

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**R E P O R T**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1949 - 1950**

The statute uses this language, "Any student who completes the prescribed course of study and otherwise complies with the regulations of the school shall receive a diploma, etc." You will note the language, "and otherwise complies with the regulations." If a student does not comply with the regulations concerning payment of fees, it is legal for the Board to withhold official credentials until all financial obligations to the institution have been met.

RALPH W. FARRIS  
Attorney General

December 21, 1949

To Albert W. Emmons, Clerk of Courts, York County  
Re: Biddeford Municipal Court, Referees' Fees

I have your letter of November 29th, stating that last winter and spring you had some correspondence with Mr. Breitbard, my former Deputy, relating to fees of a referee appointed by the Biddeford Municipal Court. You state that there is nothing in the general statutes and you cited to him a section of the municipal charter of the City of Biddeford, just prior to his death, and received no reply.

In checking over his correspondence I find your letter of April 20th, addressed to Mr. Breitbard, which was in answer to his of April 14th. You cited Chapter 151 of the Laws of 1855, the Act establishing the municipal court in the City of Biddeford and recited Section 10, which reads as follows:

"Actions pending in this Court may be referred in the same manner as in the Supreme Court, and on the report of Referees to said Municipal Court, judgment may be rendered in the same manner and with like effect as in the Supreme Court."

You state that under this section the Judge of the Municipal Court appointed a Referee last winter. He presented a bill of \$50, approved by the Municipal Court, to the County, and you ask by whom should these fees be paid, the City of Biddeford or the County of York.

In answer I will say that these fees should be paid by the City, if the City receives the fees from the Municipal Court, and by the County if the County is receiving the fees from the Municipal Court.

I have checked an amendment to the 1855 charter, which is Chapter 247 of the Private & Special Laws of 1887, which provides that the Judge shall receive an annual salary of \$1400, payable quarterly out of the County treasury, etc., etc., which shall be in full for his services, and that he shall render to the County Treasurer on the second Tuesday of April and October a signed and sworn statement of all fees received by virtue of his office, etc. In view of this amendment it is my opinion that the County of York should pay Referee's fees.

You asked a second question in regard to the Biddeford Municipal Court, namely whether under the general statutes, in the absence of the Judge, the Recorder of the Municipal Court can hear both civil and criminal matters, and if he can hear civil matters, under what circumstances he can do so.

The general statutes relating to Municipal Court Recorders will be found in Section 3 of Chapter 96, R. S. 1944:

“In the event of the death or resignation or any vacancy in the position of a judge of a municipal court, the recorder shall, as acting judge, receive the salary of the judge in lieu of salary as recorder and shall further be paid for such clerk hire as shall be necessary on account of the additional duties.”

When so acting, of course he can try both civil and criminal matters; but the charter of the Biddeford Municipal Court was amended by Chapter 24 of the Private & Special Laws of 1899, which provides that whenever the Judge of said court shall be absent from the court room, shall be sick, or engaged in the transaction of civil business, said Recorder shall have the same powers and perform the same duties that said Judge possesses and is authorized to perform in the transaction of criminal business.

Therefore it is my opinion that the Recorder of the Biddeford Municipal Court can hear only criminal cases, unless there is a vacancy by death or resignation and he is acting as Judge. . . .

RALPH W. FARRIS  
Attorney General

December 21, 1949

To Norman U. Greenlaw, Commissioner of Institutional Service  
Re: Commitment to State Hospitals for Observation

I have your memo of December 1st in which you enclosed a memo which you had received from Dr. Harold A. Pooler, Superintendent of the Bangor State Hospital, dated October 25, 1949, relative to the lack of information from the law enforcement department and from the courts when a person is sent to a State Hospital on a Superior Court commitment for observation to determine whether or not the person committed is insane. You requested me to offer comments and suggestions as to how this situation could be improved.

When a person charged with a crime is committed for observation to determine whether or not he is insane, this is always done by the attorney for the person charged with the offense. He files a petition with the court, asking for commitment for observation, setting forth the fact that he intends to plead not guilty by reason of insanity at the next term of the Superior Court. When the person is committed to the hospital, the Superintendent should be informed by the attorney for the person being committed of the reason why he intends to plead not guilty by reason of insanity, and he should also furnish a little background to the hospital.

The mode of disposing of insane criminals is not satisfactory to me. I suggested a change at the 1947 Legislature, but the only change the legislature made was to insert the words “or any justice thereof in vacation,” in Chapter 94, P. L. 1947. I re-drafted this section with the help of Justice Merrill, who is now on the Supreme Court Bench, but the legislature did not seem to want to change the law or to understand what we were driving at.