

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

R E P O R T

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

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

officer not required to be chosen by ballot; but Section 106 of Chapter 81, which you have quoted in your memo, refers to collectors who have removed or in the judgment of the municipal officers are about to remove from the State before the time for the payment of the warrant to the town treasurer. Therefore you can see that it depends upon how the vacancy occurs in the office of tax collector, as to how the appointment shall be made.

Section 106 provides that at the meeting of the committee held to settle with the collector for the money that he has received on his tax bills, they may elect another constable or collector, and the assessors shall make a new warrant, etc., and he shall have the same power as the original collector.

Then you have the question of bonds to consider in regard to commitments. The selectmen must be very careful in regard to having the assessors issue new warrants in case a new collector is delinquent and the town wishes to proceed against the sureties on the original collector's bond.

You inquire particularly about town managers who often serve as collectors. I call your attention to Section 18, Chapter 80, R. S., which provides the powers and duties of town managers, especially to subsection V which authorizes the selectmen to prescribe the duties of the town managers, such as road commissioner, town treasurer, tax collector, etc., *any other provisions of statute to the contrary notwithstanding.*

I am going to quote from "Maine Civil Officer, Eighth Edition" by Judge Francis Sullivan, page 88, under subtitle, "Appointment and Fees of Collectors":

"Collectors of taxes are elected at the annual town meetings and may be chosen by ballot, or if not so elected, they shall be appointed by the selectmen, and in case of a vacancy the municipal officers may fill such vacancy by written appointment. When towns choose collectors, they may agree what sum shall be allowed for performance of their duties. The treasurer and collector of taxes may be one and the same person, but such officers shall not be selectmen or assessors until they have completed their duties and had final settlement with the town.

RALPH W. FARRIS
Attorney General

June 21, 1950

To Marion E. Martin, Commissioner of Labor and Industry
Re: Letter from Nathan C. Fuller of H. C. Baxter & Bro., Hartland

I have studied Mr. Fuller's letter of June 2, 1950, which was referred to this office by your memorandum of June 15, 1950, which letter involves whether or not Irish potatoes are perishable products within the meaning of Section 28 of Chapter 25, R. S., as amended.

I have found no statute under which the legislature has attempted to define that which is or may be considered to be a perishable product; and with the very limited facts supplied I can say only that it would be an impossibility to give you a definition as to that which is a perishable product as a matter of law.

I would suppose that in each case where the point was in issue, it would be a question of fact as to whether or not the product being processed was