

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

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.

This section was amended by Chapter 261 of the Public Laws of 1917, at which time first appears the provision for the State to allow interest annually upon the funds at a specified rate and in which chapter the rate is set at 4%. This was amended by Chapter 15 of the Public Laws of 1919, at which time appears the provision whereby the first of the two funds shall be allowed interest annually at 4% and the second of the two funds shall be allowed interest annually at 6%. Thereafter the law remains in substantially its present form through the Revisions of 1930 and 1944.

In view of the fact that originally these funds bore interest only as earned, I see no reason why the present session of the legislature, if it so desires, could not amend the law, eliminating a fixed rate of interest and returning to the original provisions of law whereby the income of the funds was used as earned.

JOHN S. S. FESSENDEN
Deputy Attorney General

February 21, 1951

To Honorable Frederick G. Payne, Governor of Maine
Re: Incompatibility

At the request of your office I have consulted the records of the decisions of this office with respect to incompatibility in the holding of office in more than one branch of the State Government and am of the opinion that in conformity with a long line of precedent, it is incompatible for one person to occupy the office of State Senator and the office of member of the State Real Estate Commission at the same time.

A person apparently so holding is deemed to have vacated the former office at the time that he qualified for the latter.

JOHN S. S. FESSENDEN
Deputy Attorney General

February 22, 1951

To General Spaulding Bisbee, Director, Civil Defense & Public Safety
Re: Appropriations by Towns

. . . In interpreting Section 11 of Chapter 298, Public Laws of 1949, we are of the opinion that the voters of any city, town or village corporation may appropriate money to be used by their local organization for Civil Defense and Public Safety for expenses of maintaining its office with its incidental supplies and for the purchase of such services, equipment, supplies and materials for purposes of Civil Defense and Public Safety as shall be specified by amount and purpose in such appropriation.

If a town puts articles in its town warrant calling for the appropriating of certain amounts to stockpile non-perishable food, buy fuel, cots, blankets, first aid supplies, for instance, and the voters of such town favor such purchases by their votes and the same does not exceed that town's debt limit, such purchases are authorized by the Act referred to.