

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

April 7, 1961

To: Honorable Leonce J. Jobin, Jr.  
House of Representatives  
State House  
Augusta, Maine

Re: Deputy Sheriff — Per diem deputy, salary and salary increases

Dear Representative Jobin:

We have your letter on April 5, 1961, in which you ask three questions.

"1) What would constitute a per diem deputy sheriff? Is a full-time deputy considered a per diem Deputy?"

Answer: A per diem deputy sheriff is one for whom a rate of pay is established by the day. A full-time deputy sheriff may be considered a per diem deputy if his pay is established by the day.

"2) I would also like to know if there is an existing law setting the salary of full-time deputies at \$11.00 per day."

Answer: Chapter 89, Section 150, Revised Statutes of 1954, XVI provides that deputy sheriffs performing special duties under order of the sheriff shall receive for such services \$11.00 per day.

The preceding subsection XV provides that Superior Court messengers of Cumberland County shall receive \$11.00 per day.

Full-time deputies in Cumberland County receive \$11.00 per day. See Chapter 89, Section 173.

Special deputies may be paid a sum not exceeding \$3.50 per day. See Chapter 89, Section 153.

"3) If a full-time deputy was receiving less than \$11.00 per day would he be entitled to a salary increase?"

A deputy sheriff should receive \$11.00 per day if he is performing the duties set forth in Chapter 89, Section 150, XVI, or if he is a court messenger in Cumberland County. We would point out that an \$11.00 a day deputy sheriff shall not be entitled to any fees while acting as a per diem officer, Section 150, XVI.

Very truly yours,

JAMES GLYNN FROST  
Deputy Attorney General

April 10, 1961

To: Honorable L. Robert Porteous, Jr.  
Chairman, Legislative Claims Committee  
State House  
Augusta, Maine

Dear Senator Porteous:

We have your request for an opinion as to the propriety of the Legislature's authorizing payment of a sum of money based upon the claim presented in H.P. 579, L.D. 799.

It is alleged by the claimant, Bay Ferry Service, that the inauguration of ferry service by the Maine Port Authority has put the Bay Ferry Service "out of business" and compensation is claimed for the consequent damage.

It is our opinion that the legislature may properly appropriate a sum of money for the purpose above mentioned if, in the opinion of the legislature, the States owes a "moral obligation" to the claimant.

A question of this nature — loss of business — was considered by our Supreme Judicial Court in an advisory opinion to the House of Representatives dated February 28, 1961. (See House Advance Journal and Calendar, Wednesday, March 1, 1961.)

The court recognized that "elements of damage for interrupted or loss of business in condemnation proceedings is not legally compensable in the absence of statutory authorization." House Advance Journal and Calendar, *supra*, page 6.

However, in the following words the court stated the rules pertaining to those cases where the legislature may find facts from which it could conclude that a "moral obligation" was owed by the State to the claimant:

"The determination of the underlying facts is exclusively for the Legislature and its wisdom and judgment in making such findings are not to be questioned. Whether the facts found warrant the conclusion that a 'moral obligation' exists is always subject to judicial review. 'Such terms as "moral obligation" and obligation "founded on justice and equity" are flexible. They serve to formulate the problem rather than to provide the formula by which the problem may be solved. No yardstick has ever been devised which can be mechanically applied. Nonetheless, in every case there must exist an obligation which would be recognized, at least, by men with a keen sense of honor and with real desire to act fairly and equitably without compulsion of law. The Constitution does not prohibit the Legislature from doing in behalf of the state what a fine sense of justice and equity would dictate to an honorable individual. It does prohibit the Legislature from doing in behalf of the state what only a sense of gratitude or charity might impel a generous individual to do.'"

The court further indicated that the Legislature could not, under the guise of discharging a "moral obligation," grant additional compensation to one where the law provides an adequate remedy available to all claimants similarly circumstanced, and provides the nature and limits of damages recoverable therefor.

The unique circumstances of the case pertaining to the Bay Ferry Service, where it is alleged that it has been put out of business by the entrance of the State into the ferry service business, distinguishes it from the case of a business that is ordinary in the sense that there are a great number of other kinds of business similarly circumstanced. For this reason we are of the opinion that the legislature could, in exercising its wisdom and judgment, pay a sum of money to the instant claimant, if the legislature determines that the facts surrounding the circumstances are such that the State owes a moral obligation to the claimant.

Very truly yours,

JAMES GLYNN FROST

Deputy Attorney General