

# 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**

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:

“ ‘County attorneys . . . shall receive annual salaries. . . . and no other fees, costs, or emoluments shall be allowed them; . . .’

“The case in question pertains to per diem charges allowed the County Attorney for attendance at municipal court.

“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.

“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”

This schedule then lists certain travel expenses by Earl P. Osgood, who is a county commissioner of Oxford, in the sums of \$72.65 and \$77.70, and your reference to Section 6 of Chapter 79 seems to cover this. This section provides that the county commissioners in the several counties shall receive annual salaries from the counties and that said salaries shall be in full for all services, expenses, and travel to and from the county seat, etc. Your comments on these expenditures for travel are well taken.

In regard to the County Attorney's charging for court attendance, municipal expenses, I will say that if he is charging a per diem, as you state in your memo, it would seem in conflict with Sections 130 and 131 of Chapter 79. Section 130 provides that the county attorneys of the several counties shall receive annual salaries from the state and that no other fees, costs, or emoluments shall be allowed them. However, in Section 131 there is a provision which reads: "For the services herein mentioned the county attorney shall receive no compensation other than the salary from the state, except actual expenses when performing said services, the same to be audited by the county commissioners and paid from the county treasury." Without knowing for what purpose the County Attorney attended in the municipal court, whether it was in the interests of the county, for the county commissioners, where he would be entitled to actual expenses when performing said services, or whether it was attendance for regular criminal procedure, for which he is to receive no other fees, costs, or emoluments, under Section 130, I cannot advise you.

In regard to Section 17 of Chapter 122, R. S., which you cite in relation to Goodwin's, Inc., insurance premiums, there is some question in my mind as to whether or not a county is a quasi-municipal corporation, and of course Goodwin's, Inc., is not a county officer. The same applies to W. J. Wheeler & Co., Inc., the name of which company appears as having received insurance premiums from the county. In the Maine Register for 1949-50, Stanley L. Wheeler is listed as one of the county commissioners. Whether or not he has any pecuniary interest in W. J. Wheeler & Co., Inc., I do not know. This being a corporation, he is not receiving insurance in his own name as county commissioner. The same applies to Robert W. Goodwin, who is listed in the Maine Register as county treasurer of Oxford County, with regard to Goodwin's, Inc., if that is a corporation, as its name indicates.

Section 17 of Chapter 122 provides that no trustee, superintendent, treasurer, or other person holding a place of trust in any state office or public institution of the state, or any officer of a quasi-municipal corporation shall be pecuniarily interested directly or indirectly in any contracts made in behalf of the state, etc., or of the quasi-municipal corporation in which he holds such place of trust, and any contract made in violation thereof is void. It is my opinion that county commissioners are not state officers and that counties are political subdivisions of the State and creatures of the legislature, having only such powers and duties as the legislature has conferred by statute.

Section 197 of Chapter 79 provides that the county commissioners of the several counties shall, without extra charge or commission to themselves or to any other person, procure all necessary supplies, etc., for the jails and the prisoners therein, etc., and that no county commissioner shall be interested directly or indirectly in the purchase of any such supplies or in any contract

therefor made by the board of which and while he is a member thereof, and that all contracts made in violation hereof are void. Therefore this brings up the question of whether or not the furnishing of the insurance policies for the county comes within the provisions of this section. Even if the county commissioners come within the provisions of this section and also within Section 17 of Chapter 122 and the contracts made in violation thereof are void, the voiding of contracts is a question for the courts to pass upon. For that reason I do not want to give an opinion as to whether or not these payments are legal which you set forth in your Schedule A-11, page 19 of your audit. The county commissioners as a board have passed upon these vouchers and the vouchers have been paid by the county treasurer. It seems to me that only court action could bring about a determination of whether or not these payments are legal, and in order to do so, further evidence would have to be obtained as to what interest, direct or indirect, a county commissioner had in W. J. Wheeler & Co., Inc., and the county treasurer in Goodwin's, Inc., if these two firms are duly incorporated.

On reference to the records in the Attorney General's office, we find that Goodwin's, Inc., was incorporated June 10, 1948. Pauline McCormick of Norway is listed as clerk, and the 1949 tax has been paid. Our records also indicate that W. J. Wheeler & Co., Inc., was organized on June 21, 1918. The clerk is Gertrude N. Abbott of South Paris, and the 1949 tax has been paid. Therefore the county commissioners were approving vouchers of two corporations rather than in their capacity as county officers, and the question is whether they are pecuniarily interested, directly or indirectly, in these contracts.

The last paragraph in your general comments states, "It is believed that review can be made of the expenses listed on Schedule A-11 to ascertain their legality." Under the present situation I would not include that in your comments if I were you. I would simply leave the statutes quoted in your general comments as they are, because a review can be had only by the courts to ascertain whether or not the contracts are void. There is no penalty in any of these statutes, unless there is a drawback.

RALPH W. FARRIS  
Attorney General

April 10, 1950

To Ernest H. Johnson, State Assessor  
Re: Sanford-Dover, N. H., line

I have your memo of March 17, 1950, relating to the Boston & Maine Railroad's selling a 44-mile branch line operating between Sanford and Dover, N. H., to the Sanford & Eastern Railroad on July 1, 1949. You inquire whether, in computing the railroad tax this year, under Chapter 14, § 111, the tax should be computed as follows:

"Boston and Maine should include in its report gross receipts and operating expenses for this line for the period January 1 to June 30, and in computing its average mileage consideration should be given to this mileage for the period owned—that is, 44 miles for  $\frac{1}{2}$  year, or 22 miles average,—and the tax assessed at  $3\frac{1}{2}\%$  or more depending on the net operating revenue as compared to the gross operating revenue.