

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

tempore employed by them. . . . They shall account quarterly under oath to the county treasurer for all fees received by them or payable to them by virtue of the office, *except fees collected by them in naturalization proceedings*, specifying the items, and shall pay the whole amount of the same to the treasurers of their respective counties quarterly on the 15th days of January, April, July and October of each year.” (Emphasis supplied.)

This section as it appears in Revised Statutes, chapter 89, was repealed and replaced by Public Laws 1959, chapter 372, section 2. There have been no subsequent amendments.

Chapter 89, section 254, sets forth the salaries of all county officers and municipal court judges and recorders. In addition, this section provides in the last paragraph:

“After January 1, 1962 all fees and charges of whatever nature, except charges for the publication of notices required by law, which may be payable to any county officer, shall be payable by them to the county treasurer for the use and benefit of the county, but preserving the right of sheriffs and their deputies not on a salary” (Emphasis supplied.)

This part of section 254 quoted above was enacted by Public Laws 1959, chapter 372, section 7. Thus it appears that sections 98 and 254 were enacted by the legislature in the same bill.

It might appear there is a conflict between sections 98 and 254 as to the Clerk of Courts retaining naturalization fees. However, Title 8, section 1455 of the United States Code provides that the clerk of any naturalization court shall account and pay over to the Attorney General (United States) one-half of all fees up to the sum of \$6,000 and all fees in excess of \$6,000 collected in naturalization proceedings in any fiscal year. Thus, the Federal law allows the clerk to retain a portion of the fees collected.

Consequently, the provision of section 98 was written carrying out the Federal law. Section 254 must be read with the Federal law in mind. Clerks of Courts may retain their proper share of naturalization fees as set forth in Title 8, section 1455, of the United States Code.

GEORGE C. WEST

Deputy Attorney General

September 27, 1962

To: Richard E. Reed, Executive Secretary, Sardine Council

Re: Replacement of broken glass in premises leased by Maine Sardine Council

In your memo of September 24th you inquire whether the Maine Sardine Council is obligated to replace a plate glass window at its leased building at 114 Exchange Street, Bangor, where the window was broken by a third person.

Responsibility is determined by the terms of the lease, which you state contains a clause that “all glass broken in said premises during this lease to be replaced by said lessee, said glass now being whole.” Since no exceptions to the lessee’s liability appear in the lease, the Council is obliged to replace at its expense all glass broken from whatever cause. If you should be able to identify the

person who broke the glass, the Council, in almost all circumstances, would be entitled to reimbursement by such person.

LEON V. WALKER, JR.

Assistant Attorney General

September 27, 1962

To: Major General E. W. Heywood, Adjutant General

Re: Plowing and maintenance of road from Blaine Avenue to Airport Building

In order to answer the questions contained in your memo of 12 September, I have examined the records of the County Commissioners and the various deeds by which the State acquired title to the airport property.

The proposed use of the land does not appear in any of the deeds. In 1933 the municipal officers of Augusta petitioned to have so much of Winthrop Street as lies between the westerly line of Blaine Avenue and the westerly line of the Muster Field discontinued, to "permit development of the Muster Field as a commercial airport." On April 17, 1934, the County Commissioners ordered "that said road be discontinued as prayed for in said petition." Petitioners then appealed to the Superior Court with no reason given. In 1936 the appeal was dismissed by agreement.

In view of the above, the answer to your first question is that the Adjutant General does not have responsibility for snow plowing and maintenance of the above-described section of Winthrop Street. In view of this opinion, the second question does not require answer.

Since the State owned the land on both sides of the discontinued section of road, it previously owned the road subject to the public easement, and it is now obligated for snow removal and other necessary maintenance.

LEON V. WALKER, JR.

Assistant Attorney General

October 8, 1962

Paul L. Powers, Esq.

Attorney at Law

Freeport, Maine

Re: Harraseeket Yacht Club

Dear Mr. Powers:

Your letter of October 3, 1962, has been forwarded to me for answer.

In the second paragraph of your correspondence you mentioned that the "property owned by this corporation should be exempt from taxes under our statutes." I presume that the exemptions referred to are those found in Chapter 91-A, section 10.

You will note that Section 10, II, speaks of benevolent and charitable institutions. Benevolent associations are those which are philanthropic, humane, having a desire or purpose to do good to men, according to *Black's Law Dictionary*, 4th Edition. See also the definitions concerning benevolent associations and charitable corporations in the same volume.