

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

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July 10, 1959

To: Michael Napolitano, State Auditor

Re: Authorities Subject to Audit by the Department of Audit

We have your memo of May 22, 1959, which reads as follows: "The Department of Audit is governed by the statutory provisions of Chapter 19, Revised Statutes of 1954, as amended. The duties of the State Auditor with respect to postauditing are contained in the following:

"To perform a postaudit of all accounts and other financial records of the State Government and any departments or agencies thereof . . ."

"My particular concern is with reference to the following:

Maine School Building Authority Chapter 41, Section 243-259, as amended.

Maine Industrial Building Authority Chapter 421, Public Laws of 1957 (Special Session).

Maine Turnpike Authority Chapter 69, Private and Special Laws of 1941.

"I would appreciate a reply as soon as possible as to whether any of the above are subject to audit by this department."

It is our opinion that each of the above-named Authorities is subject to audit by the Department of Audit.

For a definition of the term "agency" as used in Chapter 19, section 3, Revised Statutes of 1954, we would refer you to an opinion of the Attorney General dated February 6, 1945, and addressed to the then State Auditor.

"The words "agency of the State of Maine" in this sense mean municipal corporations, which include cities, towns, counties, taxing districts, and other subdivisions of a State erected for the purpose of government or administration."

Where a body organized by the legislature carries on a State function, then it is such a body as would be subject to audit. The exception to this rule would be where the legislature has provided otherwise; such as in the case of those bodies exempt under the code of 1931 or under certain conditions such as the manner in which the legislature dealt with audit of the town records.

With respect to the Maine School Building Authority, it is stated in section 246 of chapter 41, Revised Statutes of 1954, that that Authority is a "public instrumentality of the State."

The Maine Industrial Building Authority is a "public instrumentality of the State," chapter 421, section 4, Public Laws of 1957.

In connection with the Maine Turnpike Authority, our court has said "the Authority takes its powers immediately from the legislature and the enabling act delegates police power of considered precedence. . ."

Section 18 of chapter 69, Private and Special Laws of 1941, states:

"It is hereby declared that the purposes of this act are public and that the authority shall be regarded as performing a governmental function in the carrying out of the provisions of the act."

For the reasons that each of the Authorities in question are instru-

mentalities of the State performing a State function, and not expressly exempt from audit, we are of the opinion that each Authority is subject to audit under provisions of chapter 19, Revised Statutes of 1954.

JAMES GLYNN FROST
Deputy Attorney General

July 15, 1959

To: Mr. A. Edward Langlois, Jr.
General Manager
Maine Port Authority
Maine State Pier
Portland, Maine

Dear Mr. Langlois:

This is to confirm our telephone conversation on July 15, 1959, concerning the use of the State seal. In regard to the use of the name of the State, I believe it would not be improper since this agency is operating a ferry line which is backed by bonds issued on the full faith and credit of the State of Maine.

May I refer you to Chapter 143, section 8, regarding the use of the State seal, and I would suggest that you request permission from Honorable Clinton A. Clauson, Governor, pursuant to this statute, before using the State seal.

Very truly yours,

GEORGE A. WATHEN
Assistant Attorney General

July 16, 1959

To: Harland H. Harris, Controller

Re: Compensation, Secretary of the Senate

I have your request for an opinion on the following statement of facts:

Senate Order dated June 13, 1959 states "that the Secretary of the Senate shall receive compensation of \$1,000 for the year in which the Legislature is not in regular session." Is this order sufficient authorization for the State Controller to pay additional compensation to the Secretary of the Senate?

In my opinion, a Senate Order does not have the force and effect to amend a statute which would be necessary in this case to authorize a salary increase other than that provided in Chapter 10 of the Revised Statutes.

GEORGE A. WATHEN
Assistant Attorney General