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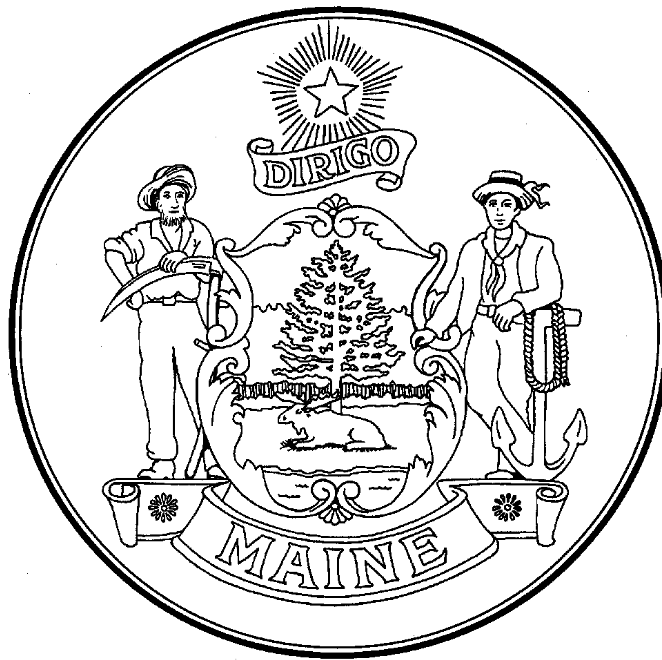

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

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.

There is a provision in the same section of law for acceptance of these items by gift, should they be offered by the Federal Government or by any person, firm, or corporation.

NEAL A. DONAHUE
Assistant Attorney General

March 12, 1951

To H. H. Chenevert, Milk Commission
Re: Hearings

. . . As you know, the Milk Commission Law contemplates that the Commission shall act on the basis of evidence obtained at public hearings and after investigations. While the law does not specifically so state, it is believed that, if the Commission is acting upon investigational material, such material, as a matter of public policy, should be made public at a public hearing, so that persons interested will have an opportunity to be heard thereon.

We were informed that in holding hearings it has been the custom, when questions were asked, for the chairman to state that the witness may answer if he chooses. In view of the fact that the Commission has the authority to subpoena witnesses and to examine persons under oath, it appears to this office that an opportunity should be given for cross-examination and that the witness should not be instructed that he may answer if he chooses. A witness, of course, should not be compelled to answer any questions the answer to which might tend to incriminate him; but since the law contemplates that the Commission shall act on evidence it is a basic element of a fair hearing that there be an opportunity to cross-examine. This does not mean that there must be cross-examination, but only that an opportunity be given to interested parties.

JOHN S. S. FESSENDEN
Deputy Attorney General

March 14, 1951

To William O. Bailey, Deputy Commissioner of Education
Re: Approval of Plans for Schoolhouses

. . . Your specific question is whether school district trustees have the authority to select a location and build a schoolhouse without the approval of the superintending school committee of the town.

The statute referred to recites: "A plan for the erection or reconstruction of any schoolhouse voted by a town shall first be approved by the superintending school committee; and in case no special building committee has been chosen by the town, said superintending school committee shall have charge of said erection or reconstruction; provided, however, that they may, if they see fit, delegate said power and duty to the superintendent of schools."

The first part of this sentence is pertinent to the question at hand. A plan for the erection or reconstruction of any schoolhouse voted by a town shall