

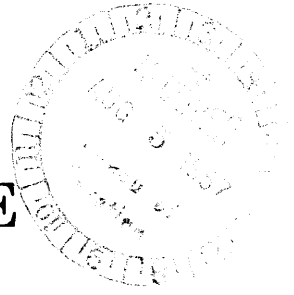
MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT
OF THE
ATTORNEY GENERAL

for the calendar years
1955 - 1956

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