

MAINE STATE LEGISLATURE

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STATE OF MAINE

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Inter-Departmental Memorandum Date July 3, 1973

To: William F. Kearns, Jr., Commissioner

Dept. Mental Health and Corrections

From: Courtland D. Perry, Asst. Att'y General

Dept. Attorney General

Subject: Responsibility of Warden of Maine State Prison under Title 34, M.R.S.A., § 559 re Convict Property

SYLLABUS:

Title 34, § 559, imposes no liability upon the Warden of the Maine State Prison to secure the addition of interest to the bank account of any convict at the Maine State Prison whether such account be evidenced by a passbook, a bank account code card or by any other writing. The Warden is merely the bailee of a convict's property, responsible for receiving, using reasonable care in holding, making a record of the property's receipt and returning the same to the convict upon discharge.

FACTS:

On July 2, 1973, this office received from the Commissioner of Mental Health and Corrections the following memorandum:

"The following comments were excerpted from the Audit Report for the Maine State Prison for the fiscal year ending June 30, 1972:

... 'An examination of time deposit passbooks was performed. It was noted that some passbooks had not had interest posted for at least a year. It is recommended that at least once a year, preferably towards the end of the fiscal year, all passbooks be sent to the depository to have the interest posted.

'Some banks have eliminated the use of passbooks, using instead a system of deposit and withdrawal slips. When such is the case, it is recommended that verifications be sent and if any are not in agreement with the Prison records, administrative action be taken to reconcile the savings accounts concerned.

'Relevant to the above paragraph, at times some convicts, when entering the Prison, have with them a bank account code card so called, indicating the convict has an account with a bank.

'Title 34, Section 559, Maine Revised Statutes Annotated of 1964, directs the Warden to take care of any property that a convict has with him at the time of his entering the State Prison. Keep an account thereof and pay the same to him upon his discharge.

July 3, 1973

'Prison personnel are uncertain if such an account card constitutes a liability within the provisions of Title 34, Section 559, Maine Revised Statutes Annotated of 1964. It is recommended that an opinion from the Attorney General be obtained to resolve the problem.' ...

"I would appreciate an opinion in regard to the above."

QUESTION:

Does the warden have responsibility to secure the addition of interest on a convict's bank account evidenced by a passbook or code card brought by the inmate into prison?

ANSWER:

No.

REASON:

This question appears to be asked because of a misunderstanding of the application of Title 34, § 559, in connection with prison responsibility for securing the addition of interest on bank accounts evidenced by passbooks. It is considered necessary that we address ourselves to the whole question of the warden's responsibility under Title 34, § 559, in order to answer the narrow question and to correct the false premise upon which it is based.

Title 34, § 559 provides:

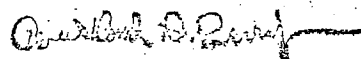
"The warden shall receive and take care of any property that a convict has with him at the time of his entering the State Prison, keep an account thereof, and pay the same to him on his discharge."

Under this section, the warden of the Maine State Prison is the bailee only of property brought by a convict into the Maine State Prison, meaning that he has

July 3, 1973

the responsibility for receiving any such property, using reasonable care in holding the same, making a record of the property received and returning the same to the convict upon discharge--nothing more.

The function of the warden as set forth in Title 34, § 559, casting him in the role of bailee for the benefit of the convict--bailor--does not include any responsibility for securing the addition of interest on any bank accounts of any convicts. Any activity in this regard conducted by the business office at the Maine State Prison is an administrative matter and not controlled by the cited statute.



Courtland D. Perry
Assistant Attorney General

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