

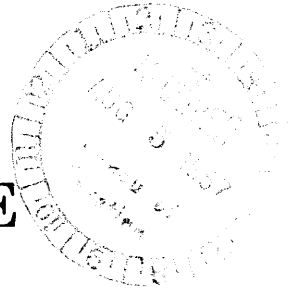
MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT
OF THE
ATTORNEY GENERAL

for the calendar years
1955 - 1956

May 25, 1956

To Lee Gardiner, Farm Supervisor, Insitutional Service

Re: Farm Contract, State School for Boys

Yesterday you orally presented the following problem: Can the State School for Boys contract in the spring with a canner to raise beans for same, the canner to furnish the seed, the State School, of course, to furnish the land and the labor, and the School to be paid so much per pound or possibly some sort of exchange in canned goods, for service rendered?

There is little mention of farms in the statutes. Section 1 of Chapter 27, R. S. 1954, provides that the Commissioner may employ a farm supervisor and provides for the payment of his salary. Section 19 of the same chapter refers to the prison farm and such other farms as there may be on leased land in the County of Knox. We note that Section 83 of the same chapter provides that the State School for Boys shall train the boys, if they are able, in the fields of agriculture and horticulture, and along this line, of course, the School maintains a farm where the boys are instructed. We note also that the legislature has seen fit, in Sections 30 and 31 of the chapter, to provide that prison-made goods may be sold and for marking the same.

It is our conclusion that the lack of specific statutory authority compels us to answer that the contract above mentioned could not be entered into. While it may be beneficial to the School, and of this we have no doubt, it does take on the complection of a business arrangement, and the School is to be operated primarily for the rehabilitation of the inmates. This does not mean, of course, that surplus commodities raised at any institutional farm cannot be sold in the general market, but this case is different. Here we should be contracting in the spring to have a known surplus in the fall, and this we feel is impossible under existing law.

Much as we regret to say so, we feel that it cannot be done and would suggest, if this is necessary for the proper operation of our institutional farms, that specific authority be sought at the next legislative session.

ROGER A. PUTNAM
Assistant Attorney General

May 29, 1956

To Ober C. Vaughan, Director of Personnel

Re: State Employees in Legislative Service

We have your memorandum requesting our opinion in regard to the employment in the Executive branch of our government of persons who are members of the Legislature, also the further question whether or not an employee of the Executive branch can take leave of absence without pay and serve in the Legislature as a member of that body.

Section 11, Part Third, Article IV of the Constitution of Maine provides:

“No member of Congress, nor person holding any office under the United States (post officers excepted) nor office of profit under this state, justices of the peace, notaries public, coroners and officers of the

militia excepted, shall have a seat in either house during his being such member of Congress, or his continuing in such office.”

Section 2 of Article III of the Constitution of Maine provides:

“No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.”

Based on the foregoing, it is our opinion that an employee of the Executive branch cannot carry out his duties as such and also be a member of the Legislature; nor should any member of the Executive branch be given leave to attend the annual session of the Legislature or any special session thereof.

Further, no member of the Legislature should be employed by the Executive branch after the regular session, unless and until he has resigned from that body.

If the Constitution were not so specific, undoubtedly public policy would dictate the same answer.

We trust that this answers your problems.

ROGER A. PUTNAM
Assistant Attorney General

June 13, 1956

To Norman U. Greenlaw, Commissioner of Institutional Service

Re: Contract—Costs of Return of Parole Violators

We have examined the letter dated May 21, 1956, from Brevard Carihfield of the Secretariat of the Council of State Governments, and the attached contract, which he requested you to execute, concerning costs of cooperative returns of violators of parole and probation.

In brief, the contract relates to a device whereby violators can be transported between States by officers deputized by this State, but who are actually officers of another State, with the payments of costs to such persons for necessary expenses incurred in the transportation of such violators. This would, in effect, mean that the State would pay to officers of another State expenses incurred in returning to this State violators of our laws.

While we do not have at hand the descriptive legal brief relating to informal cooperative agreements, we are of the opinion that legislation would be necessary, authorizing the Commissioner to execute this agreement with officers of another State.

It will be noted that on page 102 of the Handbook on Interstate Crime Control published by the Council of State Governments, it is stated,

“Thus, the key question to a plan for cooperative returns of violators rests with adequate statutory authority giving appropriate officials power to deputize parole and probation officers (out-of-State agents).”

We are returning herewith the above named Handbook, which accompanied your request for an opinion.

JAMES GLYNN FROST
Deputy Attorney General