

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

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-

closure commissioner, judge of probate, register of probate, judge of a municipal court, etc., we feel that the same rule applies to all persons defined as "magistrate".

JAMES G. FROST
Assistant Attorney General

October 10, 1951

To Marion E. Martin, Commissioner of Labor and Industry
Re: Boilers

Your memo relative to Section 64 of Chapter 25, R. S. 1944, has been received.

Section 64 exempts certain types of boilers from the application of Sections 51 to 65 of Chapter 25, one exemption being

" . . . or to steam heating boilers which carry pressures not exceeding 15 pounds per square inch, constructed and installed in accordance with the rules adopted by the board of boiler rules; . . . "

You state that since the effective date of this section, 1935, no such rules have been adopted, that your staff is insufficient to inspect the thousands of such boilers if the rules were adopted, and that, similarly, you have insufficient funds to carry out the purpose of the section.

You then ask if you are derelict in your duty in having failed to adopt such rules. Our answer, of necessity, is, "Yes." The problems you pose of lack of personnel and lack of funds to carry out the program are, of course, administrative problems, and do not vary our answer.

You also ask if in low-boiler rules provision can be made that such rules would not apply to private residences and/or other categories.

The statute has already attempted to exempt certain boilers from the application of Sections 51-65, Chapter 25, and with respect to boilers carrying pressures not exceeding 15 pounds per square inch, they too are exempt only if you adopt rules relative to their construction and installation, and the boilers are accordingly installed.

It is our opinion that a further classification of boilers carrying pressures not exceeding 15 pounds is not consistent with the law. Certain classifications having been made, or specifically enumerated exemptions set out, further classification is for that reason precluded.

It is our opinion also that Section 62, Chapter 25, does not permit an inspection charge to be made, in the event rules are adopted, Section 64 exempting such boilers from the application of this section.

JAMES G. FROST
Assistant Attorney General

October 17, 1951

To Marion E. Martin, Commissioner of Labor and Industry
Re: Statistics

Your memorandum of October 15th makes inquiry whether the wording