STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

As constitutional officers, further legislative qualifications would be subject to the same objection noted in paragraph (a).

STATUTORY OFFICERS

A further class of officers are those statutory officers elected by the Legislature but whose tenure and other qualifications are governed by statute. This class includes the Commissioner of Agriculture and the State Auditor.

While there appears to be no constitutional barrier against the imposition of statutory qualifications for such officers, we again note the possibility of discrimination if a person who is a member of the Retirement System is considered ineligible to run for such offices because of hs age, while one who has never been a member is eligible despite his age.

For the above reasons, possible lack of uniformity in administration of the law, possible discrimination without, in our opinion, any reasonable relationship to the effect to be desired, (we presume that membership in the Retirement System neither adds to nor detracts from the basic qualifications or abilities of a person to do a particular job), we conclude that the section in question does no more than spell out a policy with respect to the age of public officers. The legislature may, if it so desires, disregard that policy and elect to office a person over 70 years of age, and such person is eligible to run for office.

JAMES GLYNN FROST
Deputy Attorney General

April 7, 1960

To: Harold I. Goss, Secretary of State

Re: Pardon Petition — Before Sentence

We have your memo of March 28, 1960, in which you ask if a certain pardon petition is in order to go before the Governor and Council for hearing.

It appears from the letter accompanying the petition that the petitioner was charged with the offense of operating a motor vehicle while under the influence of intoxicating liquor; that a bill of exception was filed and allowed to the jury verdict of guilty. The case has been continued from day to day for sentence. Thus, the case is pending before the Law Court, according to the record before us.

In a letter dated March 25, 1960, you advised counsel for petitioner that petitioner's case could not be assigned for hearing before the Governor and Council since there had been "no conviction handed down for operating a motor vehicle while under influence, from the Law Court."

Counsel for petitioner urges that the term "conviction," as used in the constitutional provision relating to pardons, refers to that stage of the trial where a respondent is convicted, either by his plea of guilty or nolo contendere, or is found guilty, and before sentence or punishment is imposed. He believes that the term "conviction" is not such conviction as is the basis of imposing punishment when the guilt of the defendant is

legally and finally determined. In furtherance of his position, counsel referred you to 39 Am. Jur. 542, and *Com. v. Lockwood,* 109 Mass. 323 (1872).

Question: From the above facts we gather the question can be stated in the following manner:

> "May the Governor, with the advice and consent of the Council, grant a pardon of an offense after verdict of guilty and before sentence and while exceptions allowed by the judge who presided at the trial are pending in the Law Court for argument?"

Answer: No.

Both uses of the term "conviction" referred to above are recognized by our courts. For a case where a "conviction" exists for the purpose of imposing punishment when the guilt of the defendant is legally and finally determined and adjudicated, see *State v. DeBery,* 150 Me. 28. A conviction may also exist as indicating 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 vs. Board of Registration,* 128 Me. 523.

The citation to American Jurisprudence referred to above points out that pardons may be granted only after conviction, but that the use of that term varies from jurisdiction to jurisdiction, the rule in most cases being that "conviction" is that point where a person is convicted either by his plea or by the verdict of a jury.

An exception to that rule applies, however, in cases where the constitutional provision relating to pardons requires the Governor to communicate to the legislature each case of pardon granted "stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of the reprieve, remission, commutation or pardon. . ."

Article V, Part First, section 11, of our Constitution reads as follows:

> "He shall have power, with the advice and consent of the council, to remit, after conviction, all forfeitures and penalties, and to grant reprieves, commutations and pardons, except in cases of impeachment, upon such conditions, and with such restrictions and limitations as may be deemed proper, subject to such regulations as may be provided by law, relative to the manner of applying for pardons. And he shall communicate to the legislature, at each session thereof, each case of reprieve, remission of penalty, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of the reprieve, remission, commutation, or pardon, and the conditions, if any, upon which the same was granted."

In *State v. Alexander,* 76 N.C. 231, 22 Am. Rep. 675, it is stated:

> "Inasmuch as the Constitution, in the same section in which it authorizes the Governor to pardon "after conviction," requires him to report to the General Assembly not only the conviction but the sentence, is it not intended that there shall be a sentence to report, else how can he report it?"

In *Campion v. Gillan,* 79 Neb. 364, 112 H W 585, the court examined a provision similar to ours, where pardon had been granted after verdict of guilty, but after a motion for new trial was filed and while the same was pending. The court said, in holding the pardon to be improper:

> "The Governor can pardon only after conviction . . . In this

case no final verdict had been rendered. The defendant had asked the court to set aside the verdict because of intervening errors, as he claimed, rendering it ineffectual. Nothing but the plainest language excluding any other meaning could justify the construction of the Constitution contended for. But the language employed in the Constitution precludes such a construction. The Governor is required to communicate to the Legislature each case of pardon granted, "stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the reprieve, commutation, or pardon." This he could not do if there had been no judgment and sentence."

The cases we have examined, including *Com. v. Lockwood,* 109 Mass. 323, cited by petitioner, which hold that a pardon may be granted after verdict but before sentence, do not contain a constitutional provision similar to ours. In those states having provision such as ours, it has been held that sentence must be imposed, or else pardon is not proper.

In the instant case, petitioner has never been sentenced, and for that reason we are of the opinion that a pardon could not be granted on the present petition.

JAMES GLYNN FROST
Deputy Attorney General

April 7, 1960

To: R. W. MacDonald, Chief Engineer, Water Improvement Commission

Re: Houlton Water Company

We have your recent request for an opinion as to whether the Water Improvement Commission can grant funds to the Houlton Water Company for a survey of the company sewer system. This grant would be made under the terms of Section 7B, Chapter 79, Revised Statutes of 1954, as amended.

Under the terms of the above Section 7B, the Commission is authorized to make payments to municipalities and quasi-municipal corporations for approved sewage surveys. The question involved here is whether or not the Houlton Water Company is a quasi-municipal corporation so as to be eligible for such a payment.

The question of the status of the Houlton Water Company has been adjudicated by the Supreme Judicial Court of this State. In the case of *Greaves v. Houlton Water Company,* 140 Me. 158, the question was whether this company was a quasi-municipal corporation with respect to its property devoted to the service of surrounding towns. This issue arose because of the fact that the Houlton Water Company furnishes electricity for a large area surrounding the Town of Houlton. The court differentiated between activities carried on for the comfort and convenience of the people of Houlton and those services furnished the residents of other towns.

"We, therefore, conclude that, by legislative action and intendment, the corporate entity of the Houlton Water Company has been continued and maintained separate and distinct from the town of