STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

The interest rate on the loan would, of course, vary from time to time as the balance on the loan were increased or decreased. No passbook in which all payments are recorded is furnished. The monthly statement would supplant such passbook.

We are of the opinion that the "Plan" as submitted to you, and as briefly outlined above, violates express provisions of the small loan law.

Under the "Plan" a prospective borrower has not obtained a loan until such time as he endorses and negotiates a check. While his top credit is established in a piece of paper he has in hand, he receives no further word from the loan company until a date some time after he "borrows" a sum of money. Periodically thereafter he receives a statement, but the mailing of statement has no relationship to the time of the loan; many such loans could in practice, be made, after receipt of the first such statement, before the receipt of a monthly statement.

Such "Plan" is in conflict with our small loan law, especially Chapter 59, section 219, Revised Statutes of 1954, which provide that the loan company shall:

> "I. *Deliver to the borrower, at the time a loan is made,* a statement . . . showing in clear and concise terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the rate of interest charged.
>
> "II. Give to the borrower a plain and complete receipt for all payments made on account of any such loan *at the time such payments* are made, . . ."

It is clear that the formula of the "Plan" does not permit compliance with the above-quoted provisions of law, which provisions of law are mandatory upon the licensee small loan company.

JAMES GLYNN FROST
Deputy Attorney General

October 19, 1959

To: Governor Clinton A. Clauson

Re: Sheriff, Removal of

We are herewith returning to you the petitions requesting that the sheriff of be removed from office.

The petitions were presented to this office with the request that we determine if such petitions constitute an adequate complaint under the terms of the constitution.

It is our opinion that the petitions are insufficient to grant to the governor and council the necessary authority to proceed to a hearing.

The petitions are in the following form:

> "Whereas Article IX, sec. 10, of the Constitution of the State of Maine provides ". . . whenever the governor and council, upon complaint, due notice and hearing shall find that a sheriff is not faithfully or efficiently performing any duty imposed upon him by law, the governor may remove such sheriff from office and with the

advice and consent of the council appoint another sheriff in his place for the remainder of the term for which such removed sheriff was elected",

"And whereas a duly constructed Grand Jury has found the sheriff of and his deputies guilty of gross negligence and other sundry offenses against the welfare of the County,

"We, the undersigned citizens of , hereby make complaint against, and request the removal from office of, the said sheriff of , in accordance with the above named Section of the Constitution of the State of Maine."

Then follow the names of the persons subscribing to the petitions.

NATURE OF PROCEEDING

In this proceeding of hearing and adjudging the governor and council are not

"performing an ordinary executive act, but a quasi-judicial one. To hear and adjudge on complaint after due notice is a judicial function." *Opinion of Justices* 125 Me. 529, 533.

While the findings of the governor and council may not be subject to judicial review, it appears that the substance of the complaint, the adequacy of the notice, and perhaps the mode of procedure before the governor and council, are subject to court review.

"They have been constituted a special tribunal as triers of facts. While not a court in the ordinary meaning of the term, or judicial in the sense that its findings are in any manner subject to review by the regularly constituted courts, up to and including the findings are, at least, quasi-judicial in nature." *Opinion of Justices* 125 Me. 529, 533.

COMPLAINT AND NOTICE

The proceedings being judicial in nature, the complaint initiating the process should substantially be of the nature required to start a regular judicial procedure.

As used generally in the field of law, a complaint is a charge or accusation against an offender made by a person to a proper officer charging that the accused has violated a law.

Such complaints must set forth the facts which constitute the violation, in this case the unfaithfulness or inefficiency, in sufficient form to adequately advise the sheriff of the charges made against him, so that he can appear prepared to defend himself.

The broad charge of "gross negligence" is, in our opinion, an insufficient charge. Such a charge does not advise the sheriff of the facts which constitute the offense. Nor do the words "other sundry offenses" forewarn the sheriff of any particular offenses against which he should be given an opportunity to defend himself.

Of course, the complaint and the "due notice" required by the constitution are tied together, hand to hand.

"Due notice" is such notice as will adequately advise an offender of the facts comprising the offense with which he is accused.

The "due process clause" of our constitution requires that the notice called for in a judicial or quasi-judicial case be as indicated above — adequate to advise the accused of the specific offense.

Without a proper complaint the "due notice" cannot be given, for the notice is based upon the allegation in the complaint.

A comparable case can be found in the laws relating to teachers in our public schools.

> "After due notice and investigation they (the superintending school committees) shall dismiss any teacher who proves unfit to teach, or whose services they deem unprofitable to the school, giving to the teacher a certificate of dismissal and of the reasons therefor. . ."

The notice in such case was that the committee was "to act upon the advisability of Lucinia E. Hopkins teaching said school, at which time and place said Lucinia E. Hopkins might present herself and be heard in the matter, if she desired."

The court said in *Hopkins v. Bucksport* 119 Me. 437, 441:

> "As notice to the plaintiff of the object of the meeting, such a statement is wholly insufficient; from it she could not know for what reason her dismissal was sought, whether upon the ground of moral unfitness, temperamental unfitness, or lack of educational qualifications; much less whether it was sought on the ground that her services were deemed to be unprofitable to the school. . . She was entitled to know in advance on what ground her dismissal was sought."

For the above reasons we conclude that the complaint is insufficient.

We would also advise that our files reveal that on three prior occasions the governor and council have acted upon complaints under the same constitutional provision. In each of the instances the complaint was in the usual affidavit form, being sworn to by the complainant.

In the most recent matter in 1951 after a grand jury investigation the foreman of the grand jury was the complaining party to the governor and council. In the present instance after the grand jury investigated they made certain findings and recommendations with intentions of reviewing the situation in the January term, 1960.

FRANK E. HANCOCK
Attorney General

October 19, 1959

To: Asa A. Gordon, Coordinator of Maine School District Commission

Re: Election of School Directors

I have your request for an opinion regarding the manner of electing school directors by a municipality. Chapter 323, Public Laws of 1959, provides as follows: