

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

It is our opinion that Section 6 of the Act supplies the conductor to reach non-resident sellers and that an amendment using the term "non-resident" in the Act would not improve the enforcement, but would make it subject to constitutional litigation.

RALPH W. FARRIS
Assistant Attorney General

July 16, 1958

To Raymond C. Mudge, Finance Commissioner

Re: Purchase of Automobiles by the Department of Education

At your request I have checked the opinions rendered by this office and I am unable to find any opinion concerning the purchase of vehicles for departmental use. Therefore, Section 43 of Chapter 15-A of the Revised Statutes of 1954 controls.

As stated by said section, the State does not provide automobiles for the travel of State employees, with certain exceptions. The Department of Education is not included in these specific exceptions, and to the best of my knowledge that department has not been designated by the Governor and Council to purchase automobiles.

GEORGE A. WATHEN
Assistant Attorney General

July 16, 1958

To John J. Shea, Director, Probation and Parole

Re: Sentence for Crime Committed by Parolee

This is in response to your memo of June 25, 1958, in which you ask an opinion on Chapter 387, Section 16, Public Laws of 1957, seen on page 455:

"Section 16. Sentence for crime committed by paroled person. A parolee who commits an offense while on parole and is sentenced to a State penal or correctional institution shall serve the second sentence beginning on the date of termination of the first sentence, whether it is served or commuted."

Question: Can a parolee of the Men's Reformatory, who commits, while on parole, an offense for which he is sentenced to the Maine State Prison, serve time at the prison on the offense for which he was paroled prior to the beginning of the new prison sentence?

Answer: Yes, under conditions as outlined hereafter.

An examination of the history of this section offers little in the way of assistance in arriving at a decision.

The law first appeared in Chapter 60, Section 11, Public Laws of 1913, in the following form:

"Any prisoner committing a crime while at large upon parole or conditional release and being convicted and sentenced therefor shall serve the second sentence to commence from the date of the termination of the first sentence after the sentence is served or annulled."

The Revised Statutes of 1916 contain substantially the same provision (Chapter 137, Section 37), the last clause having been changed to read:

“ . . . whether such sentence is served or annulled.”

This section remained unchanged until 1953, when, by Chapter 404, Section 10, Public Laws of 1953, the section was amended to read as follows:

“Any prisoner committing a crime while at large on parole or conditional release and being convicted and sentenced therefor to imprisonment at the state prison shall serve the 2nd sentence to commence from the date of the termination of the 1st sentence, whether such sentence is served or annulled.”

It is, of course, clear that, before the most recent amendment, such second sentence should have been served after service of the first sentence only in the event the second sentence was to be served in the Maine State Prison. Such limiting clause is not now present. If the second sentence is to be served in any State penal or correctional institution, then it shall be served after the first sentence is either served or commuted.

Thus in this one respect the present statute is much more encompassing, with respect to those prisoners potentially having to serve the contemplated sentences, extending the group to prisoners on parole committing offenses for which they are sentenced either to the State Prison or to any other penal or correctional institution.

Under the circumstances of the present fact situation, such prisoner would be subject to serve the remainder of the sentence on which he was paroled in the State Reformatory.

We believe that a trial court, having knowledge of all such facts, should set the time for the beginning of the new sentence at the expiration of the first sentence, for at the time of the second sentence the prisoner had a liability to the State on the first sentence.

There is, however, nothing the trial court could do to change the effect of Section 16, which section directly, positively, and mandatorily provides for consecutive sentences; *Lewis v. Robbins*, 150 Me. 121.

For the above reasons we are of the opinion that:

1) If the trial court had so directed, the first sentence could be served in the Men's Reformatory and the Prison sentence served at the Prison upon termination of the Reformatory sentence;

2) If the trial court fails to indicate the manner of service of sentence, but sentences only on the offense to the State Prison, then the statute with its immutable provisions takes effect and is self-executing, with the result that both sentences are to be served in the Prison. See *Lewis v. Robbins*, *supra*, and *Mercer v. Fenton*, 120 Neb. 191, 231 N.W. 807, which latter case our Court approved in principle.

JAMES GLYNN FROST
Assistant Attorney General