

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

August 15, 1951

To the Honorable Frederick G. Payne, Governor of Maine
Re: Panel of Mediators

It has been requested of this office to submit to his Excellency an opinion relative to the appointment to the Panel of Mediators established by Chapter 353, Public Laws of Maine, 1951, of a person now a member of the Board of Arbitration, if that person resigns from the Board of Arbitration.

With regard to this matter, incompatibility of offices may be present either by virtue of the common law or through express legislation. Chapter 353, Public Laws, 1951, expressly states that a member of the Board of Arbitration and Conciliation may not be eligible to serve as a member of the Panel.

It is our opinion that, as distinct from such a provision as is contained in our Constitution, Article IV, Part Third, Legislative Power, which forbids certain persons from appointment to office for a definite period, incompatibility present by virtue of Chapter 353, Public Laws, 1951, is similar to common law incompatibility, in that appointment to the Panel of Mediators would effect an automatic resignation of the membership on the Board of Arbitration and Conciliation.

It is our opinion, therefore, that upon a member's resigning from the Board of Arbitration and Conciliation, such person would be eligible to appointment as a member of the Panel of Mediators.

JAMES G. FROST
Assistant Attorney General

August 21, 1951

To Fred M. Berry, State Auditor
Re: Fees

In your memo of July 23, 1951, you quote the following paragraph from the charter of the Western Washington Municipal Court:

"Fines and penalties to be paid into county treasury. All fines and forfeitures and fees of the judge and recorder of said court, imposed and collected by said court, in all criminal cases, and all fees of said judge and recorder of said court in civil and criminal cases received by either or both, shall be accounted for and paid over quarterly into the treasury of said County of Washington, for the use of said county; . . ."

and ask: "In this particular court, is the recorder liable for civil fees which have been extended on credit to various attorneys in the county, or is the recorder liable only for such civil fees as actually have been collected?"

Answer. We refer you to the memo of January 9, 1951, submitted to you by John S. S. Fessenden, Deputy Attorney General, and state that we are in concurrence with Mr. Fessenden's opinion that the extension of credit for fees due in civil cases would be at the peril of the court officer so extending credit, unless the charter of the particular court provides otherwise.

The use of the word "received" in the above quoted section of the charter is not an unusual one, and in such instances means more than simply the fees

collected, but should be construed to mean both fees collected and fees with respect to which credit has been extended.

We again suggest, relative to this matter, that if you desire statutory control on this question, the Director of Legislative Research be requested to draft a statute to take care of the problem.

Question 2. When there is a provision in a charter which conflicts with a public law such as is occasioned in this instance, time of payments to County Treasurer, which of the two takes precedence?

Answer. A general public law takes precedence over a provision of a charter when the two provisions are in conflict.

JAMES G. FROST
Assistant Attorney General

August 21, 1951

To Kenneth B. Burns, Accountant Supervisor, Institutional Service
Re: Encumbrance of Funds

Your memo of August 10, 1951, recites a situation where the Department of Institutional Service, having a surplus of funds before the end of the fiscal year, June 30, 1951, submitted to the Governor and Council a Council Order approving the transfer of \$3500 to the Central Maine Sanatorium and the Governor and Council approved such transfer and ordered that the funds be encumbered for the purpose of repairing certain portions of the Central Maine Sanatorium.

We are of the opinion that, as no contract or purchase order had been placed prior to June 30th, the funds were not properly encumbered, and as a result lapsed into the General Fund under Section 23 of Chapter 14, R. S. 1944.

Relative to this matter we draw your attention to Section 21, Chapter 14, R. S. 1944, in connection with the construction of buildings, highways, and bridges, and note that even for this important construction funds cannot be carried forward to the next fiscal year unless contracts have been let, actually starting the work, during the year for which the appropriation was made.

JAMES G. FROST
Assistant Attorney General

August 27, 1951

To Philip A. Annas, Associate Deputy Commissioner of Education
Re: Tuition Liability

In your memo of July 19, 1951, you recite a situation of a boy whose parents have died, who is living with his sister in the town of Enfield. The Town of Enfield does not support and maintain a standard secondary school and of necessity the boy must attend school in another town. You ask: