STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

May 23, 1962

To: Governor John H. Reed

Re: Amendment of Reapportionment Provision of the State Constitution

You have asked this office for its opinion relative to the necessity of a special session of the 100th Legislature to consider an amendment to Article IV, Part First, Section 3, of the Constitution relative to apportionment of the House of Representatives.

It would appear that a special session of the 100th Legislature, even if held immediately, would not affect the composition of the 101st Legislature. If a constitutional amendment were proposed at a special session held in the immediate future, the amendment could not be voted upon by the people until the general election in November, 1962. Normally this amendment would then become effective on the first Wednesday of January, 1963 unless the resolve made it effective at an earlier date. Therefore, it would be impossible to make this amendment effective to reapportion the 101st Legislature.

On the other hand, if the matter is considered by the 101st Legislature and an amendment is proposed, it can be voted upon on the Tuesday following the first Monday of November, 1963. Normally the amendment would be effective on the first Wednesday of January, 1964. The resolve proposing the amendment can, however, carry an earlier effective date.

As soon as the Governor and Council have canvassed the votes and the Governor has proclaimed the ratification of the amendment, he may then call a special session of the legislature for the purpose of reapportioning the House of Representatives in accordance with the new constitutional amendment. This apportionment resolve could be passed as an emergency measure which would be effective upon the signature of the Governor and would be effective in time for candidates to secure signatures and file papers for the primary election in June, 1964.

From the foregoing it is very evident that a special session of the 100th Legislature would be of no advantage in this situation.

GEORGE C. WEST

Deputy Attorney General

May 23, 1962

To: Austin H. Wilkins, Commissioner of Forestry

Re: Powers of Deputy Forest Fire Wardens

We have your request of May 3 for an opinion as to whether or not the chief warden has the authority under the provisions of Revised Statutes, chapter 36, § 103, to delegate to his deputy forest fire wardens the power to arrest violators of the laws relating to forests and forest preservation. We have your additional request for an opinion as to whether or not a deputy forest fire warden has the right to take evidence such as a gasoline fuel stove.

Revised Statutes, chapter 36, § 103, provides in part that each chief forest fire warden "shall have and enjoy the same right as a sheriff to require aid

in executing the duties of his office. . . . . Deputy forest fire wardens shall perform such duties, at such times and under such rules and regulations, as the commissioner, or the chief fire warden of the district with the approval of the commissioner, may prescribe." (Emphasis supplied)

Under the provisions of law quoted above it would appear that the chief forest fire warden in an area may properly delegate any or all of his powers to a deputy warden. This power to delegate, in our opinion, includes the power to authorize the deputy warden or wardens to arrest persons who are in violation of any state law relating to forests and forest preservation. It is our further opinion that each deputy warden can be delegated the power and right to take evidence of violation of laws relating to forests and forest preservation. This delegation can be made in the same manner as the delegation of the power of arrest.

THOMAS W. TAVENNER

Assistant Attorney General

May 24, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Including Federal Aid Under Public Law 874—1950 as a Part of the Foundation Subsidy Program of the State

Chapter 41 of Section 237-D excludes from the total foundation subsidy program, "tuition collections and other school maintenance incidental receipts."

The State Board of Education has ruled that federal aid received under certain sections of Public Laws of 1950, Chapter 874, is not an "incidental receipt" and, therefore, is to be included within the state foundation subsidy program. The Board has also excluded aid received under some sections of said Public Law 874 as an incidental receipt. You now inquire whether or not the State Board of Education has authority to include aid received by a municipality under section 3(c)1 of Public Law Chapter 874, as part of the state foundation program.

The law does not define "school maintenance incidental receipts." The State Board of Education after considerable research has published a list of receipts which it deems to be school maintenance incidental receipts and not includable in the state foundation subsidy program. It is my opinion that the State Board of Education is acting within its authority when it determines which receipts shall be considered as included or excluded under the term "school maintenance incidental receipts."

You have informed me that inclusion within the foundation program of federal aid paid under section 3(c)1 of Public Law 874 would involve a considerable expenditure of state subsidy funds. I would suggest, therefore, that before the State Board includes federal aid paid under section 3(c)1 within the state foundation program, that enabling legislation be enacted either in the form of including such sums for state subsidy in the education budget, or an amendment to section 237-D defining "school maintenance receipts" to include federal aid under Public Law 874.

RICHARD A. FOLEY

Assistant Attorney General