

# 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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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:

“When for any reason whatsoever a recipient of old age assistance is unable to properly indorse the check for the last payment approved for him prior to his death the department may approve payment by the state of obligations incurred by the recipient for board or medical or nursing services in anticipation of the receipt of such check but not in excess of the amount of the check. . .”

The facts stated are that the recipient died on October 28, 1945, while the check in question was issued on November 9, 1945, and the Department of Health and Welfare approved a payment for medical care which would consume the amount of the check. Your inquiry is whether this statute applies to checks issued after the death of the recipient.

The date of the issuance of the check is of no criterion, because the statute provides that it is the approval of the payment that controls. Thus, if the payment was approved by the department prior to the death of the recipient, the proceeds of that check would be available for the payment of any obligation incurred by the recipient. The purpose, of course, of allowing these claims to be paid out of the proceeds of the check was to avoid the necessity of administration of the estate of the recipient, in case he died before the receipt or cashing of the check. If then, the approval for this payment to the recipient by the department was made prior to October 28, the proceeds of the check issued on November 9th may be used to pay the doctor's bill. If the approval for payment was made after his death, then the proceeds of the check may not be devoted to that purpose.

ABRAHAM BREITBARD  
Deputy Attorney General

February 21, 1946

To Harry V. Gilson, Commissioner of Education  
Re: Payment of Subsidies—Education of Physically Handicapped  
Children

Receipt is acknowledged of your memo of February 15th with regard to payment of a subsidy to “local school districts” for the education of physically handicapped children, provided for by an act passed by the present legislature, which became law on July 21, 1945, being Chapter 149 of the Laws of 1945.

The determination of the amount to be paid or apportioned to such districts is on an individual pupil basis, but not at a cost exceeding \$200 per school year and in cases where pupils are to be boarded away from their home districts the excess cost is to be then not more than \$350 per school year. Excess cost is the “excess cost of such education over and above the average per capita cost of educating normal children in their respective school districts.”

This act appropriated \$7500 for subsidies for the fiscal year ending June 30, 1946, and \$10,000 for the year ending June 30, 1947.