MAINE STATE LEGISLATURE

The following document is provided by the

LAW AND LEGISLATIVE DIGITAL LIBRARY

at the Maine State Law and Legislative Reference Library

http://legislature.maine.gov/lawlib

Reproduced from scanned originals with text recognition applied

(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1945-1946

STATE
LIBRARY

tion the fact that some of these employees were laid off through no fault of their own and due to the curtailment of the activities of the department involved.

A familiar and fundamental rule of statutory construction is that where a statute is clear and plain, there is no room for interpretation. Consequently, the statute must be interpreted as it is written. There is no ambiguity in the statute. By its plain terms, prior service credit may be allowed only to those who were re-employed prior to July 1, 1945, and who were formerly employed by the State at any time during the period of three years prior to July 1, 1942. We have no right to enlarge the time or consider the question of whether the cessation of employment by the State was due to no fault of the employee.

I feel, however, as no doubt you and the Board of Trustees feel, that returning veterans should not be deprived of the benefits of the act under consideration because they were prevented from becoming re-employed prior to July 1, 1945. I would suggest, therefore, that at the next session of the legislature an amendment be introduced allowing discharged servicemen who become re-employed to have the advantage of prior service credits.

ABRAHAM BREITBARD
Deputy Attorney General

February 6, 1946

To C. P. Bradford, Superintendent, State Park Commission

Re: Tenure of Office

Receipt is acknowledged of your memorandum of the 5th instant, inquiring about the status of two members of the State Park Commission, whose terms expired on February 4th. These two members also acted as chairman and secretary, respectively, of the Commission. The act creating the Park Commission does not provide that the members thereof, who are appointed by the Governor, shall hold over until their successors are appointed and qualified. Notwithstanding, however, the omission of such a provision, they do, in my opinion, hold over until a successor is appointed and qualifies. You are, therefore, advised that they may continue to act as members of the Commission until they are either re-appointed or succeeded by new members.

ABRAHAM BREITBARD
Deputy Attorney General

February 7, 1946

To Harrison C. Greenleaf, Commissioner of Institutional Service

This is in reply to your memo of February 6th, bringing to my attention the fact that .... has become eligible for parole . . . by reason of the fact that on writ of error his sentence was reduced to 2½ to 5 years. The original sentence was 4 to 8 years. The reason for the reduction was a defect in the indictment which . . . reduced the crime to simple larceny.

This respondent was charged in that indictment with having broken into a garage . . . and stealing an Oldsmobile sedan of the value of $1300. There was no further description of the building. A garage is not one of the buildings enumerated in the statute. Consequently, the indictment should have alleged "a building where valuable things are kept." . . . The indictment was therefore good only for the theft of the automobile, which made it simple larceny, the maximum for which is 2½ to 5 years.

It has been the practice of Judge Murray to require notice in proceedings brought by writ of error to be given to the Attorney General, although for some time past I have insisted that in addition . . . notice shall also be given to the county attorney of the county in which the prosecution was had. Very often these proceedings arise out of cases in remote parts of the State, of which we have no record, and the only person who would ordinarily have any familiarity with it is the county attorney in the county where the crime was committed.

How the above affects this case may be readily seen from the following. . . This same respondent was at the same time convicted of two other larcenies and of escape from the county jail. In the last case he was given from 1 to 2 years, which ran concurrently with the 4 to 8 year sentence. The other two cases that I have mentioned, larcenies, were, one for the theft of a 1941 Pontiac sedan of the value of $750, in the town of Chelsea, and the other case was breaking and entering in the night time at the store of Ray E. Tillson in Augusta. Both of these cases were placed on file in view of the sentence in the one for which he was imprisoned. Had I known these facts, the sentence of 4 to 8 years would have been justified, because in reality he should have been sentenced as a common thief, for which a maximum of 15 years is provided. The Massachusetts court, some years ago, decided that under the statute prescribing punishment as a common thief (I believe that ours is like the Massachusetts statute verbatim) a several sentence, that is to say, a sentence on each case was not permissible; but where three convictions for larceny were had at the same term of court, the court could only impose a combined sentence as a common thief. (Chapter 119, Section 10.)

I feel that, in the consideration of the parole of a prisoner, he should not have the benefit of immediate parole by reason of the fact that there was a defect in an indictment, where the sentence has been reduced because of such defect, particularly in a case like this, where all his other escapades for which he was indicted and convicted would justify the greater sentence which the court originally imposed. Since the parole of a prisoner is a matter of discretion, I think the Board should take into consideration the other crimes for which he was indicted and convicted at the same term of court. . . I may add that . . . in accordance with the Massachusetts ruling written by Chief Justice Shaw he could not be brought before the court and imprisoned for the offences which were placed on file, if the only sentence which should have been imposed was

a sentence combining the three as a common thief. Judge Murray has ruled . . . that where several sentences are meted out for three distinct larcenies at one term of court, the first sentence is the only valid one and the others have no effect.

ABRAHAM BREITBARD
Deputy Attorney General

February 11, 1946

To R. W. Carter, Chief Accountant, State Highway Commission

I have examined the papers you left with me in regard to .... who was convicted on a criminal charge for leaving the scene of an accident and was fined $10 and costs, which was not paid, and thus the State Police officer took him from Brunswick, which is the municipal court where the conviction was had, and transported him to the county jail in Portland in execution of the mittimus. The cost of travel and executing the mittimus was $6, and the county commissioners question the payment of this to the State. They doubt the propriety of this payment because, they say, the State Police officer is a salaried officer. I regard the fact that he is a salaried officer of no consequence.

Subsection 29 of Section 166, Chapter 79, provides that sheriffs and their deputies shall receive $1 for service of a mittimus to commit a person to jail and the usual travel with reasonable expenses incurred in the conveyance of such prisoner. By Chapter 13, Section 2, State Police officers are vested with the same powers as sheriffs, and

> "as arresting officers, or aids, or witnesses in any criminal case they shall be entitled to the same fees as any sheriff or deputy. Such fees shall be taxed on a bill of costs and shall accrue to the treasurer of the state."

By Chapter 136, Section 44, it is provided that whenever a convict is sentenced to pay a fine and costs and does not pay the same, he shall in default thereof be committed and imprisoned in accordance with law. On payment, however, of the fine and costs he is entitled to be discharged forthwith. The fees for committing and travel and cost of conveyance to the jail, when incurred, become a part of the cost of the prosecution which the prisoner must pay before he can be released.

I am of the opinion that these fees are properly payable by the county commissioners to the treasurer of the State.

ABRAHAM BREITBARD
Deputy Attorney General

February 15, 1946

To J. J. Allen, Controller

This department acknowledges receipt of your memo of February 13th asking for an interpretation of Chapter 122 of the Public Laws of 1945, which provides: