

MAINE STATE LEGISLATURE

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SIXTY-FIRST LEGISLATURE.

HOUSE.

No. 122.

In compliance with House orders of February 2d and 5th, the Committee on Mercantile Affairs and Insurance submit the following report :

It finds the number of licensed insurance agents for the year 1877, 1,219; Insurance Commissioner settled for 1,204.

| | | | | | |
|-------|--------|--|---|---|-------|
| 1878, | 1,119, | " | " | " | 1,198 |
| 1879, | 1,090, | " | " | " | 1,122 |
| 1880, | 863, | " | " | " | 917 |
| 1881, | 816, | no settlement with Governor and Council. | | | |

For the year 1882 there is no report as yet published. The discrepancies in the number of agents doing business in the State, and the number accounted for in the settlements, arise from the fact that the reports are published in March (usually) and the settlements made the last of December or the first of January.

The Insurance Commissioner stated to the Committee that he had received from 1,725 agents \$1,725 for the years 1881 and 1882, which sum had not been reported to the Governor and Council. It also finds that section 44, chapter 49 of the revised statutes relating to the compensation of the Insurance Commissioner, was amended in 1881 by a bill drawn by the present incumbent, who stated that he drew the same at the request of the Committee on Mercantile Affairs and Insurance, they afterwards reporting the same for the consideration of the Legislature. The bill as drawn gave the Insurance Commissioner \$1,200 per annum and all expenses. The bill as passed gave the Insurance Commissioner \$900 per annum and all postage expenses. The law that this bill amended

provided that the salary of the Insurance Commissioner should be \$900 per annum, in full. The law of 1879 also required him to keep an accurate account of all fees received by him, as such commissioner; the amendment of 1881 requires him to keep an accurate account of all fees received from companies and brokers for licenses. The receipts of the Insurance Commissioner for the year 1880, were as follows:

| | |
|---|------------|
| Cash received for licenses from 118 companies, | |
| at \$20, | \$2,360 00 |
| Cash received for licenses from 53 brokers, at \$5, | 265 00 |
| Cash received for licenses from 917 agents, at \$1, | 917 00 |
| | <hr/> |
| | \$3,542 00 |

The disbursements in the same year were,

| | |
|----------------------------------|------------|
| Salary of Commissioner, | \$900 00 |
| Postage and travelling expenses, | 304 47 |
| Cash paid State Treasurer, | 2,337 53 |
| | <hr/> |
| | \$3,542 00 |

The receipts of the Insurance Commissioner for the year 1881, were as follows:

| | |
|---|------------|
| Cash received from 115 companies for licenses, | |
| at \$20, | \$2,300 00 |
| Cash received from 93 brokers for licenses, at \$5, | 465 00 |
| Cash received from 816 agents for licenses, at \$1, | 816 00 |
| | <hr/> |
| | \$3,581 00 |

Disbursements same year :

| | |
|---------------------------------------|------------|
| Salary of Commissioner, | \$900 00 |
| Expense of Commissioner to Boston | |
| on business of his department, | 46 59 |
| Postage, express and stationery, | 214 07 |
| Cash paid State Treasurer, | 1,604 34 |
| | <hr/> |
| | \$2,765 00 |
| Adding fees from 816 agents, not paid | |
| to Treasurer, | 816 00 |
| | <hr/> |
| | \$3,581 00 |

The receipts of the Insurance Commissioner for the year 1882, were as follows :

| | |
|---|------------|
| Cash received from 116 companies for licenses, | |
| at \$20, | \$2,320 00 |
| Cash received from 88 brokers for licenses, at \$5, | 440 00 |
| Cash received from 909 agents for licenses, at \$1, | 909 00 |
| | <hr/> |
| | \$3,669 00 |

Disbursement in same year :

| | |
|---|------------|
| Postage, freight and stationery, | \$232 33 |
| Salary, | 900 00 |
| Cash paid State Treasurer, | 1,627 67 |
| | <hr/> |
| Add \$909 received from agents not paid State Treasurer, | \$2,760 00 |
| | <hr/> |
| | 909 00 |
| | <hr/> |
| | \$3,669 00 |

The Insurance Commissioner has also received from companies for examining the said companies and returns of same, about two hundred dollars during his term of office.

The Attorney General appeared before the Committee, and his opinion upon the matter under consideration is herewith annexed.

The Committee would recommend that a definite sum be fixed for the salary of the Insurance Commissioner, which shall be a compensation in full for his services, and payable in equal quarterly instalments ; that he shall turn over to the treasurer all moneys received by him by virtue of his office, each quarter, and shall settle his accounts with the Governor and Council at the same time. And the Committee would further recommend that the duties of the Insurance Commissioner be turned over to the Secretary of State, or in other words to make the Secretary of State Insurance Commissioner by virtue of his office, and that the salary of the Insurance Commissioner be fixed at nine hundred dollars per annum.

ATTORNEY GENERAL'S OFFICE, }
Portland, Feb. 20, 1883. }

To Hon. William D. Pennell, Chairman, and Gentlemen of the Honorable Committee on Mercantile Affairs and Insurance :

In compliance with your request, desiring my opinion relating to the interpretation of the acts applying to the compensation of the Insurance Commissioner, I have the honor to submit the following :

The statutes relating to the Insurance Commissioner, for several years previous to 1879, provided that the compensation of that officer should not exceed the sum of twenty-five hundred dollars per annum. The Legislature of 1879 established a *salary* and fixed the amount at nine hundred dollars in full ; and the commissioner until 1881 continued to receive such sum per annum *as salary*, with the express requirement under the statute, that *all fees* received by him should be *accounted for to the State*. This legislation continued in force and governed the compensation of the commissioner until the legislation of 1881.

