

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

issue the commission. The executive authority then may, when a proper application is submitted, consider not only the necessity for making the appointment, but also exercise their independent judgment in considering the fitness, integrity and character of the person designated in the application before issuing to him a commission and vesting him with the authority to arrest persons charged with violating the law relating to cruelty to animals "the same as any sheriff, deputy sheriff, or constable can do, and whose jurisdiction shall extend throughout the State. . . ."

While, under this section, the executive authority is not free to appoint some other person, it may, however, refuse to appoint the person designated and continue to do so until such person as the Governor and Council feel possesses the essential qualifications to be entrusted with the duties outlined by the statute is designated by the applicants.

I return herewith the letter of the mayor and the other memoranda which you submitted therewith.

ABRAHAM BREITBARD

Deputy Attorney-General

October 12, 1944

David H. Stevens, State Tax Assessor

Taxation

The Maine-New Hampshire Bridge Authority

I have your memo of September 18th. The Portsmouth-Kittery Bridge Authority is an instrumentality of the States of Maine and New Hampshire acting jointly under the provisions of a compact.

The provisions of section 10 of P. & S. 1937 (the Portsmouth-Kittery Bridge Act), together with the language in other parts of the act, indicate clearly that the intent of the legislature to set up, in so far as it could, a public corporation which is within the definition of the phrase "bridge district" as used in R. S. c. 12, §72.

However, inasmuch as any relief from taxation will necessarily redound to the State of New Hampshire, the proposition should be taken up with the State of New Hampshire to determine what, if any, action that State will take. No definite proposition should be made by the State of Maine unless a decision of equal value to the Bridge Authority is made by the State of New Hampshire.

FRANK I. COWAN

Attorney-General

October 12, 1944

William D. Hayes, State Auditor

Audit

Allocation State Highway Funds

I have your memo of September 8, in which you cite transfer of \$1,139.86, on December 7, 1943, from Account 20125 (General Highway Fund) to Account 9016 (Secretary of State.) You cite also, transfer on July 14, 1944, of \$1,000 from the general highway fund surplus to the Motor Vehicle Division of the State Department.

I am answering the questions in the order in which you ask them.

A. Such transfers have to be made by Order of the Governor and Council.

- B. Such a transfer must of necessity increase the amount allocated to the transferee. R. S. c. 2, §117, does not take care of this particular transaction but P. & S. 1943, c. 87, §(v) "for extra administrative costs not anticipated in the budget" does take care of it. . . .

FRANK I. COWAN

Attorney-General

October 24, 1944

Harold I. Goss, Secretary of State

You inquired orally with relation to incorporation fees payable to the State when two or more corporations merge or consolidate under Chapter 56, Section 63.

It seems to me that when one of the constituent corporations is to remain as the consolidated company, into which the others merge, then if the capital stock of this surviving corporation is increased by the agreement of consolidation, the fees payable on such increase are to be computed in accordance with Section 48 of said chapter.

On the other hand, if a new corporation is formed which becomes the consolidated company, the fees are to be computed in accordance with Section 10 of said chapter.

See Fletcher, Cyc. Corporations, Vol. 15, page 70, section 7071; *Chicago & E. I. R. Co. v. Doyle*, 256 Ill. 514.

ABRAHAM BREITBARD

Deputy Attorney-General

November 9, 1944

Hon. Sumner Sewall, Governor of Maine

Central Maine Sanatorium—Atwood title

I have had a search made of the title of land owned by Willard K. Atwood in Fairfield, across which the State of Maine maintains a sewer pipe from the State Sanatorium. There seems to be nothing of record in regard to this pipe line. It is possible that a verbal license may have been given to some one at some time to put the line through; but, if so, this office has found no memorandum on the subject, and inquiry in the office of the Commissioner of Institutional Service fails to disclose any such memorandum. The Commissioner reports that he has made diligent inquiry and can learn nothing about such a license.

The sewer was authorized in Resolves of 1917, Chapter 9. Bids were obtained and the sewer installed in 1918. In theory, title of the State is now good by prescription, since we have used the land for purpose of a sewer for more than twenty years. It is difficult to believe that the State would place a long sewer pipe across land in which it had no right. The reasonable presumption is that there was a grant which has been lost. The law presumes the same thing. I see no reason why the State should do anything about the matter.

FRANK I. COWAN

Attorney-General