

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

so broadly. There is no reason, of course, for admitting everyone who asks admittance. The Board should at all times be satisfied that the person is not pretending to have some skill which in fact he lacks.

We are conscious of altering only one word of the statute and for that there is statutory authority. Subsection I of Section 2 states that "electrical installations" relates to devices "for heating, lighting *and* power purposes". The underlined "and" we have considered to be equivalent to "or". Chapter 9, Section 21, provides:

"The words 'and' and 'or' are convertible as the sense of a statute may require."

We believe that the two are convertible in this instance for the reason that an electrician is defined as a person who, as a business, makes electrical installations, or makes them "as auxiliary to a principal business". But their business relates to heating and not to lighting and power. Hence it would seem to follow that the "and" should be understood to mean "or".

BOYD L. BAILEY

Assistant Attorney General

March 8, 1954

To Honorable Burton Cross, Governor of Maine

Re: Probation Officer — Incompatibility with Post Office Service

This office has been asked if the position of probation officer is incompatible with employment in the Post Office Department of the Federal Government.

Our Maine Court has said that two officers are incompatible when the holder cannot in every instance discharge the duties of each.

Section 137.24, paragraph (i) of Title 39, Code of Federal Regulations, deals with postal service and outside employment of employees, and reads in part as follows:

"Postmasters and employees in post offices shall not engage in any business or vocation that will interfere with their official duties. . ."

Section 29 of Chapter 136 of the Revised Statutes of 1944 specifically places upon probation officers the duty of attending the Superior Court during the times when persons convicted of crime are sentenced, of giving advice upon request to the courts, and of attending the sessions of other courts within their respective counties having criminal jurisdiction as often and as continuously as the performance of their duties shall permit.

It would appear to this office that these positions are incompatible and that the probation officer would be unable to perform adequately his services for the State if he were employed in the postal service.

It should be noted also that the tenure of office of a probation officer, under the provisions of Section 28 of Chapter 136, is during the pleasure of the Governor and Council. Under such a statute the Governor and Council may terminate the services of an appointee when evidence would show that such appointee cannot properly perform his statutory duties.

JAMES GLYNN FROST

Deputy Attorney General