

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

November 5, 1958

To Perry D. Hayden, Commissioner, Institutional Services

Re: Expenses of support and commitment.

I have your request for an opinion from this office concerning the expenses of support of patients in the insane hospitals. Section 135 of Chapter 27 provides, in the case of a person unable to pay for his support, that the town where the patient resided or was found at the time of his arrest shall pay the expenses of *examination* and *commitment*; and the expenses of *support* shall be borne by the state, provided the municipality files the certificate stating that the patient or his relatives are unable to pay for the support.

Section 139 of Chapter 27 provides that the state may recover from the insane person *if he is able*, or from persons legally liable, the reasonable expenses of his support.

The real question raised is, "When is an insane person able to pay for his own support?" If he is unable at the time of commitment and later becomes able to support himself, may the state collect for the period when the insane was unable to support himself?

The answers to these questions are found in *Bangor v. Wiscasset*, 71 Me. 535; *Cape Elizabeth v. Lombard*, 72 Me. 492; *Orono v. Peavey*, 66 Me. 60.

The *Orono v. Peavey* Case concerned a person infected with a contagious disease and removed to a separate house by the municipal officers of Old Town, but since his residence was Orono, the Town of Orono reimbursed Old Town. A suit was brought by Orono against the defendant to recover the expenses paid due to his illness. The Court held that since the defendant was unable to pay the entire amount of the expenses, he was not liable to pay any part thereof. This was based on the statutory language "if able".

We have the same language in the present statute and this language was in the statute when the *Bangor v. Wiscasset* and *Cape Elizabeth v. Lombard* cases were decided. Both of these cases involved persons committed to insane hospitals. Both cases held that there is no debt unless there is an ability to pay. If, due to changed financial circumstances, the insane becomes able to pay, a debt is created from that time.

In my opinion, based on the cases heretofore cited, if a person is unable to pay his entire support at the time of his commitment, there is no debt created, and upon becoming able to pay at a later date, he pays only from the time he is able to pay and does not pay for the period of time when there is no legal debt.

GEORGE A. WATHEN
Assistant Attorney General

November 14, 1958

To Edward Langlois, General Manager, Maine Port Authority

I have your letter of October 30, 1958, requesting an opinion concerning the application of Section 26 of Chapter 15-A, Revised Statutes of 1954, as amended, to the Island Ferry Service. On a previous occasion I had discussed this matter

with Mr. Pressey, Assistant Controller, and agreed that Section 26 did not apply to the Island Ferry Service.

I have also received a letter addressed to James Frost, Deputy Attorney General, requesting an opinion concerning whether or not the Maine Port Authority in its administration of the Island Ferry Service comes under the jurisdiction of the Bureau of Public Improvements for leasing of grounds, buildings and facilities.

The Maine Port Authority as an agency of the State would appear to come within the purview of Chapter 15-A, Revised Statutes of 1954, but historically these quasi-governmental agencies such as normal schools, the University of Maine and the Maine Port Authority have been considered in a different category than our other state agencies. (Chapter 216, P. L. 1931, commonly known as the administrative code, exempts the Maine Port Authority, then known as the Port of Portland Authority from the provisions of the act.) The Maine Port Authority was charged by the Legislature to acquire property, boats and equipment to provide transportation of vehicles, freight and passengers between the islands and the mainland. The legislature specifically laid down the duties and the authority of the Maine Port Authority for organizing and operating the ferry service. The Legislative Record indicates that the Maine Port Authority was given this task because of their special knowledge in such a venture.

In the overall survey of the statutes and the Legislative Record it is, therefore, my opinion that the Maine Port Authority administering the ferry service is not subject to Section 26 or Article XIX of Section 25 of Chapter 15-A, Revised Statutes of 1954.

Very truly yours,

GEORGE A. WATHEN
Assistant Attorney General

December 2, 1958

To Honorable Edmund S. Muskie, Governor of Maine

Re: Vacancy in Office of Sheriff

From time to time this office has given oral opinions to the Governor that the appointing power has the right to make a prospective appointment when a vacancy will occur during the term of office of that appointing power, and that the Governor and Council can thus make such appointments when the vacancy will occur prior to the expiration of the terms of office of the Governor and Council.

We are now asked if the same rule applies to the filling of a vacancy caused by the death of a sheriff.

We are of the opinion that the general rule above stated applies to the office of Sheriff, although the sheriff was originally elected to his office. In the event of vacancy in that office the Constitution vests the power of appointment in the Governor, with the advice and consent of the Council, and, absent further provisions *re* the manner of appointment, the general provisions surrounding that power would apply.

Under the provisions of Article IV, Section 10, Constitution of Maine, a sheriff is elected by the people for a period of two years from the first day of