

# 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**

On the facts submitted in your memorandum, merely that the Town of Boothbay Harbor appropriates annually a sum of money for the library and that its trustees are elected by the town, combined with the fact that our research discloses that the library is a charitable corporation, we are of the opinion that employees of said library should be covered under an agreement with the Bureau of Internal Revenue rather than under the agreement which your System has with the Town.

JAMES GLYNN FROST  
Deputy Attorney General

June 2, 1954

To Honorable Harold I. Goss, Secretary of State  
Re: Itinerant Vendors' Deposits

This is in response to your memo asking for an interpretation of the provisions of Section 96 of Chapter 88 of the Revised Statutes.

Under the provisions of the Itinerant Vendor's Law, such vendor must make a deposit with the Secretary of State (Section 86) and it is further provided by Section 96 that such deposit

“shall be subject so long as it remains in his hands, to attachment and execution. . .”

The same section continues in part in the following tenor:

“and the secretary of state if he has in his hands a sufficient sum deposited by such licensee shall pay the sum so specified. . . ; and if the secretary of state shall not have a sufficient sum so deposited he shall make payment as aforesaid, of so much as he has in his hands.”

With respect to these provisions of law you ask if such deposits shall be kept under your control at all times or if they should be deposited with the Treasurer of State.

We are of the opinion that funds deposited by you with the Treasurer of State, which funds have been received under the provisions of the before-mentioned law, are at least constructively in your possession and sufficiently within your possession to comply with the requirement that you be able to pay when so ordered by the final judgment of the court. We think that an orderly procedure for conducting the State's business would call for depositing the money with the Treasurer of State.

JAMES GLYNN FROST  
Deputy Attorney General

June 2, 1954

To Lillian Brush, PhD, Secretary, Board of Examiners of Psychologists

. . . The Board, under Section 2 of Chapter 243 of the Laws of 1953, is required to hold at least one meeting which will have the purpose of conducting examinations of candidates who desire to be certified. This is a minimum requirement, and the word “shall” is generally construed to be an absolute order

rather than permissive. Irrespective of the fact that you may not have any applicants, I do feel that the Board should advertise this meeting to examine candidates, and if none appear, then the problem will more or less be resolved.

You state that you assume that the term "year" coincides with the fiscal year of the State. I would not necessarily agree with that assumption. The term "year", to my mind, refers to the calendar year, meaning from January 1 to December 31, rather than the fiscal year. If it is the intent of the legislature to put a board on a fiscal year basis, it generally uses that term throughout the statute. Thus, as far as this office is concerned, we feel that we could not permit you to waive the meeting for this year.

ROGER A. PUTNAM  
Assistant Attorney General

June 3, 1954

To E. E. Edgecomb, Supervising Inspector, Labor and Industry  
Re: Elevator Inspections

This is in response to your memo of some time ago, in which you recite the procedure you have followed in the inspection of elevators and the special certificates and orders for compliance that you have issued following the opinions issued by Neal Donahue, Assistant Attorney General, dated April 3 and April 9, 1951.

With respect to such procedure, and more particularly your action with regard to the Boyd Building in Portland, Maine, you have asked several questions:

1. "Did I use this Order for Compliance as was its intent?"
2. In the case of the Boyd Building "where I received a report of an insurance company inspector which listed conditions that I consider dangerous and even though he stated on this report that the elevator was safe, was it within my powers to inspect the elevator myself or have it inspected by an inspector from this Department, and use my judgment as to whether this elevator was dangerous or not? Also, in your opinion what action should I have taken in this case?"
3. "When and under what circumstances may I condemn an elevator?"

*Answer to Question No. 1.* Your use of the Order for Compliance was undoubtedly proper in view of the opinion given by Mr. Donahue. Mr. Donahue's opinions were issued to you shortly subsequent to the time of enactment of the laws in question and those opinions considered what result strict adherence to the laws would have on the elevators in the State that had not hitherto been compelled to comply with any laws of the State. For this reason the opinion of this office at that time was lenient in favor of owners of elevators. However, we feel presently and in view of the information supplied in your memo that the time has come when the statute should be complied with and there should no longer be an Order for Compliance as distinguished from the certificates contemplated by Section 99-H of Chapter 374, Public Laws of 1949. Said section authorizes the department to issue an inspection certificate when the examined elevator is found to be in con-