

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

of members of the State Police. The fifth paragraph of the Act relates to the salary of majors in the State Police, stating:

“On appointment as a major, the member shall receive a salary of \$86 per week, and thereafter he shall receive an increase in salary of \$4 per week at the beginning of each fiscal year until a maximum salary of \$107 per week is reached.”

The only major in the Maine State Police organization is the Deputy Chief, and in conflict with Chapter 408, Public Laws, 1951, which purports to control the salary of majors is the first paragraph of Section 5, Chapter 13, R. S. 1944, which paragraph states:

“The governor and council shall determine the salary of the chief and deputy chief.”

This paragraph remains unchanged throughout the amendments of 1947, 1949, and 1951, and is effective today.

There arises, then, the question which provision governs the salary of Major Young, Deputy Chief of the Maine State Police: the first paragraph of Section 5, Chapter 13, R. S. 1944, or the fifth paragraph of Chapter 408, Public Laws of 1951.

In considering this problem, attention should first be directed to that Council Order which provided that the Deputy Chief shall hold the rank of major. The Deputy Chief is, then, in effect, *ex officio* a major. To be further considered are the rules and regulations of the Maine State Police, the first paragraph of which contains the provision that there shall be only 1 major in the organization of the State Police.

As a result, the Statutes, Council Orders, and rules and regulations relative to this problem point to the fact that the State Police have only 1 major; that that major is an *ex officio* major by virtue of his being the Deputy Chief; and that the salary of the Deputy Chief is determined by the Governor and Council.

It is our opinion, therefore, that the salary of Major Young, Deputy Chief, is determined by the Governor and Council, and not controlled by Chapter 408, Public Laws, 1951. We therefore recommend that a Council Order be submitted requesting that the salary of Major Young be increased, retroactive to August 20th, in an amount equal to that amount which he would have received had his salary been controlled by Chapter 408.

JAMES G. FROST
Assistant Attorney General

October 3, 1951

To Doris St. Pierre, Secretary, Real Estate Commission
Re: License to Married Woman

You ask our opinion as to whether or not it is legal to issue a license to a married woman in her maiden name.

A married woman's name consists in law of her own Christian name and her husband's surname, marriage conferring on her the surname of her hus-

band. It is our opinion, therefore, that a license may not be issued to a married woman in her maiden name.

JAMES G. FROST
Assistant Attorney General

October 9, 1951

To Fred M. Berry, State Auditor
Re: Disposition of Disclosure Fees

In your memo of October 2d you inquire:

(1) When disclosure cases are heard by a municipal court judge should fees mentioned in section 42, Chapter 107, R. S. 1944, as amended, be retained by the judge or should they be paid over to the county treasurer as provided by Chapter 137, section 5, R. S. 1944?

(2) Should fees taxed by the Disclosure Commissioners be retained by them or paid to the county treasurer?

The pertinent portion of section 42, Chapter 107, R. S. 1944, as amended by Chapter 1, P. L. 1951, reads as follows:

"The magistrate shall be entitled to 25 cents for each subpoena, \$1.00 for entry, 50 cents for *capias*, 50 cents for certificate, and \$3.00 for each day in hearing the disclosure and other testimony, and for entering default, 25 cents."

Section 5, Chapter 137, R. S. 1944, contains the provisions by which the municipal courts should dispose of all fines, costs, and forfeitures, stating that such fines, costs and forfeitures shall be paid into the treasury of the county where the offense is prosecuted on or before the 15th day of the month following the collection of such fines, costs, and forfeitures.

Section 9, Chapter 96, provides for the disposition of fees in criminal cases and costs in civil cases.

In the absence of express statutory direction relative to the disposition of disclosure fees, we must look to the statute authorizing such fees and seek a solution from the wording of the statute, giving to the words used their usual, commonly understood meaning.

Thus we find in section 42, Chapter 107, R. S., as amended, that the magistrate shall be "entitled" to certain fees. The word "entitled" is a strong one and signifies a claim of right. 70 Maine 36, 48. Where a public law required that bonds must be registered and "the . . . auditor shall be entitled to a fee of not exceeding fifty cents for each bond so registered in his office," the Kansas Supreme Court held that such fees collected by the . . . auditor belonged to him, and he was not required . . . to account for or turn them over to the State Treasurer; "entitle" meaning to give a claim, right or title to. 86 Kan. 564.

It is our opinion, therefore, that in the case of disclosure fees, the magistrate may retain as his own such fees as section 42, Chapter 107, R. S. 1944, as amended, says he is entitled to.

As the word "magistrate" as used in section 42 is defined in section 23 of Chapter 107, R. S. 1944 (see also section 24 of said chapter) to be a dis-