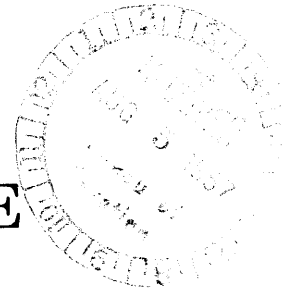
STATE OF MAINE



REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1955 - 1956

control law. Following the same rule of law, and not considering the question of the source of funds, it is our opinion that the superintending school committee, in entering into a contract to provide milk for a school-lunch program, is excluded from the provisions of this law.

FRANK F. HARDING
Attorney General

October 12, 1956

To Captain John deWinter, Director, Traffic Division, State Police

Re: Defrauding an Innkeeper

We have your request in regard to defrauding an innkeeper.

Section 44 of Chapter 100 provides:

> "Whoever obtains food, lodging or other accommodations at any hotel, inn, boardinghouse or eating house, with intent to defraud the owner or keeper thereof, shall be punished by a fine of not more than $100 or by imprisonment for not more than 3 months."

You can see that this is an intentional crime and that the intent must be proved. At common law a mere failure, refusal or inability to pay does not constitute the offense contemplated by the statute. There must be an intent to defraud existing at the time the board or other accommodation is obtained. To overcome the common-law rule, Section 45 of Chapter 100 provides that certain acts shall constitute *prima facie* proof of the fraudulent intent. Among these acts are refusal to pay on demand or absconding without paying or offering to pay for the accommodations received. This, of course, is *prima facie* only, and the burden is on the respondent to rebut it.

The question of arresting under certain circumstances is raised. For instance, assuming, as you state, that a person has defrauded an innkeeper by refusing his bill, that an officer is outside the establishment, and that the complainant follows the alleged respondent out and tells the officer the facts, can the officer under such circumstances make an arrest without a warrant?

The answer to that particular problem is, No. See *Palmer* v. *M. C. R. R.*, 92 Me. 399, which, of course, was a civil case, involving false imprisonment. In that case the original defendant was a passenger on the plaintiff railroad. He refused to state to the conductor whether he was the person named on the proffered railroad ticket. The conductor then refused to accept the ticket and demanded cash fare. The defendant refused, and upon getting off the train, the conductor caused a constable to arrest him on a charge of fraudulently attempting to evade payment of his fare. The defendant was subsequently found not guilty of the charge and sued the railroad, in the above cited action, for the act of its agent, the conductor. In this instance the court covers the field of arrest and states that a private individual may arrest for an affray or for a breach of the peace committed in his presence and while it is continuing. In this instance they decided that the alleged offense was not a breach of the peace. In attempting to justify, the defendant railroad used that section of the Revised Statutes which says that every officer shall arrest and detain persons found violating any law of the State until a legal warrant may be obtained. The court held that the statute did not aid

the defendant, as the plaintiff was not found violating any law of the State and states as follows:

> "The constable had no lawful authority to arrest him (i. e., the plaintiff) for a misdemeanor of which he was not guilty, on information merely, without a warrant."

Thus the court concluded that the arrest was unlawful.

Under the circumstances given in your case the plaintiff would not be found violating the law. The court evidently construes this statute to mean that the officer must actually find the person breaching the law. For instance, he stops a person who is driving under the influence of intoxicating liquor, or something of a similar nature, and does not rely upon information furnished by any other person.

My advice, therefore, would be that under similar circumstances, in order to protect the officer from civil liability—for you must always bear in mind that the respondent may be found not guilty—the alleged respondent's identification should be obtained, if at all possible, and a warrant sought at the local municipal court. This will give the officer the necessary protection.

ROGER A. PUTNAM
Assistant Attorney General

October 17, 1956

To Honorable Edmund S. Muskie, Governor of Maine

Re: Appointment of Probation Officer

You have inquired if there is any method by which a probation officer can be appointed immediately to fill the vacancy created by the resignation of a probation officer during a term of court.

The provisions having application to the appointment of a probation officer are contained in Chapter 149, Section 24, R. S. 1954, and in part the qualification for the position is that the person be a citizen of the county in which said appointment is made. In view of the duties of the probation officer and his relation to the parolee, it would appear that this qualification would be held to be a necessary one.

The only provision we can find where a parole officer can receive a temporary appointment is contained in Section 33 of Chapter 149. Section 33 provides that where the case is that of a juvenile, then the court having jurisdiction may appoint a person to serve as probation officer for that case only.

It is our opinion that Section 33 provides the only opportunity for a *pro tem.* appointment and that an appointment by the Governor and Council would have to follow the usual procedure: nomination and confirmation by the Council.

Because of the requirement of citizenship we would feel that it would be improper for the probation officer of another county to take over affairs in the county where the vacancy exists.

This answer, we think too, is bolstered by Section 33 and the provision therein contained with respect to *pro tem.* appointments.

JAMES GLYNN FROST
Deputy Attorney General