

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

April 3, 1950

To Fred M. Berry, State Auditor
Re: Verification of Audit Petition

Under date of March 20, 1950, you referred a petition for audit of the books of the Town of Castine to this office with the question as to whether or not the signatures should be verified by the town clerk. This petition was accompanied by a letter signed by Mr. James B. Lake, Jr., as a Justice of the Peace, in which he certified that the signatures are those of registered voters in excess of 10% of those appearing on the voting lists of 1950.

The petition was submitted to you under the authority given in Section 116 of Chapter 80, R. S. 1944.

The extent of verification which you will require as a preliminary to undertaking the audit authorized in this section is entirely a matter for you to decide in the administration of your department.

I am returning the petition and the verifying letter herewith.

JOHN S. S. FESSENDEN
Deputy Attorney General

April 5, 1950

To Honorable Frederick G. Payne, Governor of Maine
Re: Elevator Inspection

At your request the Commissioner of Labor and Industry has asked this office to give you an opinion as to whether or not under the terms of Chapter 374 of the Public Laws of 1949, the State may engage the services of an elevator inspector for the purpose of inspecting State-owned elevators or whether the State would be required to use the services of a State-employed elevator inspector.

As I read Chapter 374 of the Public Laws of 1949, it appears to me that this chapter is a piece of legislation designed to protect the public in its use of elevators and that for this purpose every person owning and operating an elevator must comply with safety standards prescribed by this chapter. Since this chapter is compulsory on owners and operators of elevators, there are of course limitations imposed upon the amount of fees that owners and operators of elevators may be required to pay and these limitations are necessary in view of the compulsory nature of the statute.

I cannot conceive, however, that these limitations are designed to foreclose the right of any owner or operator of an elevator to take any steps which in the judgment of that owner or operator attain to higher standards than those imposed in the statute; nor do I believe that the chapter was designed to foreclose the right of any owner or operator to employ any duly qualified and licensed elevator inspector, regardless of the company by which that inspector is regularly employed.

The sentence in Section 19-F to the effect that an authorized inspector shall receive no salary from the State and have no expenses paid by the State is simply a direct legislative pronouncement to the effect that as a result of taking examinations and becoming licensed by State authority such

an individual does not become a State employee and cannot expect that by virtue of holding such a license he shall be entitled to compensation from the State.

As a matter of fact, if the State were to engage the services of a licensed inspector other than an elevator inspector employed by the State, it would be presumed that such services were engaged for the purpose of receiving the judgment of an independent contractor to overcome the criticism which might result from utilizing the services of a State employee who might be subject to the dictates of his own superiors who are themselves State officials or employees. In engaging such an independent contractor the State would not be paying such licensed individual any salary or expenses, since the very fact of engaging an independent contractor precludes that individual's being an employee, and hence the payment made cannot be in the nature of a salary.

JOHN S. S. FESSENDEN
Deputy Attorney General

April 6, 1950

To Fred M. Berry, State Auditor
Re: Verification of Audit Petition

My memorandum of April 3, 1950, was addressed to you after consultation with the Attorney General and pursuant to his opinion in the matter.

Upon receipt of your memorandum of April 5, 1950, I again conferred with the Attorney General. We are in agreement that there is little more that I can say than was said in my memorandum of April 3, 1950.

The statute involved merely states that the department shall make the audit upon petition of 10% of the legally qualified voters of the town. The statutes do not say whether or not the petition should be verified, nor, if it should be verified, by whom. There are no legal standards set up with respect to the petition.

The cost for making the audit is payable as prescribed in Section 120 of Chapter 80. The result, therefore, of the two sections is that the State shall be reimbursed for the making of the audit, which reimbursement is payable only if the audit was undertaken as a result of the request of 10% of the legally qualified voters of the town.

Whether or not the request was made in accordance with the minimum required in Section 116 is entirely a question of fact and not a question of law. In other words, we feel that you, as head of a State department, in your administration of its affairs, should determine the preliminary question of fact, and having determined that question of fact you should proceed to make the audit, or not, just as your determination of fact dictates.

If in any case you were satisfied that the petition was signed by 10% of the legally qualified voters, you would in that case need no verification by anybody. On the other hand, if you were not satisfied in any particular case as to whether the signatures were the valid signatures of 10% of the legally qualified voters, you could in that case require any evidence or certification satisfactory to you before proceeding.