

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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1) What is the responsibility of the State Treasurer's office under Section 8, Chapter 15?

2) Does Section 8, Chapter 15, require all state units to certify all items of income accruing to the state immediately or does it allow the several units to certify to the State Treasurer a list of unpaid and overdue accounts monthly, quarterly, etc.?

Answers

1) It is the responsibility of the State Treasurer under Section 8 of Chapter 15 to "receive and keep a record of all items of income accruing to the State. . . He shall promptly collect all taxes and accounts due the state and certified to him as provided herein." In case he cannot collect said accounts and taxes, he shall institute court action through the Attorney General's office. That is about the limit of his responsibility under this section.

There are many legal definitions of the word "promptly," depending on the nature of the thing to be done. In our court decisions, "promptly" in some cases means "at once," and is synonymous with "quick," "sudden," "precipitant." In most cases the courts have held that "promptness" means "within a few days," especially in the performance on contracts; but in the handling of State funds and the intricate machinery for collecting taxes in a municipality, there are bound to be many delays, so that the word "promptly" would not apply in those specific cases. For instance, how could the State Treasurer promptly collect the taxes, if the person taxed refused to pay? In my opinion the word "promptly" in this statute means a reasonable time considering the facts in every case. The collector of a large number of items of tax assessments cannot act promptly and report and turn over the proceeds until he has had an opportunity to make demand, collect the money, make up his statement and turn over the proceeds. This machinery takes time and clerk hire, and should be done as promptly as may be.

In regard to former Attorney General Cowan's ruling upon the same, it is appropriate to your office.

2) Section 8 of Chapter 15 requires of State units to certify promptly to the Treasurer of State the items of income with which they are charged, and I should say that if a department did not certify to the Treasurer within three months over-due accounts, it would not be promptly done.

RALPH W. FARRIS
Attorney General

June 27, 1945

To Roscoe L. Mitchell, M. D., Director, Bureau of Health

Pardon my delay in answering your letter of June 6th in which you asked my interpretation of questions on matters covered by Chapter 320, P. L. 1945. You call my attention to Section 1, which provides that no official shall issue a certificate of birth which discloses illegitimacy.

My answer to that question is that when you are requested to furnish a certified copy of your record, you would have to inquire whether or not such record was to be used in court or was in response to the illegitimate, his or her legal guardian or legal counsel, and if the answer was in the affirmative, you should issue the certificate. If the answer is in the negative, you should advise the requesting party of this provision of law and inform him that you are not permitted under this act to deliver such certified copy of your record.

You state in the third paragraph of your letter that Section 5 permits use of data contained in records pertaining to births, deaths, or marriage for research purposes, but forbids giving or showing records which will identify the person to whom the records relate except in records of death. That provision is contained in subsection 5 of Section 3 of the act. Your inquiry is made as to whether the person who is making genealogical studies or searching for missing or unknown heirs may be permitted to view the records of the State Registrar. My opinion is that those persons who are interested in searching the records for legitimate reasons should be permitted to view the records, and it is incumbent upon the State Registrar to interrogate those persons searching the records as to their interest in the same.

Section 4 of the act provides for an amendment to Section 388 of Chapter 22 of the Revised Statutes, which mentions a "tangible" interest in recorded matters. That section gives the State Registrar and the clerk of the city or town discretion as to whether or not the applicant has a direct and tangible interest in the matter recorded. If the Registrar or the clerk, in the opinion of the applicant, should make a harsh or wrong decision, the applicant can apply to the Superior Court, or any Justice thereof in vacation, and ask for an inspection of the records over the objections of the clerk and the State Registrar. A direct interest would mean the attorney or guardian or a near relative. That would be up to the clerk or State Registrar to determine. I think that the word "tangible" is a misnomer, as a tangible thing is one which has physical substance. All other things are intangible. Under the common law "tangible property" is that which may be felt or touched, and is necessarily corporeal, although it may be either real or personal. I should say that the word "tangible" means "material" or "substantial," as defined in Webster's Dictionary. So, under this section, the State Registrar or the city or town clerk should inquire whether or not the applicant has a material or substantial interest in the record as a relative, guardian or counsel.

RALPH W. FARRIS
Attorney General