

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

issue a warrant directed to an officer, requiring him to remove any person afflicted with contagious sickness, "or to impress and take any convenient houses, lodgings, nurses, attendants and other necessities for the accommodation, safety and relief of the sick, or for the protection of the public health."

In my opinion this statute is not applicable to cases of tuberculosis. This is a very old statute. It was on the books a century ago and was employed to control the highly contagious diseases, such as smallpox, which spread swiftly.

While under Section 74 of Chapter 22, tuberculosis is declared to be an infectious and communicable disease dangerous to the public health, the succeeding sections nevertheless impose upon the persons suffering with this disease the exercise of certain care with regard to the disposal of sputum, saliva, etc., and make it an offense punishable by a fine to violate these provisions. Likewise, provision is made for precautionary measures to be carried out by physicians and local health officers to prevent the transmission of the infection to other persons and to advise the department of the procedures and precautions adopted. Nowhere does it appear that a person afflicted with tuberculosis should be quarantined, nor do I think that Section 134 may be interpreted to authorize a trial justice or judge of a municipal court to commit a person to one of the State sanatoria.

I do not believe, however, that you are obliged to accept this man, or, having accepted him, to detain him, where he disregards every rule of behavior required of him while he is an inmate and does not cooperate so as to arrest the progress of the disease. From the file it would appear as though his former stay at the sanatorium was useless to him, since his conduct was such that improvement in his condition was impossible. There is no authority in the statute for punitive measures or for detaining a person against his will. Consequently, no such measures can be indulged in.

ABRAHAM BREITBARD
Deputy Attorney General

March 21, 1947

To Governor Horace Hildreth
Re: H. P. 185, L. D. 133, An Act Relating to Clerk Hire in the County
Offices of Sagadahoc County

This act purports to repeal Section 2 of Chapter 290 of the Public Laws of 1945, which relates to an increase for clerks in the office of the Register of Deeds of Sagadahoc County from \$1560 to \$1950, an increase for clerks in the office of the Register of Probate of said county from \$1040 to \$1300, and an increase for clerks in the office of the Clerk of Courts in said county from \$1040 to \$1300.

Section 2 of said Chapter 290 is a limitation of the act which provides that the act shall remain in force for a period of two years only. It is the intent of the legislature to change the present statute for a period of two years only, after which period the present statute shall return to full force and effect.

In my opinion, if L.D. 133, which is waiting for your signature, is not effective by July 21, 1947, Chapter 290 of the Public Laws of 1945 will be

at an end, and that part of Section 269 of Chapter 79 of the Revised Statutes which relates to clerk hire in these several county offices will be in full force and effect.

As the Constitution provides that no act of the legislature shall take effect until 90 days after the recess of the legislature passing it, unless in case of emergency, if the legislature did not recess before April 21st, then the provisions of Chapter 290, P. L. 1945, would expire on July 21st, and L.D. 133 would not repeal a part of an act that was not in force at the time it took effect.

However, if the legislature should recess before April 21st, the present repealing act would take effect before that Chapter 290 had expired and it would be effective.

In my opinion this bill should be recalled by Senate Order and recommitment to the Committee on Salaries and Fees.

RALPH W. FARRIS
Attorney General

March 27, 1947

To Richard E. Reed, Commissioner of Sea and Shore Fisheries
Re: Sea and Shore Fisheries Rule and Regulation No. 50

I have your memo of March 25th and have had a conference with your assistant, Mr. Malloy, in regard to this matter.

In my opinion this rule and regulation is ineffective, because it was not recorded in the office of the Secretary of State or published in any newspaper, as required by Section 3 of Chapter 34. For that reason the rule and regulation would not be enforceable, as the burden is upon your department to prove that it was promulgated according to the statute authorizing same. Of course the county attorney of Hancock County could not prosecute cases without a certificate from the Secretary of State and a certificate from the town that this rule and regulation had been filed there and without publication in the newspapers.

RALPH W. FARRIS
Attorney General

March 28, 1947

To David H. Stevens, State Tax Assessor

I herewith return letter from the Register of Deeds and bill for \$3. You should pay 50c for recording, as provided in Section 77-A of Chapter 41, P. L. 1945. This supersedes the general schedule of recording fees in Section 232 of Chapter 79, R. S. 1944 and is not in conflict with that schedule. The legislature set up the recording of these tax liens and at the same time set the fee not exceeding 50c for recording same, and that law prevails. You may write the Register and tell him to rebill you for 50c for each tax lien, on my opinion.

RALPH W. FARRIS
Attorney General