

# MAINE STATE LEGISLATURE

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ACTS AND RESOLVES  
OF THE  
FIFTY-EIGHTH LEGISLATURE  
OF THE  
STATE OF MAINE.  
1879.

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1879.

## OPINIONS OF THE JUSTICES OF THE SUPREME JUDICIAL COURT.

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UPON QUESTIONS PROPOSED BY THE COUNCIL.

STATE OF MAINE. }  
IN COUNCIL, Feb, 12, 1878. }

*Ordered*, That the opinion of the Supreme Judicial Court be requested on the following questions :

*Question.* First, Is a person *found* in an unincorporated place, in need of relief, having no home or place of residence in said unincorporated place, but being there for some temporary purpose only, within the meaning of Section twenty-two, Chapter twenty-four of the Revised Statutes? Second, If such person is relieved by the oldest adjoining incorporated town, and he has no legal settlement in the State, and he has not lived in the town furnishing relief, is such town entitled to be reimbursed by the State for the relief furnished under the statute aforesaid, and act of 1874, Chapter two hundred and thirty?

BANGOR, June 20, 1878.

I have the honor to announce the following answers as the opinion of a majority of the Justices of the Supreme Judicial Court on the questions proposed.

First, A person found in an unincorporated place, in need of relief, having no home or place of residence in such unincorporated place, but being there for some temporary purpose only, is not within the meaning of section twenty-two, chapter twenty-four of the Revised Statutes. Second, If such person is relieved by the oldest adjoining incorporated town, and he has no legal settlement in the State, and he has not lived in the town furnishing such relief, such town is not entitled to be reimbursed by the State for the relief furnished under the statute aforesaid and act of 1874, Chapter two hundred and thirty.

JOHN APPLETON,  
*Chief Justice Supreme Judicial Court.*

UPON QUESTIONS PROPOSED BY THE COUNCIL.

STATE OF MAINE.  
IN COUNCIL, Feb. 15, 1878. }

*Ordered*, That the opinion of the Justices of the Supreme Judicial Court be requested on the following questions:

Is a Trial Justice or a Justice of the Peace and Quorum, to be considered a Justice of an Inferior Court, under the provisions of section two of Article nine of the Constitution of this State? Can a Register of Deeds properly be commissioned by the Governor as a Trial Justice, or a Justice of the Peace and Quorum?

BANGOR, June 20, 1878.

I have the honor to announce the following answers as the opinion of the majority of the Justices of the Supreme Judicial Court:

First, A Trial Justice or a Justice of the Peace and Quorum, is not to be considered a Justice of an Inferior Court, under the provisions of section two of article nine of the Constitution of the State. Second, A Register of Deeds can properly be commissioned by the Governor as a Trial Justice, or a Justice of the Peace and Quorum.

JOHN APPLETON,  
*Chief Justice Supreme Judicial Court.*

UPON QUESTIONS PROPOSED BY THE LEGISLATURE.

*To the Governor and Council:*

A resolve in favor of the town of Alexander and eighteen other towns, pending before the last Legislature, and the whole subject matter relating thereto, was referred by the Legislature to the undersigned as a commission, to determine questions both of law and fact, and to report our findings to the Governor and Council.

We have given notice, as directed to do, to all parties concerned, of the time and place of hearing, and have heard the claimants and the State by counsel appearing for them, and we herein submit a report.

A history of the matter is this: Soon after the early calls for men for the war of the rebellion, towns quite generally began to offer bounties for volunteers. After the beginning of the year 1863 (and no doubt before that), men for the field could not be obtained without extra compensation, except by draft. From the nature of things there could hardly be exceptions. If one town would not pay for men offering themselves, other towns would. It was notorious, also, that not a few men left the State to obtain higher bounties obtainable elsewhere. Nor did it seem reasonable for a portion of the towns to pay bounties, without all paying. Evidently a race of competition was being run by the towns, the

sure result of which was to greatly increase the price to be paid for the enlistment of volunteers. In this posture of affairs the Governor of the State, acting upon the advice of his civil and military councillors, endeavored to exercise some control over the amount of bounty which towns should pay for volunteers. The desire was that volunteers everywhere should receive an uniform amount. With this view, the executive through the Adjutant General, (see general order No. 22, division 8, Adjutant General's printed report of 1863, page 13 of Appendix A) on October 31, 1863, said to the citizens of the State, "it is probable that bounties uniform in amount and not less than \$100, nor exceeding \$200 per man, will now be paid volunteers by the respective cities, towns and plantations in the State. Great injustice will be wrought to the smaller and poorer localities, by exceeding this amount in any instance, as such towns and plantations may find it impossible to fill their quotas, by reason of their citizens seeking larger bounties elsewhere than are offered them at home." The object at headquarters was to get towns to pay less rather than more bounty than they were disposed to pay. And again, in general order No. 23-dated Dec. 1, 1863, the municipalities of the State were admonished against further violations of the previously promulgated order, and it is therein stated that measures had been adopted to prevent them in the future. (See page 18 of said Appendix A.)

