

# 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**

I do not know practice of the Maine tuberculosis sanatoria with regard to the admission of patients affected with any form of tuberculosis such as Pott's Disease; but Section 167, to which you refer, provides:

“Residents of the state may be admitted to these sanatoriums, if found by any regular practicing physician to be suffering from tuberculosis.”

As I stated before, this is a matter for administration at the sanatorium, as it depends on what the practicing physician who asked that this patient be admitted stated to the authorities of the sanatorium.

RALPH W. FARRIS  
Attorney General

July 12, 1950

To L. C. Fortier, Chairman, M. E. S. C.  
From John S. S. Fessenden, Deputy Attorney General  
Re: Your memo, July 8, 1950—subject: Appropriation

Your memorandum raises a question as to an appropriation of \$20,000 for the fiscal year 1948-49. According to the State Auditor, the appropriation was “transferred to the ‘General Fund Contributions and Transfers’ account, and subsequently lapsed to the General Fund Surplus at the close of the year.” Comment is made that the transactions were not reflected on the books of the Maine Employment Security Commission. The auditor also cites pertinent sections of the Employment Security Law setting forth the general rule that balances in the unemployment compensation administration fund shall not lapse, but shall be continuously available to the commission for expenditure consistent with the provisions of the Employment Security Law chapter.

The question involved is the propriety of the Employment Security Commission's handling of the item and the lapsing of the item as an apparent conflict with the statute.

When the Unemployment Compensation Law was first enacted in Maine, it was mandatory that the State appropriate a prescribed sum (\$20,000) as its part in the administration of the employment service. This mandate arose from the administration of the U. S. Employment Service pursuant to the Wagner-Peyser Act. It is my understanding that for a number of years the sum so appropriated was used under the authorization of work programs and allotments as required by the respective appropriation bills and Section 14 of Chapter 14, R. S. 1944.

In the exercise of emergency powers during World War II, by presidential order, the employment service was taken over by the Federal Government. No State employment service was left in existence. With no State employment service and no cooperative service, pursuant to the Wagner-Peyser Act, there remained no purpose consistent with the provisions of the Unemployment Compensation Law for which the State-appropriated sum could be expended. The balances necessarily lapsed.

Following the war, the States through concerted effort, after a long and somewhat bitter struggle, secured the return of the employment service to State operation, fully anticipating that each State would be required to appropriate a sum of money, as before, as its share in the cooperative program. In Maine the sum set by law (see sub. II, Sec. 7, Chapter 430, P. L. 1949) was annually appropriated in anticipation of the return of the employment service to obviate any possibility of the necessity of calling a special session of the legislature to appropriate the sum required to qualify the State to participate in the program.

Upon the return of the employment service and as a result of some action at the Federal level about which I have no information, Federal authorities did not require the State to allot and use the sum in controversy, but it was understood that they (the Federal authorities) might at any time do so and still had such authority. The appropriation being for the purpose of complying with Federal requirements and the requirement not having been imposed, there is no purpose consistent with the provisions of the Employment Security Law for which the sum should remain continuously available to the commission. The amount appropriated must therefore of necessity lapse, as in the previously mentioned instance.

I do not feel that it is within my province to express an opinion as to propriety of bookkeeping or how the matter should be handled by the commission in collaboration with the Department of Finance and the State Auditor's department, so long as the result is as stated above.

In your memorandum you ask, "Furthermore, is there any way that the law could be corrected so that we would not run into this incident in the future?"

If, at the Federal level, the law has been amended so that the administration can no longer require an appropriation by the States, I would suggest that the second sentence of subsection II, Section 7 of Chapter 430, P. L. 1949, and the first two words of the next sentence be repealed and that biennially no appropriation be requested.

If the Federal law has not changed and it is still possible that the State would be required to contribute State funds to the program, I would recommend that the appropriation bill state that the sum appropriated is to become available only upon the contingency of a demand by competent Federal authority that the amount be allotted and used.

JOHN S. S. FESSENDEN  
Deputy Attorney General

July 12, 1950

To Honorable Frederick G. Payne, Governor of Maine  
Re: Term of Office, Board of Registration of Optometrists

By Chapter 333 of the Public Laws of 1947 the term of office of the Board of Optometry was changed from three years to five years. In making this change the legislature prescribed:

"They shall be appointed for terms, as the terms of the present members expire, so that eventually the term of one member shall expire each year,