STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

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.

Since, as we view it, this is entirely a question of fact, there seems to be little more that this department can offer in the way of advice.

JOHN S. S. FESSENDEN
Deputy Attorney General

April 7, 1950

To Fred M. Berry, State Auditor
Re: County of Oxford

I have your memo of March 21, 1950, relating to your examination of the accounts of the County of Oxford and your report thereof, in which you seek my advice on the following matters:

"Certain expenditures were noted which did not appear to conform with the provisions of three different statutes. They relate to payments made to the County Attorney and County Commissioners. I am attaching a list of the items in question for your information so that I may receive an opinion as to whether or not these payments are legal.

> "Chapter 79, Sections 130 and 131, Revised Statutes of 1944, relate to the salaries of County attorneys—duties and civil procedure. Section 130 provides in part:
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> > " 'County attorneys . . . shall receive annual salaries. . . . and no other fees, costs, or emoluments shall be allowed them; . . .'
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> "The case in question pertains to per diem charges allowed the County Attorney for attendance at municipal court.
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> "Chapter 122, Section 17, Revised Statutes of 1944, relates to public officers forbidden to have pecuniary interest in public contracts. The expenditures in question concerning this statute relate to one County Commissioner, and the County Treasurer selling insurance to the County.
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> "Chapter 79, Section 6, Revised Statutes of 1944, relates to the salaries of County Commissioners. It reads in part:
>
> > " 'Said salaries shall be in full for all services, expenses, and travel to and from the county seat . . except that when outside of the county seat on official business, including public hearings, inspection and supervising construction et cetera . . they shall be allowed all necessary traveling and hotel expenses connected therewith; . .'
>
> "The expenses of a Commissioner in this case were for travel to the County seat, on days of regular commission meetings."

On the basis of the foregoing statement of the facts and law in your memo you say that my assistance concerning these matters will be deeply appreciated and you attach proposed comments concerning this matter, to be found on page 3 of your schedule, which lists the various items in question, copy of which you enclose. Page 19, Schedule A-11, is headed:

"Expenditures by County Applicable to Provisions of
Chapter 79, Sections 130 and 131
Chapter 122, Section 17
Chapter 79, Section 6,
Revised Statutes of 1944"