its "normal expiration."

The further contention is advanced that under the statutes existing prior to July 9, 1943, when Chapter 320, Laws of 1943, set up a new method of providing for bonds of State officials and State employees, there was no provision for the cancellation of a qualifying bond; nor was there provision vesting in anyone the power or authority to cancel a qualifying bond prior to the expiration of the term of such official.

None of these contentions, however, apply particularly to the Deputy Insurance Commissioner. His appointment is not for a specific term, nor is he required to qualify for that office by giving bond. R. S. Chapter 60, Section 83.

I must therefore assume that the bond in question was written under the provisions of R. S. 1930, Chapter 125, Section 56, which, so far as here pertinent, is as follows:

"Bonds of Public Officials. All persons employed in the several state departments and institutions who handle public moneys . . . shall give bond in such sum as may be fixed by the governor and council to properly account for all funds coming into their hands. . . ."

This provision applies to all persons in the State departments and institutions who handle public money and to those only. In this respect it is unlike the provisions of law which require the appointed official to qualify for the office by giving bond. A person may be appointed to office, the duties of which do not involve the handling of State funds. By change in the system of management of the department or of the manner of handling funds in that department, the official may come into the possession of or handle State funds; then

again, by subsequent change while he is holding office, he would no longer handle or come into possession of public funds. I believe that it would be unreasonable to contend that a bond given under these circumstances could not be terminated, but would continue in force so long as the person was in office; that this provision was not flexible enough so as to authorize the Governor and Council, under whose order the bond is fixed, to provide for its termination, cancellation and release.

I do not believe that bonds written pursuant to that section create a continuing liability which cannot be terminated and the surety released from future liability. I am of the opinion that the Governor and Council could do so.

The bond under consideration was written April 30, 1942. Chapter 320, heretofore referred to, which took effect on July 9, 1943, provides as follows:

"Sec. 4. All acts of the legislature dealing with bonds to be furnished by state officials and employees other than the state treasurer are hereby specifically repealed, and, without limitation upon the foregoing, the following enactments, in so far as they are inconsistent with the provisions of this act, are specifically repealed."

Amongst the enactments repealed (a list of which follows) is Section 56 of Chapter 125.

In Section 1 of Chapter 230 aforesaid it is provided:

"All bonds written before the effective date of this act, in compliance with existing statutes, shall continue in force until their normal expiration dates as though the statutes hereinafter repealed had remained in full effect; no official or employee who has furnished a bond before the effective date of this act, while the bond is in force, shall be obliged to give a new bond until the normal expiration date of the existing bond."

This bond was written before the effective date of the act. But it has no "normal expiration date (s)" since it was not a qualifying bond for an official whose term was fixed by statute. The "Normal expiration" date, then, on bonds given under Chapter 125, Section 56, would be the cancellation date fixed by the Governor and Council and for that purpose not only was the bond continued in force, but the statute under which it was written remained in force under the saving clause.

To hold otherwise would mean that these bonds would be a continuing obligation until the employee died or was discharged, or, in the case of a public official, until he was removed from office, notwithstanding the fact that his duties were changed.

I am therefore of the opinion that the Governor and Council have the power and authority to cancel this bond, and that hereafter the bond of the deputy commissioner may be included in a schedule bond—or other type of bond—under the provisions of Chapter 320, Laws of 1943.

But if there be any doubt as to this, I am of the opinion that Section 57 of Chapter 2 remains in force, as that section is neither repealed specifically nor by implication by Chapter 320, Laws of 1943. It is not inconsistent with any of the provisions of that chapter.

Section 57 is as follows:

"The governor and council may require any officer who by law gives bond to the state to give a new bond when they consider it necessary; and when it is given, the obligors in the former bond are discharged from liability thereon for acts and defaults after the acceptance of the new one; and if such officer does not give a new and satisfactory bond within the time specified by the governor and council, his office becomes vacant, and shall be filled 'as provided by law."

The Governor and Council are here empowered to require a new bond when in their judgment they think it is necessary and the statute then operates on the former bond, releasing the surety from future liability. Non-compliance also creates a vacancy in the office and it may be filled anew.

No such provisions are to be found in Chapter 320. No provision is there made for the release of the surety nor the giving of a new bond for that matter, nor the creation of a vacancy if the bond is not furnished. It provides there only that bonds may be increased and decreased; the cancellation may be by the surety company only.

If Section 57 has been repealed, what would happen if a surety company of a bond given prior to July 9, 1943, should become insolvent or receivership be imminent? No new bond then could be required, as there would be no law or authority for it, and by the same token the official or employee could refuse to give a new bond, and yet there would be no vacancy to fill as contemplated by Section 57.

I do not believe that the legislature intended any such absurd result. The purpose of the new law was to strengthen the laws relating to bonds, rather than to weaken them.

Under this provision, then, the Governor and Council may require a new bond, and when it is given, the surety on the former bond is released from defaults thereafter occurring.

Returned herewith is bond of Guy R. Whitten, Deputy Insurance Commissioner.

ABRAHAM BREITBARD

Deputy Attorney-General

July 27, 1944

William D. Hayes, State Auditor

Audit

I have your memo of July 18th, in regard to the salaries of the Chief Engineer and Bureau Chiefs of the Highway Department.

As far as concerns the employment of the Chief Engineer, the statute expressly provides how he shall be selected and employed. There is no question but what he belongs in the unclassified service, although the position does not fit into any of the fifteen types enumerated under §7, in spite of the fact that §6 states that the employees are in the classified service "except persons who are holding office or employment excepted by section 7." The reason for this opinion is that persons in the classified service are employed on the basis of examinations, and no person in the classified service can be appointed except in accordance with the rules of the Personnel Board. Obviously a statute which