

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

Mr. James Briggs, and an intra-departmental memo from Henry S. Carson, Biologist.

It would appear that Sportsmen Incorporated has purchased a portion of land in the Stockholm Game Preserve in Aroostook County. Mr. Briggs, on behalf of Sportsmen Incorporated, has requested the Commissioner of Inland Fisheries and Game to change the boundaries of the Preserve so as to exclude that land purchased by the club.

We wish to advise that the Stockholm Game Preserve is a statutory Preserve, created by the legislature, by Chapter 76 of the Public Laws of 1949. Having so established this game preserve by statute, the legislature alone can amend or repeal the provisions of the act. It cannot delegate to any other party its power to do so.

Section 129 of Chapter 33 grants to the Commissioner power to create temporary game preserves in limited areas and from time to time to release all or any part of such lands whenever he deems it expedient. Thus the provisions of Section 129, while not permitting the Commissioner to amend or repeal the preserves created by the legislature, would permit him to release parts of a temporary preserve established by the Commissioner.

JAMES G. FROST
Deputy Attorney General

September 15, 1953

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Screen at Embden

We have your memo of August 27, 1953, in which you inquire as to the responsibility for the repair of the fish screen at Embden Pond. The sum of \$1000 was provided by Chapter 216 of the Resolves of 1927 for the screening of the pond.

It is the opinion of this office that under our present statutes and the provisions of this Resolve, your department is not authorized to repair the screen at Embden Pond. The purposes for which departmental moneys can be spent are particularly limited by statute and such statute should be construed with reasonable strictness.

JAMES G. FROST
Deputy Attorney General

September 18, 1953

To Willard R. Harris, Acting Director of Personnel
Re: Federal Employees in the Department of the Adjutant General

We have your memo of September 8th and attached correspondence relating to the employment of Mrs. Josephine L. Smith by the Federal Government at the Adjutant General's Department. It appears that the position which Mrs. Smith holds will no longer be required as of October 2, 1953, and she has requested the Personnel Board to schedule a hearing at which her case would be considered.