

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1947 - 1948**

By the second section of Chapter 13, such fees shall be taxed on a bill of costs (for a State Police officer) and shall accrue to the Treasurer of State. Without this provision and that contained in the end of Section 5, the State Police officer would be entitled to receive these fees; the legislature, however, has diverted them to the State Treasurer. I can therefore see no inconsistency in these provisions, as when read together, which they should be, it is clear that the taxable costs for these officers go to the State Treasurer. I think that this view is also confirmed by Section 5 of Chapter 137 by which clerks of courts are required to pay the fines, costs and forfeitures collected to the treasurer of the county, and the county treasurer is then, upon approval of the county commissioners, required to pay to the State, town, city or persons any portion of the fines, costs and forfeitures that may be due.

ABRAHAM BREITBARD  
Deputy Attorney General

December 3, 1947

To General George M. Carter, Adjutant General  
Re: Wages and Subsistence—Emergency

Receipt is acknowledged of your memo dated November 20th concerning the obligation of local communities to be responsible for the payment of wages and subsistence of National Guard units, when the communities called for their assistance or when National Guard units were sent to assist the civil officers in protecting property in the fire areas.

It is my opinion that under the present law municipalities have no obligation to pay the compensation of these men or for their rations. I have done some research, although I have not examined with particular care the various enactments since 1857, because I have felt that it would not serve any purpose in view of the changes recently made and hereinafter referred to. I start with 1857, because in that Revision, under Chapter 10, Section 92, provision was made, where troops were sent into a city or town, that such city or town shall cause suitable provisions, quarters and ammunition to be furnished to such troops, "and the expenditures therefor shall be reimbursed by the State."

The military laws were omitted by special act from the Revisions of the Statutes which followed in 1871, 1883 and 1903, although the revised acts dealing with this subject in the various session laws which followed thereafter were retained as these Revisions were adopted.

In 1916, and again in 1930, the military laws were again included in the Revised Statutes. I find that under Chapter 18 of the latter, Section 46 was made up of two paragraphs, of which the first provided for the allowance of pay to the various grades of officers and men, and the second provided that when the National Guard is called forth in aid of the civil authorities or assembled in obedience to such calls, its members" . . . shall be paid by the county where such service is rendered." Then there was provision for the raising of this money by the county by certificates of indebtedness which were to bear interest at the rate of 6% per annum and made payable on the first day of January next following two months from their issue. Provision

was then made for the raising of the amount thereof in the next tax budget of said county, and the amount so raised was to be applied to the payment of such certificates.

In 1939 by Chapter 277, Section 2, the second paragraph of Section 46 was amended by striking out all that portion thereof which provided that the compensation should be paid by the county. What remained thereof is now incorporated in the present Revision in Section 58 of Chapter 12, which is as follows:

“When the national guard, or other authorized state military or naval forces, or any portion thereof, shall be called forth in aid of the civil authorities, or assembled in obedience to such calls, as provided in section 2, all officers and men thereof shall receive the pay set forth in this section.”

The pay there referred to is in the preceding paragraph, which fixes the rate of compensation.

In view of the deliberate act of the legislature in striking out in 1939 the obligation of the county to pay, I cannot see any obligation on anyone else but the State, where it now rests.

ABRAHAM BREITBARD  
Deputy Attorney General

December 16, 1947

To Fred M. Berry, State Auditor

. . . You ask the following question: “Have the Municipal Officers of a town the legal right to expend monies in excess of the appropriation voted at Town Meetings?” . . .

The municipal officers are bound by the terms of the articles in the warrant calling the town meeting providing for the expenditure of money. The officers should not spend more than the taxpayers appropriated at town meeting, unless the statute expressly authorizes an expenditure in excess of the appropriation. You cite one instance where the statute authorizes the town officers to expend up to 15% of the appropriation for the repair of ways.

Section 4, paragraph 13, Chapter 95, R. S., relating to equity powers, provides that when counties, cities, towns, school districts, village or other public corporations, for a purpose not authorized by law, vote to pledge their credit or to raise money by taxation or to exempt property therefrom, or to pay money from their treasury, or if any of their officers or agents attempt to pay out such money for such purpose, the court shall have equity jurisdiction on petition or application of not less than 10 taxable inhabitants thereof, briefly setting forth the cause of complaint.

I feel that it would be good practice for your office to advise municipal officers to keep within their appropriations, unless otherwise authorized by law to exceed same.

RALPH W. FARRIS  
Attorney General