

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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It is my opinion that inasmuch as the legislature in 1939 provided that all salaries should be fixed by the Governor and Council, and inasmuch as the Governor and Council must approve your appointments of institution heads, it would be necessarily implied that the Governor and Council should fix and regulate the salaries upon your recommendation.

You told me in our conference yesterday that the institution heads were in the classified service under the Personnel Law, and I wish to call your attention to the ruling of former Attorney General Frank I. Cowan, which will be found on page 114 of the Report of the Attorney General for 1943-1944, and I quote from the last paragraph of said opinion, on page 115 of said Report:

"Whether or not the institution heads are within the provisions of the State Personnel Law is a matter on which I do not wish to comment without further information. It has been consistently held that persons appointed to definite terms should be classified as Bureau Directors under Section 7 of the Personnel Law, so as to be in the unclassified service. Unless there is some strong reason for interpreting the law otherwise, said reason being found in the facts with regard to each particular case, I shall continue in the opinion that 'institution heads' are to be regarded as 'Bureau Directors.'"

The provision for unclassified service is now Section 7 of Chapter 59, R. S. 1944, and I quote from Subdivision III of said section:

"Heads of departments and members of boards and commissions required by law to be appointed by the governor with the advice and consent of the council, bureau directors, and the official clerk of the public utilities commission and of the state liquor commission."

I will say that I concur with the opinion of Mr. Cowan, and I think you will agree with me that the institution heads are heads of departments or bureau directors required by law to be appointed by the Governor and Council; and it would naturally follow that they would be in the unclassified service and that their salaries, upon your recommendation, should be fixed by the Governor and Council.

I just talked with Mr. Hayes, Secretary of the Personnel Board, and he informed me that the institution heads have not been in the classified service since February 17, 1944, the date of the opinion of former Attorney General Cowan.

RALPH W. FARRIS
Attorney General

July 11, 1945

To C. P. Bradford, State Park Commission
Re: Lapsing of Funds

I received your memo dated March 7th on July 9th, as per my request, as I cannot find my office copy of said memo. With the memo of March 7th you enclosed copies of letters from the State Controller and the State Auditor, referring to the lapsing of Commission funds.

In the memo from Mr. Allen, dated January 15, 1945, he quotes Chapter 144, Section 2 (k) of the Public Laws of 1935, as follows:

"All moneys received by the commission shall be deposited with the treasurer of state, who shall maintain a separate fund which shall be used for the continued maintenance and development of said parks."

Chapter 144 of the Public Laws of 1935 was repealed by the legislature in September, 1944. The Revision Committee rewrote Section 2 of Chapter 144, P. L. 1935, which is now incorporated in Section 23 of Chapter 32, R. S. 1944, and I note that paragraph (k) was left out of Section 23, and all of that section of Chapter 144, P. L. 1935, was repealed except paragraph (g) of said Section 2, which was the interpretation clause of said Act.

In regard to the amount lapsed by the Controller in the amounts of \$38.41 on June 30, 1943, and \$30.44 on June 30, 1944, it is my opinion that this revenue should not have been lapsed, and that future balances existing because of revenues received from the State parks and memorials should be carried over to the next fiscal year.

RALPH W. FARRIS
Attorney General

July 18, 1945

To Charles P. Bradford, Park Commission
Re: Lapsing of Funds

Referring to my memo of July 11, 1945, I wish to change said memo, in that I stated that it was my opinion that the legislature repealed paragraph (k) of Section 2 of Chapter 144, P. L. 1935, inasmuch as my attention has been called to the fact that that particular provision of law is now incorporated in Section 25 of Chapter 32, R. S. 1944, and of course is now in effect.

This strengthens my opinion that the amounts on hand at the close of the fiscal year, which were taken in by the Park Commission after the appropriation had been expended, should not lapse, but should be carried over to the next fiscal year for the continued maintenance and development of park areas.

RALPH W. FARRIS
Attorney General

July 18, 1945

To Fred M. Berry, State Auditor
Re: Overlay Assessed by Municipalities

The subject of your memorandum of June 11th relates to the assessment of an overlay by assessors in towns of the State, and your question is whether an assessment is proper, so long as the overlay is within the 5% allowed by statute.