

# MAINE STATE LEGISLATURE

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August 31, 1962

Michael A. Napolitano, Auditor

Audit

Thomas W. Tavenner, Assistant

Attorney General

Re: Recovery of Monies Paid Court Officer by County in Error

We have your request for an opinion with regard to whether or not monies paid in error by a county to a court officer can be recovered from that officer by the county in question. We understand this problem to be as follows:

The per diem pay of deputy sheriffs, court officers and other court officials prior to 1953 was set at \$10. After this time the fees payable to deputy sheriffs were raised to \$11 per diem; the pay to other court officers remaining unchanged. The sheriffs of the various counties of the State (except for the County of Waldo) under the supposition that the pay of all court officers had been raised, proceeded to pay these court officers on the basis of \$11 per day. This supposition was unfounded as the salary payable to these other court officers had not been altered by the legislature.

The question now is whether or not the excess paid to the court officers of Cumberland County can be recovered by that county. The leading case on this point is the City of Biddeford vs. Benoit, 128 Me. 240 (1929). In this case our Supreme Judicial Court overruled former cases which had held that money voluntarily paid under mistake of law could not be recovered. The court held that:

" . . . but the weight of authority and, as it seems to us, sounder principle support the right of recovery of payments of public money, though voluntarily made under a mistake of law; . . . " City of Biddeford vs. Benoit, supra, page 250.

Cases holding that money paid under mistake of law with full knowledge of all the facts or with the means of such knowledge and not induced by any fraud or improper conduct cannot be recovered, are not applicable to the instant situation. It is our opinion that whether or not this money was paid under mistake of law, it can and should be recovered by the county which made the initial erroneous payment.

Thomas W. Tavenner  
Assistant Attorney General

TWT:H