

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

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

January next after their election. The term of a sheriff therefore expires at midnight on December 31st.

The same constitutional provision goes on to provide that vacancies in the office of sheriff shall be filled in the same manner as is provided in the case of judges and registers of probate:

“Vacancies occurring in said office by death, resignation or otherwise, shall be filled by election in manner aforesaid at the (September) election, next after their occurrence; and in the meantime the governor, with the advice and consent of the council, may fill said vacancies by appointment, and the persons so appointed shall hold their offices until the first day of January next after the election aforesaid.”

Article VI, Section 7, Maine Constitution.

It will be recalled that the above quoted provision was proposed to be amended by Chapter 94, Resolves of 1957, and was in fact amended, upon affirmative referendum vote of the people, in the following manner, with respect to filling the vacancy:

“Vacancies occurring in said offices by death, resignation or otherwise, shall be filled by election in manner aforesaid at the *November* election, next after their occurrence. . .”

Your question relates particularly to the office of Sheriff of Androscoggin County.

The sheriff-elect, as of the September election of 1958, died two days after the said September election.

The Governor and Council appointed a person to fill the vacancy created by the death of the sheriff, and by the terms of the commission the person so appointed was to hold office until January 1, 1961.

We submit that, in the first instance, the appointment was to fill a vacancy in the present term of office of the deceased sheriff, which term would have expired on January 1, 1959. The commission of such person should then properly run until midnight, December 31, 1958, with a second appointment to follow, to fill the vacancy that will be inevitable in the term of sheriff running from January 1, 1959, to midnight on December 31, 1960. See Opinion of Justices, 137 Me. 347.

With respect to the second such appointment, we are of the opinion that the Governor and Council can properly anticipate the certain vacancy in that office and appoint a person to fill that vacancy before the vacancy actually occurs, such vacancy occurring before the expiration of the terms of office of the Governor and Council.

JAMES GLYNN FROST
Deputy Attorney General

December 3, 1958

To George F. Mahoney, Commissioner, Insurance Department

Re: Sale of Used-Car Warranties

The question, “Is the conduct of the sale of used-car warranties in this state the carrying-on of insurance business?” has been submitted to me.