

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

July 25, 1950

To Norman U. Greenlaw, Commissioner of Institutional Service
Re: Out-of-State Incarceration of Offenders

I acknowledge receipt of your memo of July 21st, enclosing material from The Council of State Governments, relating to out-of-state incarceration of offenders, and I note that you intend to attend the meeting scheduled to be held at the Hotel Roosevelt in New York on August 8th and would like my comments and advice on this material by August 5th.

On July 20th I also received a letter from Mr. Carihfield, Eastern Representative of The Council of State Governments, calling my attention to a meeting of the administrators of the Compact for the Supervision of Parolees and Probationers, to discuss these matters in detail, giving the date and place as in his letter to you.

I note by the postscript of his letter to you that he has read the final report of the institutional cooperation committee from Maine, New Hampshire and Vermont, and that while the subject matter of the material which he was enclosing was somewhat different, he thought it might be useful in working out the machinery for the institutional care project.

Mr. Carihfield informed me in his letter to me that members of the Institution Cooperation Committee of Maine, New Hampshire and Vermont have been invited to attend this meeting in New York, and that he had talked with Attorney General Tiffany of New Hampshire, who planned to attend. He hoped that Attorney General Parker and I could attend also, but I regret to have to advise him that I am unable to attend this meeting on August 8th. I shall assure him, however, that as far as the interests of this State are concerned, they will be in good hands, as you plan to attend.

Mr. Carihfield sent me the same enclosures as he did you, and I herewith return yours. I have no comments to make except that if we do draft a bill along the lines suggested by Professors Wendell and Zimmermann and the uniform bill which they enclosed, we shall have to fit same in with our State laws, with the incoming legislature. In other words, we should be careful not to commit ourselves to any particular form of legislation until we have taken it up with members of the legislature who will have the matter under consideration.

I will say in passing that in Maine we do not use detainers. We do not have a detainer statute. When a person is held in one of our penal institutions, serving a sentence for violation of our criminal statutes, upon notice from a State that holds another warrant against such person for a crime committed in that State, the head of the institution always notifies such other State of the time when the sentence expires, so that they may have extradition papers made out or come to Maine and have the subject picked up on a bench warrant from a municipal court. In other words we are using extradition papers and bench warrants instead of detainers in cases of this kind.

As this matter will come before either the Judiciary or the Legal Affairs Committee, there is some question in my mind whether or not they would be in favor of having a detainer law on our statute books. That is, we must sell the detainer system to our legislators before we go very far with it.

I note the amendment on page 2 of Professors Wendell and Zimmermann especially provides for re-incarceration of parolees and authorizes the prisoner to be kept by the receiving State on a contract basis; and again I am doubtful whether or not we could work this out with our legal committees of the incoming legislature. Perhaps the possible alternative form on page 3 could be worked out. Having been a member of the Interstate Cooperation Committee when I was in the Senate, and being at present a member of the Executive Committee of the National Association of Attorneys General, I have found that many of the legal profession serving on legislative committees resent any ready-made legislation for their consideration.

These are the best suggestions I have for you to take up at the conference on August 8th.

I note in the membership of the Joint Committee on Detainers, that all three Attorneys General named to represent the National Association of Attorneys General, have not been in that office in their respective States of New Hampshire, Utah and Ohio, since January 1, 1949, but it is possible that they will serve on this committee and they are able lawyers. They formerly served with me on committees of the National Association of Attorneys General.

RALPH W. FARRIS
Attorney General

July 26, 1950

To David B. Soule, Insurance Commissioner
Re: Method of Placing Insurance

Under date of July 21, 1950, you submitted a memorandum to this office in which you detailed the administrative procedure which has been followed in connection with the placing of insurance on State property. In your memorandum you inquire as to whether or not it would be possible, under the provisions either of existing Council Orders or of a Council Order to be drafted, to eliminate the necessity for final approval of insurance matters by the Governor and Council. Presumably, this would be through the medium of the alternative of delegating the responsibility of final approval to some department head.

Chapter 11 of the Revised Statutes of 1944 specifically sets forth certain duties of the Executive Department which, though by no means covering all the duties of that department, are so clearly set forth as to constitute these duties as among the primary duties of that department. Section 12 of Chapter 11 states in part that insurance upon public buildings and other property belonging to the State shall be placed thereon by the several department heads "subject to the approval of the governor and council, or by the governor and council."

In view of the fact that the statute gives the authority to the Governor and Council to place insurance on State property, whether or not the head of a department has so recommended, it appears clear that this is a legislative mandate of a duty imposed upon the Executive Department, which duty cannot be delegated.