

# 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**

February 17, 1950

To: Col. Spaulding Bisbee, Director, Civil Defense &amp; Public Safety

Re: Conference of County Directors

Your department has inquired as to how the expenses of county directors who have been called to Augusta to attend a conference relative to the carrying out of the State Civil Defense and Public Safety Act can be defrayed.

You are advised that if the respective counties should feel that they should not pay the expenses, due to the fact that it is an activity outside the geographical limits of the counties and an activity not specifically called for in the state-wide plan, as we read the Council Order allocating the sum of \$15,000 to the director in charge of the administration of the Act, it would appear that in the allocation sufficient authority was given to the director to authorize those funds to be used for such expenses.

JOHN S. S. FESSENDEN

Deputy Attorney General

February 23, 1950

To Ernest H. Johnson, State Tax Assessor

Re: Refund of Excise Tax

I have your memo of February 16th relating to the case of a resident of Chicago who paid an excise tax on his automobile on December 22, 1949, in South Bristol while visiting there. You state that he took steps later to register his car in Maine and paid the registration fee, giving as his reason that while not a resident of Maine he expected to spend a part of the year in this State. Your question is:

"If a non-resident pays an excise tax in this state and takes steps to register his automobile here but subsequently surrenders his registration and receives refund of his registration fee, is he entitled to receive a refund of the excise tax from the town in which it was paid?"

*Answer.* I know of no statute which authorizes a refund of an excise tax. The statute you cite prohibits a refund of any excise tax to any person, when once it is paid. The South Dakota decision which you cite, 149 N. W. 422, does not seem to be in point in this case, because the tax agency had jurisdiction under the statute when this non-resident, preparatory to applying for registration, paid an excise tax in the municipality of the State where he was temporarily residing. With no machinery for a refund, I do not see how the tax agency can return the tax paid, even though he changed his mind and decided not to have his car registered in Maine. . .

RALPH W. FARRIS

Attorney General

February 23, 1950

To S. F. Dorrance, Livestock Specialist, Department of Agriculture

Re: Licensing of Dogs in Medford

I have your memo of February 20th, enclosing letter from Bion F. Jose, Town Manager of Milo. You state that his question is whether the officials in Milo have the authority to issue a directive to a constable to proceed on the unlicensed dogs in the unorganized township of Medford.

I wish to quote from Section 223 of Chapter 79 of the Revised Statutes of 1944, which provides: "A constable may serve, execute, and return upon any person in his town or in an adjoining plantation any writ of forcible entry and detainer, or any precept in a personal action when the damage claimed does not exceed \$100, including those in which a town, plantation, parish, religious society, or school district of which he is a member is a party or interested; but before he serves any process, he shall give bond to the inhabitants of his town in the sum of \$500, with 2 sureties approved by the municipal officers thereof, who shall indorse their approval on said bond in their own hands, for the faithful performance of the duties of his office as to all processes by him served or executed; . . ."

Therefore it is my opinion that the authority of constables in serving papers is limited by this section.

Section 23 of Chapter 88 provides when a constable may kill a dog. However, under this section which I have just cited a deputy sheriff would have authority in a plantation adjoining the town where the warrant was issued or the municipal court in the county having jurisdiction. This will be found in Section 11 of Chapter 88, which provides also that the penalty can be recovered by complaint before any trial justice or municipal court in the county where such owner or keeper resides. . .

RALPH W. FARRIS  
Attorney General

March 2, 1950

To Philip A. Annas, Associate Deputy Commissioner of Education  
Re: Reimbursement for Tuition

I have your memo of March 2d in regard to a pupil who lives in the town of Gouldsboro with her grandmother who raised her from a baby. You state that she attended the Gouldsboro schools without paying tuition until she completed the eighth grade, and as Gouldsboro does not have a high school, then went to Southwest Harbor to attend high school. While at Southwest Harbor she stayed with an aunt during the winter and returned to her grandmother's for the summer. This pupil claims that her grandmother is her sole support and that she had lived with her from a child although her grandmother has never been legally appointed her guardian. The Town of Gouldsboro now refuses to pay the Town of Southwest Harbor for her tuition on the ground that they are not responsible for her, because her grandmother is not her guardian. Upon this statement of facts you ask the following question:

"Should the State pay this tuition and charge the payment against the school funds due the Town of Gouldsboro?"

*Answer.* Yes, for the reason that this pupil resides in the town of Gouldsboro and has lived with her grandmother in that town from a child. Her grandmother is *in loco parentis*, that is, in place of her parent. Her father, I understand, has deserted his family, her mother is dead and this child has