

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1947 - 1948**

the support of the insane, and may collect said money due the State institutions for board and care, and that all moneys collected under the provisions of this section shall be forthwith turned over to the Treasurer of State, who shall receipt for the same, and that the expenses of the collection of said moneys shall be charged against and paid out of any sums so collected and turned over, I authorize you to employ an attorney for the purpose of investigating such facts relative to liability for the support of the insane inmates of said State institutions and collecting such sums as may be due the State.

All suits against persons liable for the support of inmates of the institutions shall be brought through the Attorney General's office.

Will you please have any attorneys or investigators whom you employ report to this office when money cannot be collected without suit, and proper action will be taken in the courts of this State to recover.

RALPH W. FARRIS  
Attorney General

January 30, 1948

To Fred M. Berry, State Auditor

I have your memo of January 29th, stating that the Department of Audit was recently requested to make an audit of the Norway Water District's accounts. In compliance with said request, you are now auditing said books.

You state that a question arises as to whether the auditing of a water district's accounts may be conducted by the Department of Audit, and you cite the law with regard to the annual audit of towns as contained in Section 116 of Chapter 82, as amended by Chapter 361, P. L. 1947.

You further state that it would appear from this statute that it would not be mandatory for a water district to have its accounts audited, even though it performs a municipal function and operates under its own charter. You further state that any quasi-municipal agencies that have requested audits by your department could rightfully do so in that they are agencies of the State.

In answer to your question I wish to state that a water district is not an agency of the government. It is a private corporation performing a public function, supplying drinking water and water for fire protection, and it is not a State agency and has nothing to do with the operation of the government of the municipality where its office and plant may be located.

The section of the statute which you cite does not give you authority to audit the books of a water district.

Section 13 of Chapter 378, P. L. 1945, authorizes a post-audit of the accounts and records of the State Normal Schools and Teachers' Colleges, the Maine Port Authority, the Maine Forestry District, and the Maine Teachers' Retirement System, and that is all.

It must be remembered that districts of this character do not possess police powers properly belonging to municipal police bodies exercising local governmental functions. Although in the nature of public corporations, they are not municipal corporations in the proper sense of that term. In the case of *Kelley vs. Brunswick School District*, 134 Maine 414, the Court said, "Con-

sistent with the three-fold division of governmental power, political divisions other than cities and towns may be erected by the legislature for public purposes. Towns must provide funds for the support of public schools within their limits. It does not follow that the legislature can do no more for the same general purposes. Municipal corporations organized for different purposes may include the same territory as a city or a county or a school district. Two authorities cannot exercise power in the same area over the same subject at the same time. But identity of territory, putting one municipal corporation, full or quasi, where another is, is immaterial, if the units are for distinct and different purposes."

Norway Water District was incorporated under the provisions of Chapter 55, P. & S. L. 1941, as you state in your memo. You will note in Section 10 of said Chapter that "the district through its trustees is authorized to contract with persons and corporations including the town of Norway, and said town of Norway is authorized to contract with it for the supply of water for municipal purposes." This indicates that the district is a separate entity from the Town of Norway.

I refer further to the rules of construction in Chapter 9, Section 21, subsection XX, "The word 'municipality' includes cities, towns and plantations." Therefore the legislature did not intend to include water districts with village corporations which exercise police powers and perform a municipal function. For that reason, in Section 116 of Chapter 82, as amended by Chapter 361, P. L. 1947, the legislature included village corporations as the subject of audit; and if you wish to include municipally owned water districts, or quasi-municipal water districts, the matter should be brought to the attention of the legislature and this provision of the statute amended to cover water districts, school districts, or whatever quasi-municipal corporations the legislature may see fit to have audited by the State Department of Audit.

RALPH W. FARRIS  
Attorney General

January 30, 1948

To Col. Laurence C. Upton, Chief, Maine State Police  
Re: P. L. 1945, Chapter 74, Section 87

You refer to the above entitled statute permitting the transportation of poles by means of a combination tractor and semi-trailer without the owner thereof being restricted to the provisions of law relating to the over-all length of the vehicle and load.

You further state that there has been more or less confusion as to just what constitutes a pole as defined in this law. You had assumed that the term "pole" meant a manufactured object such as a finished telegraph or telephone pole, but, as some believe that the word as used would include a rough log in its natural state, you ask my opinion on this subject.

It is my opinion that the word "pole" means either wood or metal poles to be used for perches some time or other for the stringing of wires for electric power transmission or telephone or telegraph purposes. In other words, the pole is to be used as a lineal perch and does not include a rough log in its natural state.

RALPH W. FARRIS  
Attorney General