

MAINE STATE LEGISLATURE

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110
Aug. 16, 1944

To Governor Sewall

Executive Dept.

From Frank I. Cowan, Attorney General

Dept. Attorney General

I am returning herewith the letter of Fred E. Hanscom, Judge of the Municipal Court in Rumford. I have checked the statutes in regard to the Rumford Falls Municipal Court. P. & S. 1911, c. 119, §2 provides as follows:

"When the office of recorder of the Rumford Falls Municipal Court is vacant the judge of said court shall perform all the duties of said recorder and shall be paid the salary provided for said recorder in addition to the salary provided for said judge, until a recorder is appointed and qualified; but the appointment of a recorder of said court shall be discretionary with the governor."

As you will notice from the above section, in case of a vacancy in the office of recorder the judge is entitled to the salary of the recorder.

Authority for the judge to keep the records is contained in the original act founding the court, which is P. & S. 1897, c. 43. Section 8 of said act reads as follows:

"It shall be the duty of the ^{judge}~~judge~~ of said court to make and keep the records thereof in a permanent manner, or to cause the same to be so kept, and to perform all other duties required of similar tribunals in this state; and copies of the records of said court, duly certified by said judge, shall be legal evidence in all courts."

The provision in regard to actions by trial justices in the absence of the judge of the municipal court is found in section 6 of Chapter 43, P. & S. 1899. This reads, in part, as follows:

"In case of the absence from the town of Rumford, or sickness of the judge of said court, and during such sickness or absence, any trial justice residing in the town of Rumford shall have and exercise in criminal matters the same jurisdiction as though said court had never been established."

We have, then, a provision for the keeping of the records by the judge; a provision that in case of a vacancy in the office of recorder, the judge shall act as recorder and draw the salary of the recorder, and a further provision that when the judge is sick or absent from town (and we must read in to the old law the provisions of the new in regard to recorder) a trial justice may act just as if there were no municipal court.

Governor Sewall
Aug. 16, 1944 O. Page 2

I believe that the same person cannot hold commissions as judge and recorder. It seems to me that the statute expressly contemplates that the offices shall be filled by different individuals. However, the statute expressly provides that the judge can act as recorder when there is no recorder. I believe that Judge Hanscom should send in his resignation as recorder. Thereafter, during the time there is no recorder, he will as Judge handle the duties of the recorder and draw the salary of the recorder.

Frank I. Cowan
Attorney General

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