

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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leave his contributions in the System be absent from the service three years and one month, would the board have any discretion in the matter?

My reply to your question is that said statute is mandatory and the board would have no discretion, except in those cases provided for in said section of the statute, which you have not quoted.

RALPH W. FARRIS
Attorney General

April 29, 1946

To Brig. Gen. George M. Carter, Adjutant General

I have your memo of April 23rd relating to the credit to the War Bond Account of the Military Defense Commission of rentals received from the Federal Government and from individuals and municipalities for the use of the State armories; and I note that the former Finance Commissioner, Mr. Mossman, credited the receipts from the rentals of armories to the State's General Fund, rather than to the War Bond Fund of the Commission. . . You state that you would appreciate a ruling from this office on this matter. . .

It is my opinion, after studying Chapter 308, P. L. 1939, and Chapter 120, P. & S. L. 1939, (the latter chapter providing for a bond issue for military expenses) and in view of the fact that the Finance Department is carrying two accounts, one for the Military Defense Commission called the War Bond Account of the Commission, and the Adjutant General's Account, which is created by appropriations of the legislature, that the proper procedure was followed in crediting the proceeds of the rentals of armories to the General Fund, rather than to the War Bond Fund.

The statute provides that "The proceeds of all bonds issued under the authority of this act shall at all times be kept distinct from other moneys of the State. . . So much of the same as from time to time shall not be needed for current expenses shall be placed at interest and the income derived therefrom, etc."

Section 4 provides as follows: "Proceeds of the sales of such bonds which shall be held by the state treasurer, paid by him upon warrants drawn by the governor and council, are hereby appropriated to be used solely for the purposes set forth in this act."

Section 6 provides that the interest shall be met by money from the State Treasury not otherwise appropriated (which is the General Fund), upon warrants drawn by the Governor and Council therefor.

After studying these two chapters passed at the special session of 1940, I am of the opinion, as I have said, that the proper procedure was followed, as the General Fund is responsible for interest on these bonds, and the appropriation was taken from the General Fund, and the legislature provides an appropriation in your budget each year for the operation of the Adjutant General's Department, and this money from rentals

of armories comes back to the Adjutant General's Department for the operation thereof through legislative appropriations.

Therefore it is my opinion that it was the intent of the legislature not to mingle other moneys with the War Bond Fund. . .

RALPH W. FARRIS
Attorney General

May 2, 1946

To Harrison C. Greenleaf, Commissioner of Institutional Service

I have your memo of May 1st, dealing with the case of Anthony J. Bourgeois, who is now serving a sentence in the Maine State Prison of not less than 5, nor more than 8 years, imposed on March 21, 1942. Your inquiry is whether or not this sentence should have been for a fixed period, rather than an indeterminate sentence, and the Parole Board is in doubt as to the prisoner's being subject to the provisions dealing with parole which are applicable only to indeterminate sentences.

The papers which you have attached to your memo show that the prisoner was indicted by indictment which contained four counts. The first count was for incest; the third and fourth counts for rape, and the second count for a minor offense arising out of the same criminal act. It would appear, although it is not quite clear from the papers submitted, that the prisoner was convicted of the counts charging incest and rape. While the Court might have imposed sentences for each of these crimes, apparently it did not do so, but imposed one sentence.

The crime of incest is punishable under the statute by imprisonment for one to ten years. It is not excluded from the indeterminate sentence provisions. Thus, for that crime an indeterminate sentence may be imposed.

Where, as here, a single sentence was imposed, the same may be applied to any count in the indictment which is good. This sentence, then, could be applied to the count in the indictment which charged the crime of incest.

The prisoner would thus be entitled to the benefits of the provisions of the parole law, and the Parole Board may consider his application.

ABRAHAM BREITBARD
Deputy Attorney General

May 3, 1946

To Hon. A. K. Gardner, Commissioner of Agriculture

Your letter of May 1st at hand, concerning your problem which relates to the administration of Section 127-F of Chapter 153, P. L. 1945, and you ask for a ruling from this office.