

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

June 26, 1947

To Earle R. Hayes, Secretary, Employees' Retirement System

Your memorandum of June 25th has been received. Your first inquiry relates to Chapter 85 of the Resolves of 1947, by which Mr. X was given an increase in his pension. You inquire whether the increased amount should be paid beginning July 1, 1947 or beginning August 13, 1947, when the law becomes effective.

I think it is well at this time to advise you that in all cases unless the Resolve specifically provides for retroactive payment, such payment cannot begin before the effective date of the Act.

Your second inquiry relates to Chapter 82, of the Resolves of 1947, by which Mr. Y was given an increase in his pension. . . This Resolve specifically provides that the pension shall begin on July 1, 1947. This Act does not become effective until August 13, 1947. Thus, after the effective date of the Act and not before, the pension payment can be made retroactively, beginning with July 1st.

ABRAHAM BREITBARD
Deputy Attorney General

June 27, 1947

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

I have your memo of June 24th relating to our discussion on June 23rd and enclosing attested copies of records of meetings of the State Military Defense Commission on dates of October 9, 1942 and October 12, 1943; also copy of a letter received from the Executive Department, signed by former Governor Sumner Sewall, relating to the matter of \$500 compensation voted to you for services as administrative director of the State Military Defense Commission.

You call my attention to the opinion of former Attorney General Cowan recorded in his Report for 1943-1944 on page 83, in which he states that the Commissioner of Finance at that time was justified in assuming that his interpretation of Chapter 349, P. L. 1945, was a reasonable one and there was nothing to prevent an Adjutant General from receiving compensation for services outside of his official duties, if those services are voluntarily assumed by him and the performance thereof does not in any way interfere with the functioning of his official position.

In our discussion of June 23rd, I suggested that you furnish me with data on your duties under the State Military Defense Commission and I would then give you my opinion as to whether or not the fact that you received \$500 as administrative director of the State Military Defense Commission would in any way conflict with Section 12 of Chapter 12, R. S. 1944, which reads: "The adjutant general shall receive an annual salary of \$4500. He shall receive no other fee, emolument, or perquisite," and which has since been amended as to salary.

It is my opinion, even though you are a member ex officio of the State Military Defense Commission, the sum of \$500 per annum for your services

as administrative director for the Commission is not a fee, emolument or perquisite as Adjutant General or as an ex officio member of the State Military Defense Commission, but is for special extra duties assigned to you by the members of the Military Defense Commission, for which they voted to pay you the sum of \$500 for these extra duties, and which are not necessarily a part of your duties as Adjutant General, you having taken the place of the original administrative director, who received a salary of \$10,000 a year and was succeeded by an administrative director who received a salary of \$4000 a year. Your assuming these duties, on a vote of the Military Defense Commission and the recommendation of Governor Sewall, then chairman of the Commission, at a rate of \$500 for services rendered, in no way conflicts with the said statute above quoted and in my opinion it saved the State at least \$3500. You should receive credit rather than censure for accepting these added responsibilities for the Military Defense Commission and the then Governor of Maine.

RALPH W. FARRIS
Attorney General

June 27, 1947

To A. K. Gardner, Commissioner of Agriculture
Re: Conformity with the Food and Drug Act

I have your memo of June 26th . . . asking for an opinion on a letter written by an officer of a canning company, in which he states:

"Since arriving home from the very pleasant interview with you I have been reading the Maine sardine Law, Revised Statutes 1944, and particularly under section 201 where it clearly states that we are to conform with the Federal Food and Drug Laws, and the laws of the State of Maine, we all know those laws call for no tolerance, and as they are laws clearly made it does not appear that anyone has the right to establish rules and regulations, in any case where the law is clearly defined, therefore it appears that your Department does not have the authority to establish tolerance, but as your department has established a tolerance outside of that law, hasn't the law been violated by your department and also all sardine packers?"

Commenting on this letter, I will say that he did not quote the important part of Section 201 of Chapter 27, relating to this subject. Further on in this section, the law reads:

"He (meaning the Commissioner) shall make uniform rules and regulations for carrying out the provisions of said sections (meaning sections 198 to 205, inclusive) and shall fix standards of quality when such standards are not fixed by law; . . ."

It is my opinion that the Food and Drug Act of the State of Maine does not fix standards of quality in the packing of sardines, and that the Commissioner has authority under this section to make uniform rules and regulations carrying out the provisions of said sections relating to the packing of sardines, and also to fix standards of quality when such standards are not fixed by law.