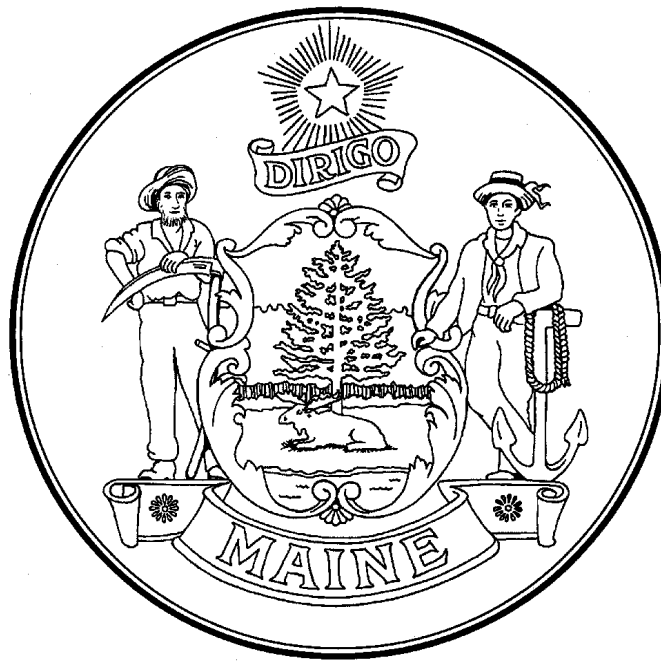


MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

construction is started upon the project for which the money was advanced for preparation of plans, the money is repayable when the first contract is let for construction; 2) it is repayable if the applicant fails to take prompt steps to initiate and prosecute to completion the final plans and specifications for the project.

The Federal Government in the letter to you takes the position that since the advance was made in July of 1947 and final plans have not materialized, the advance is now repayable for failure to take "prompt steps".

In any event, Section 8 of the Regulations contemplates that there should be reasonable expectation of initiating the construction of the proposed works within four years after the receipt of the advance. I am informed that the plans as of this date have not been finally approved and I am informed that there is little likelihood that actual construction will start within four years from the date of the advance. From my study of the Law and Regulations, read in the light of my information as to the status of the building project, it appears to me that the advance is now repayable, whatever view may be taken of the matter.

I would therefore recommend that the repayment be made at an early date.

JOHN S. S. FESSENDEN
Deputy Attorney General

January 22, 1951

To Fred M. Berry, State Auditor
Re: Expenditures in Excess of County Estimates

By R. S., Chapter 79, Section 26, county commissioners may borrow, not exceeding \$10,000 without first obtaining the consent of the county. By Section 27, temporary loans are provided for, to be paid within one year, not exceeding \$175,000 in Cumberland, \$75,000 in Washington County, \$50,000 in Kennebec County, and the commissioners in each of the other counties may thus raise by temporary loans, to be thus paid out of money raised during the current year by taxes, not exceeding 1/5 of 1% of the assessed valuation of their respective counties.

The consent of the county is to be obtained by vote in the several towns and cities before obtaining any additional loans, as provided in Section 24.

These limitations indicate the amount which may be lawfully expended in excess of county estimates, once the funds are available. We deem it to be incumbent upon the county commissioners to maintain a complete record of all such transactions for the inspection of the State auditors, including the commissioners' vote to obtain such loans.

The moneys of the county are kept and handled by the county treasurer. His general duties, arising from the very nature of his office, are to receive the money of the county lawfully deposited with him, keep it safely, and pay it out on the commissioners' order, according to law. He is bound to exercise good faith and reasonable skill and diligence in the discharge of his trust, or

in other words to bring to his discharge that prudence, caution, and attention which careful men usually exercise in the management of their own affairs.

NEAL A. DONAHUE
Assistant Attorney General

February 7, 1951

To Fred M. Berry, State Auditor
Re: Uncollected Costs of Court

In your memorandum of February 5, 1951, you ask, "What disposition should be given to the cost of court charge which usually is assessed at \$2.00 when these costs are not collected from the respondent?" and you further state that since the matter does not seem to be covered by Chapter 290 of the Public Laws of 1947, you would appreciate receiving our opinion as to whether or not the county treasurer should reimburse the cities for the court costs if they have not been collected from the respondent.

It appears to this office that the questions which you ask can be answered only in the light of the provisions of Section 5 of Chapter 137, R. S. 1944. By the provisions of this section it is required that all fees, costs and forfeitures shall be paid into the treasury of the county where the offence is prosecuted and that (third sentence) "the county treasurer on approval of the county commissioners shall pay to the state, town, city, or persons any portion of the fees, costs and forfeitures that may be due."

We construe this sentence to mean that the amounts payable must be those that are found to be due from the fees, costs and forfeitures that were paid in pursuant to the first sentence of the section and pursuant to the bill of costs which accompanied the remittance when the funds were transmitted to the county treasurer.

JOHN S. S. FESSENDEN
Deputy Attorney General

February 8, 1951

To Frank S. Carpenter, Treasurer of State
Re: Income from money arising from the sale of timber and grass on public reserved lots.

You have inquired as to whether it is within the lawful authority of the legislature to amend the interest rates set forth in Section 38 of Chapter 32, R. S. 1944, so that instead of providing for rates of 4% and 6%, respectively, on the two funds therein created, there could be paid by the Treasurer of State the actual interest earned.

Without having searched for the history of this section to its original inception, we have looked back to the Revision of 1916, at which time the section appears to be Section 20 of Chapter 8, R. S. 1916, under which section the money arising from the sale of timber and grass or from trespasses on reserved lands constitutes a fund for school purposes, of which the income only should be expended and applied as was provided by law.