STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

June 1, 1950

To Lester E. Brown, Chief Warden, Inland Fisheries and Game
Re: Jurisdiction—National Parks

Your letter of May 4, 1950, addressed to the Attorney General, has been referred to me for reply, in his absence.

It is our understanding that complete jurisdiction over National Parks is in the hands of the Federal Government and that it does not rest within the province of State officials.

JOHN S. S. FESSENDEN
Deputy Attorney General

June 14, 1950

To H. A. Ladd, Commissioner of Education
Re: Section 206, Chapter 37, R. S. 1944

I have your memo of June 2nd relating to the above captioned section, which authorizes towns to expend sums received from the State school fund, in conjunction with funds raised by the towns, for certain purposes in both elementary and secondary schools outlined in the section which you cite, any unexpended balance of moneys raised by the towns or received from the State to be credited to the school resources for the year following that in which said unexpended balance accrued.

You state that certain cities in Maine have adopted a procedure whereby a detailed budget for the public schools is approved and a supporting appropriation is voted. All subsidy allocations from the State are credited to the general funds of the city.

It is my opinion that this practice conforms to the intent of Section 206 as amended by Chapter 350 of the Public Laws of 1945, which amendment strikes out the words "school fund" in the first line of said Section 206.

RALPH W. FARRIS
Attorney General

June 14, 1950

To General George M. Carter, The Adjutant General
Re: Fines Imposed by Courts Martial

I have your memo of June 1st, enclosing a communication received from Lt.-Col. Joseph B. Campbell, Judge Advocate, State Staff, MeNG, in which he asks for an opinion from the Attorney General for guidance of the department in carrying out the provisions of the statute cited in his memo, namely, R. S. 1944, c. 12, §67 as amended by P. L. 1949, c. 326, §27.

It is my opinion that the sheriff, under this statute, is authorized to accept the fine adjudged against the accused at any time after he has been apprehended on warrant of commitment and he also may accept the fine after the accused has been committed to jail and release him, as it appears from reading the statute that the legislature intended this to enable the National Guard to collect fines and costs which have been rendered as a sentence of

a court martial of the National Guard, and once the fine and costs are paid, the prisoner is intended to be discharged. If the fine is not paid within ten days of the imposition thereof, it is my opinion that the confinement is mandatory until such fine is paid. He may avoid confinement, or secure his release from confinement, upon payment of his fine and costs, if any.

I do not agree with the contention of the Cumberland County sheriff's department that this statute should be construed strictly when he feels that confinement is mandatory, because this is not a penalty for a criminal act. The statute is intended to enforce the payment of fines and costs in court martial cases, which differ from the ordinary penalties in our criminal statutes.

It is my opinion that the sentence is one day for any fine not exceeding $1 and one additional day for each dollar above that sum, plus one additional day for each dollar of cost. If the accused pays the fine, or tenders that amount, that automatically suspends the penalty.

You will note that the statute provides that it shall be the duty of the sheriff to take the body of the person convicted and confine him in the county jail for the time specified in the sentence, *or* one day for any fine not exceeding $1, etc. That is the alternative for the sheriff, and if the accused pays the fine and costs up to date there is no reason why he should be held for further punishment. . .

RALPH W. FARRIS
Attorney General

June 14, 1950

To Fred M. Berry, State Auditor
Re: Tax Collectors of Towns

Reference is made to your memo of June 1st in which you state that during municipal audits you have often been asked if it is legal for the municipal officers to recommit taxes from one tax collector to another, if a vacancy occurs in that office due to employment elsewhere. You add that this particularly applies to town managers who may change positions frequently.

You call my attention to Sections 106 and 107 of Chapter 81, R. S. 1944, which provide that collectors removed or removing may be required to give up the tax bills and settle and provide also how a warrant can be issued to the new collector, etc. In such cases the assessors shall make a new warrant and deliver it to the new collector with said bills, to collect the sums due thereon, and he has the same power therein as the original collector.

You also call my attention to Chapter 80, §22, R. S. 1944, which has to do with vacancies in office of any officer not required to be chosen by ballot. This does not apply to collectors, as Section 12 provides what officers are to be elected at annual town meetings, which includes collectors of taxes. Therefore collectors of taxes are elective officers.

Section 15 of said chapter says that the other officers may be elected by ballot, and if not so elected, shall be appointed by the selectmen. Therefore if a tax collector is not elected at the annual meeting, he can be appointed by the selectmen; but you must take each case on its own merits, as to how the collector shall be chosen, because Section 22 of Chapter 80, R. S., provides for the appointment by the municipal officers in case of vacancy of any