

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

"Incompetency has reference to any physical, moral or intellectual quality, the lack of which incapacitates one to perform the duties of his office. It may arise from gross ignorance of official duties, or gross carelessness in their discharge. It may arise from lack of judgment and discretion or from a serious physical or mental defect not present at the time of election, *though we do not imply that all physical or mental defects so arising would give ground for suspension.*" (Emphasis mine.)

It has been held in Massachusetts that insanity is a ground for removal for cause. *Attorney General v. O'Brien*, 280 Mass. 300; 186 N.E. 570. A reading of this case shows that expert testimony was taken to show that the incumbent of the office was hopelessly insane, *intimating* that temporary insanity might not be sufficient ground for removal.

So many of the definitions of "cause" refer to it in the sense that the cause for removal must specifically relate to and affect the administration of the office so that the rights and the interests of the public are not protected that this writer is led to the conclusion that, to remove a man from office due to illness, you must show that it has been such a protracted absence from the office that it has affected the normal functions of that office to the end that it has not been performed as the legislature intended and the public has suffered as a result.

Where the absentee is merely one of a three-man commission, where all members of the commission are bound to perform and enforce the law equally, where they have picked up the burdens of their absentee fellow-commissioner, and where there has been no complaint of inadequate supervision of harness racing, there would seem to be insufficient grounds to sustain any removal from office.

ROGER A. PUTNAM

Assistant Attorney General

September 15, 1953

To Roland H. Cobb, Commissioner of Inland Fisheries and Game

Re: Hearings without Petition

In response to your memo of September 10, 1953, we would say that under that provision of Section 5 of Chapter 33 which states that the Commissioner may investigate the conditions adversely affecting the fish in any waters in the State, the Commissioner may have a hearing without being petitioned therefor by the municipal officers or citizens or county commissioners.

JAMES G. FROST

Deputy Attorney General

September 15, 1953

To Roland H. Cobb, Commissioner of Inland Fisheries and Game

Re: Correspondence with James Briggs

We have your memo of September 10, 1953, attached correspondence from