In order that we may form a correct conclusion upon the question involved, it becomes necessary to refer to the provisions of law applicable to the subject.

Section 49, Revised Statutes of Maine, 1871, provides, that "no foreign insurance company shall transact any insurance business in this State, unless it first obtains a *license therefor* from the commissioner."

Section 51 of the same chapter provides that "any person may be licensed by the commissioner as *insurance broker* to negotiate contracts of insurance, and to effect insurance for others."

The statute further provides that every foreign insurance company, receiving such license to do business in the State, and for each renewal, shall pay the sum of twenty dollars, and that every insurance broker receiving a license shall pay the sum of five dollars.

Section 50, R. S., 1871, provides that "no person shall act as agent of any insurance company until he has produced to the commissioner and filed with him a duplicate power of attorney from the company, or its authorized agent, authorizing him to act as such agent. Upon filing such power, the commissioner shall issue a license to him, if the *company* has received a license to do an insurance business in the State; and such license shall continue until the first day of July then next, and may be renewed from year to year on producing a certificate from the company that his agency is continued." The sum paid for such license is *one dollar*.

The statute of 1881, chapter 63, which is the most recent legislation upon this subject, provides that the Insurance Commissioner "shall have no compensation for his official services *except* the fees prescribed in the following sections," viz: the fees above referred to; and if there was no other limitation or legislation applicable to the subject, he would be entitled to all fees paid him in the performance of his official duties.

The fees prescribed in the sections referred to, upon which I am asked to express an opinion, are the fees received from the companies for licenses to do business in the State; section 49, R. S., 1871. The fees received from insurance brokers, section 51, R. S., 1871. The fees received from the local agents of the companies, section 50, R. S., 1871.

What limitation do we find placed upon the receipt of these fees by the commissioner, as compensation for his services? Under the provisions of law existing previous to the legislation of 1881, all fees received by the commissioner as compensation were required to be paid over to the State, after deducting a prescribed amount; but by chapter 63 of the public laws of 1881, the Insurance Commissioner is required to keep an account of only the fees received from the companies for licenses, and from the brokers for licenses, and "if they amount to more than nine hundred dollars exclusive of postage expenses, he shall pay the balance into the treasury of the State."

It will be observed, under the provisions of the statute of 1881, that no provision whatever is made for an account of the sums received from the local agents for licenses, or for the payment of the same into the State treasury, while there is an express provision of law applicable to companies' licenses to do business in the State, and to brokers' licenses.

The statute applicable to the licenses of the agents, provides that "for each such license or renewal thereof, the commissioner shall receive the sum of one dollar." The existing statutes treat it as a payment to the commissioner for issuing the license: one of the fees embraced in the sections cited; and when the statute declares that the commissioner shall have no compensation for his official services except the fees prescribed, it must certainly be construed to mean that he shall have such fees, unless there is some restriction or limitation in the act giving them, or some provision requiring him to account for the same to the State.

I find no such provision applying to the sums received by him for agents' licenses, but on the contrary find that the Legislature of 1881 confirmed the construction that is now given the statute, viz: (that the commissioner should receive the fee for the agent's license,) by repealing the former law under which he was required to account for and pay over the same to the State, and enacting in its stead a statute exempting him from such obligation and permitting him to receive the same as compensation for issuing such agents' license in excess of the salary of nine hundred dollars.

What the purpose or intention of the Legislature of 1881 was, in repealing the provision of law then existing, requiring the commissioner to keep an accurate account of all fees received, including the fees for agents' licenses, as well as the fees for companies' and brokers' licenses, and pay the balance in excess of compensation to the State; and substituting therefor a provision that he should keep an account of only the fees received for companies' and brokers' licenses and not the agents', and account to the State only for the balance of these, I am only able to determine from the

language of the statute as I now find it. I have no knowledge of the intended purpose to be accomplished by the Legislature by the amendment of 1881, except as I find it recorded in their official acts, which have become a part of the laws of the State. I should not be justified, when I find the language of the act plain and unambiguous, in assuming that it does not express their intention. It would properly be regarded as an unwarrantable impeachment of the intelligence of a former legislative body, for me to presume that it did not appreciate the force of its own acts.

How could I justify myself in construing a statute in opposition to its express provisions, upon intimation that the Legislature which enacted it did not intend that it should have the scope which its language plainly and unequivocally gives it? "When the language of a statute is definite and has a precise meaning, it must be presumed to declare the intent of the Legislature; and it is not allowable to resort to other means of interpretation, or by conjecture, to restrict the meaning." Whether the act of 1881 was passed by design or mistake, it is not for me to say. The law exists, and is in full force, and finding its language plain and distinct, no discretionary power is left to me in construing it.

Under these circumstances, being of the opinion that the commissioner, under existing laws, is legally entitled to the fee for licenses to the agents, it becomes my duty so to state.

Very respectfully,

HENRY B. CLEAVES.

S T A T E O F M A I N E .

In HOUSE OF REPRESENTATIVES, }
February 23, 1883. }

Reported from the Committee on Mercantile Affairs and Insurance,
by Mr. HOUSTON of Belfast, and on his motion ordered printed.

F. L. PATTEN, *Clerk pro tem.*