

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

August 17, 1950

To Fred L. Kenney, Director of Finance, Department of Education
Re: Water Testing Law

I have your memo of August 11th, enclosing a copy of a letter which you wrote to Paul A. Smith Co. under date of February 13, 1948. You state that at the time Chapter 305, P. L. 1947, was enacted, the question arose as to whether the charges for water testing billed by the State Department of Health should be paid from municipal school accounts or from incidental or contingent funds. On February 12, 1948, Mr. Ladd, Deputy Commissioners Libby and Bailey, Deputy State Auditor Douglas and Chief Municipal Auditor Singer held a conference and concluded that the municipal officers should pay these bills from their incidental or contingent funds. As said Chapter 305, P. L. 1947, amended Chapter 22, R. S., the health chapter, not Chapter 37, the educational chapter, it seemed a very simple conclusion to make and superintendents have been advised accordingly since that date. However, you further state in your memo that several superintendents of schools are reluctant to ask the municipal officers to pay these bills from the incidental funds, and you would like a memo from me in support of your conclusion.

It seems to me that this is a matter of administration; but it is my opinion that as the amendment was to the health laws, the bills should properly be paid by the municipal officers from the incidental or contingent fund. This is a health measure and not an educational measure. That it happens to affect a group of children and teachers does not necessarily put the burden on the school funds to pay the cost of water testing under this amendment.

RALPH W. FARRIS
Attorney General

August 18, 1950

To: J. W. Randlette, Chairman, County Commissioners' Court
Re: Mileage of County Attorney

Your letter of August 5th duly received, stating that the County Commissioners have asked for a ruling on the matter of travel mileage of your County Attorney, and quoting Chapter 79, Section 130, R. S., which states that the salaries of the county attorneys shall be paid by the state and no other fees, costs or emoluments shall be allowed them. Then you quote Section 131 of Chapter 79, which provides for duties in civil proceedings, compensation. This allows them actual expenses.

It is my opinion that mileage is an actual expense under this section, and my interpretation of Section 130 is that fees are not expenses, nor are costs expenses, nor emoluments, so that in my opinion a County Attorney, when performing his duty in the County of Sagadahoc, or anywhere in the State, is entitled to his actual expenses for mileage, hotels, and meals. He should receive the same mileage as deputy sheriffs.

While the County Attorney is paid by the State, he is elected by the voters of the county and is attorney for the State within the county where he is elected. He prosecutes for the State, receives a salary from the State, and is under the direction of the Attorney General. As the County Commissioners have charge of the business and financial affairs of the county, they must estimate his annual expenses and provide for the payment of law enforcement officers.

It does not appear to me that it will strain the county treasury very much to pay mileage of the County Attorney for trips to Richmond to attend the Trial Justice Court which you hold in that town. The State Auditor has recognized and approved mileage for the County Attorneys of other counties in the course of their official duties.

Of course, by the same token, the County Attorneys have no authority to contract bills outside of their actual expenses incurred without first taking it up with the County Commissioners.

RALPH W. FARRIS
Attorney General

August 28, 1950

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Contributions of Missing Person

I have your memo of August 24th relating to a former employee of the City of Portland, who was a member of the State Retirement System through the Local District of Portland and has been missing since September 9, 1949. You have been advised by the officials of the City of Portland that his body has never been recovered and you ask my opinion as to what disposition, if any, can be made of contributions which this man paid into the System, nominating his wife as his beneficiary in this connection.

The statute provides that should a member die, the amount of his contributions shall be paid to such persons as he designates as the beneficiaries. In this case, where a man has disappeared and you have no proof of his death, it might not be safe to pay this money over to the beneficiary without a bond from the beneficiary that in case the employee appears and is not dead, the money will be returned to the Board. Our statute provides that when a man's disappearance is followed by a continued absence for a period of not less than seven years from the date of his disappearance and during that period he is unheard from, he is presumed to be civilly dead and petition for probate of his will or petition for administration of his estate may be filed with any probate court in the county where he last resided. Therefore it is my advice, if the beneficiary does not want to give bond to protect the State from any liability in case the employee should return, that the funds should be held by the Retirement System until he has been declared to be civilly dead, by a court, after seven years have elapsed since his disappearance.

RALPH W. FARRIS
Attorney General