

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1945-1946

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OPINIONS

January 25, 1945

To Fred M. Berry, State Auditor

1. I have your memo of January 19, 1945, asking if, in my opinion, the State Auditor has the legal authority to make an examination of accounts kept in probate courts. Assuming that you mean accounts kept by the Registers of Probate, it is my opinion that he has.

The next question is, "Does the State Auditor have the legal authority to proceed further than the court by making examinations of the account kept by administrators and executors appointed by the court?" In answering that question, my opinion is, No, for the reason that the general powers and duties of the Department of Audit are set forth in §3 of Chapter 16, which provides that the department is to perform a post-audit of all accounts and other financial records of the state government, or any department, or agency thereof; and, the office of State Auditor being a statutory office, the department should confine its duties to the specific powers conferred by the legislature.

2. The next question is: "Does the State Department of Audit have the authority to make examination of accounts handled by creditors as well as public administrators." My answer to that question is, No.

You will note that under §3 of Chapter 16 of the Revised Statutes of 1944, subdivision IV, which is the amendment made by the Public Laws of 1941, Chapter 27, the Department of Audit was empowered to perform post-audits for the clerks of superior courts, judges and recorders of municipal courts, trial justices and probation officers; but no mention was made of the registers of probate. However, the department has been performing a post-audit of the registers of probate in all counties, and I feel that your department has sufficient authority under subdivision I of §3, as the probate court is an agency of the State government.

RALPH W. FARRIS
Attorney General

February 6, 1945

To Fred M. Berry, State Auditor

. . . In accordance with Chapter 16, Section 4, of the Revised Statutes of 1944, the State Auditor, if he shall find in the course of his audit, evidence of illegal transaction, shall forthwith report such transaction to the Governor and the Attorney General.

In the case at hand, I believe it is your duty to notify any delinquent county officer who has not kept a satisfactory record of his fees and has failed to pay them to the county treasurer, as provided by law; and if he still refuses to comply with the law, you may notify my office, and I will take the matter up with the delinquent county officer and see if the law cannot be complied with, or ascertain the reason why.

RALPH W. FARRIS
Attorney General