STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

1. A member of the Department who retires as Deputy Chief
2. A member of the Department who retires as Chief

1. Chapter 214, P. & S. 1951, as amended by Chapter 166, P. & S. 1953, applies as to a Deputy Chief in the same manner as it applies to members otherwise eligible to participate in the benefits of the statute.

2. The said chapter also applies to Chiefs who have been selected from the membership of the Maine State Police. In the case of both the chief and a member, these particular sections apply only when such chief or member were members on July 9, 1943.

You also ask: "In the event that you are of the opinion that these laws are applicable to the retirement pay of either or both members above, it is requested that you advise me if you believe that approval of the Governor and Council of such increase would be required before the payment of the increased benefits."

We do not believe action by the Governor and Council is necessary. While the salaries of both the Deputy and the Chief are set by the Governor and Council, the retirement benefits are set by statute. For that reason it is unnecessary to obtain Governor and Council approval of the retirement pay for these officers.

With respect to answers 1 and 2 above, it appears that Chapter 214, P. & S. laws of 1951 as amended by Chapter 166, P. & S. 1953, amends by implication section 22 of Chapter 15, Revised Statutes 1954. The provisions of section 22 apply to the Chief (who was once a member), as well as to members. See the second paragraph of section 22 as quoted on the first page of this memo. Thus, Chapter 214 in amending section 22 of the Revised Statutes of 1954, of necessity amended the whole section so as to have application to the Chief as well as to members.

The Deputy Chief is, of course, a "member", and is selected by the Chief to "act as Deputy." Chapter 15, section 1, VI, Revised Statutes 1954. As a "member", the Deputy receives the benefits of Chapter 214, P. & S. 1951 as amended.

JAMES GLYNN FROST
Deputy Attorney General

February 9, 1960

To: Paul A. MacDonald, Deputy Secretary of State

Re: Conviction — Absence of Defendant and Counsel

We have your request for an opinion as to whether the following facts constitute a conviction:

A driver of a motor vehicle, exceeding the speed limit of 70 m.p.h. on the Maine Turnpike by 10 m.p.h., is stopped by a State Police officer. The driver is given a summons to appear at court on the 14th of August, taken to a bail commissioner, where he pays $25 to the bail commissioner to be recognized to appear before the court on the 14th of August. The driver then endorses the following upon the reverse side of the summons:

"I wish to plead guilty to the within offense. Please apply the bail towards payment of the fine."

Signed: (With name of driver)

Driver then proceeded to his home in another State, and never, by himself or attorney, appeared in court. The court did use the plea on the summons and applied the bail money to the fine.

The above facts are conceded to be true. It is our opinion that the above facts do not constitute a conviction.

A conviction exists, for the purpose of imposing punishment, when the guilt of the defendant is legally and finally determined and adjudicated. *State v. DeBery,* 150 Me. 28. A conviction may also exist as a point of progress in a trial; that is, the stage at which the respondent is found guilty or pleads guilty or nolo contendere. *Donnell v. Board of Registration,* 128 Me. 523. Thus, punishment can be imposed upon the verdict of a jury, or upon a plea of guilty, or of nolo contendere. *State v. Cross,* 34 Me. 594. But no such conviction can be obtained in the absence of *both* respondent and attorney.

Anciently, the personal presence of the accused was considered an indispensable necessity in all stages of a trial until the final result. *State v. Hersom,* 90 Me. 273.

At common law, personal presence of respondent was usually required in cases where punishment might be imprisonment, but the court had discretion to allow one indicted for a misdemeanor to plead and defend, in his absence, by an attorney. Neither the respondent nor his attorney appeared in the present case.

This common law requirement has been softened by statute. Chapter 148, section 14, Revised Statutes 1954:

"Respondent present at trial for felony; not otherwise. — No person indicted for felony shall be tried unless present during the trial; but persons indicted for less offenses, at their own request and by leave of court, may be tried in their absence if represented by their attorney."

That this section applies also to cases initiated by complaint, and for statements as to the common law requirement of presence of respondent at trial see *State v. Garland,* 67 Me. 423. And see Chapter 149, section 1, Revised Statutes 1954:

"No person shall be punished for an offense until convicted *in a court having jurisdiction of the person* and case."

Under the facts above described the court had no jurisdiction of the person of the respondent — he had left the State.

By reason of the circumstances of this case there was no conviction either of the nature upon which punishment may be imposed, *State v. DeBery* supra, or of a nature to determine the stage of trial reached when respondent pleads guilty or is found guilty. *State v. Morrill,* 105 Me. 207.

FRANK E. HANCOCK
Attorney General

By: JAMES GLYNN FROST
Deputy Attorney General