

MAINE STATE LEGISLATURE

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May 21, 1954

MS

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Outstanding Fees, Eastport

This will acknowledge receipt of your inquiry of May 17th to which was attached your file relative to the former city clerk in Eastport. . . Your first question concerns the responsibility of the city for delinquent funds amounting to \$336.

Your chapter provides in Section 32 that clerks of all municipalities are authorized agents for the issuance of all fishing licenses. the license shall be issued upon payment of \$2.25 and the clerk shall retain 25¢ for his fee. There is a similar provision in Section 63, as regards hunting licenses.

It would appear from the statute that the duties imposed in this particular instance are imposed by the legislature and that therefore the city has nothing to do with the matter. This is particularly true when we see that the clerk himself is allowed to retain 25¢ from the fee. If this fee were payable to the city, you might be able to say that the clerk was carrying on something in behalf of the city.

It is possible for a designated municipal official to act in a capacity for the State and thus his negligence in that capacity is not attributable to the town. Graffam v. Poland, 115 Maine 375. We would therefore conclude that the city is not responsible for the deficit, but that the former city clerk was acting in his personal capacity, as an individual.

The second question deals with whether you, as Commissioner, should send licenses to the successor while this obligation is still outstanding. I would say that this was a purely administrative matter, to be decided by you alone, and I would say further that the fact that these individuals are designated agents does not necessarily mean that you must use them. Specific authority is given you to designate additional agents. It certainly would be foolish to say that you had to forward licenses to an individual whom you do not feel to be capable of handling the situation.

I would further point out to you the last paragraph of Section 110 of your chapter, which, in my opinion, would cover failure to turn over the fees here in question, provided there had been a neglect after demand, as the statute reads.

If you desire criminal prosecution, you should consult with the local county attorney, as he is the man who will make out the complaint and indictment.

Of course, we assume that there is personal liability. That means that a civil suit also could be maintained against the former city clerk to recover the sums, if there be any chance of turning a judgment into cash.

This development and the bankruptcy claim that Mr. Frost is working on bring me to the conclusion that perhaps it might be wise if you, as Commissioner, were to amend your license provisions to provide that all city clerks, town clerks and parties selected by you to sell licenses should be bonded up to a certain sum, in order to protect your department from defalcations, bankruptcies or anything that might arise to prevent recovery. We suggested this recently in connection with a bankruptcy that occurred in Massachusetts. You are particularly interested in the fees, in view of the fact that all fees are deposited in your special funds and used by you to carry out legislative directives.

I am sure that Mr. Whitten of the Insurance Department would be of assistance to you in the matter.

Roger A. Putnam
Assistant Attorney General

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