It is evident that these orders and the provisions contained therein, had, as a general thing, the desired effect. It became quite an uniform thing that \$200 were offered and paid per man for volunteers by the municipalities to fill their quotas for the call of October 17, 1863. By this means the contention between towns to a great degree ceased. Men generally enlisted on the quotas of their own towns, and the general order last named expresses an earnest desire of the State authorities that they should.

Another object in having an uniformity of town bounty, and a certainty that a town bounty would be paid, was that the term of service of many men in the field was about expiring, and it was the policy of the State to get from among such men as many re-enlistments as possible. In order to do so, it became of paramount importance that a bounty should be offered to them before they left the field, and that the offer should be made to all such men alike, in order to retain them upon the quotas of the towns where they were inhabitants when they originally enlisted. These men could be reached and their enlistment obtained through the methods and assistance of the Adjutant General's Office, better than in any other way. Accordingly, in the military orders and circulars of Adjutant General Hodsdon of that period, it will be found that efficacious measures were adopted and most zealously and successfully pursued, for the benefit of the State and of the towns in that behalf.

To fill the call of October 17, 1863, the State was allowed by

law to pay but \$100 bounty to each volunteer, while the towns were generally paying \$200, (a few towns more) making the State and town bounty \$300 in all. Before the October call was filled, and while the work of recruiting for it was actively going on, the call of February 1, 1864, came along for an additional two hundred thousand men. On Feb. 20th, 1864, by legislative act, the policy of the law as to bounties was changed. By the act of that date it was provided that to all persons enlisting on that (February) and any future calls, the State should pay a single bounty of \$300, and that the towns (and by this term, when used, we mean city, town or plantation,) were not to be allowed to pay any bounty at all.

The new policy worked unfortunately for some of the towns. The State could pay \$300 to a recruit who was assigned upon the February call, but could not pay but \$100 to a recruit who was assigned to the October call, and the towns were recruiting for both calls at the same time. Of course a man would not knowingly enlist upon his town's quota for October, without \$300 bounty, when an enlistment on the February quota would give him \$300 from the State. And the State had a better credit in the minds of volunteers, than the towns had. Serious difficulties were in the way where towns from any cause omitted to pay a bounty to their October recruits. Many, if not most of the recruits, enlisted at this period without regarding the particular call on which they were to be assigned, not knowing or appreciating any difference. In very many cases the bounty was not to be paid until the recruit had gone from his home to Augusta, or some other place of rendezvous, and been mustered in. Some of their towns although willing to pay them the town bounty, from inability or some other cause had omitted to do so. Many men also re-enlisted while in the field for the benefit of and upon the quotas of their towns, not definitely understanding through what medium they would receive the bounty to be paid them, but implicitly trusting the honor of the town and the State. This latter class could not be so readily and easily paid by the towns as by the State.

It is evident enough that these facts presented at the time a serious and difficult dilemma. If the movement of the towns was waited for, the result would be that one volunteer would go to the field with \$300 from the State, and another volunteer, a neighbor of the other, might go from the same town, at the same time, upon the same field, and into the same company, with but \$100 from the State, and with or without any promise from his town. In this emergency what was the executive of the State to do? He was well aware that most of the towns had voted to pay the bounty, that they were willing to pay it, and that they had paid it to the great majority of the men recruited. He had good reason to believe that if advanced by the State it would be reimbursed by the towns.

As a matter of necessity, as it was then deemed, the Governor and Council took the responsibility to advance the requisite sums to such enlisted men who had been mustered in, as were to be assigned upon the October call for volunteers. For Alexander, \$800 were advanced; for Anson, \$400; for Brooksville, \$800; for Fort Fairfield, \$2,400; for Harrington, \$600; for Bradley, \$1,000; for Linneus, \$2,400; for Lexington, \$1,200; for Milford, \$1,200; for Marshfield, \$600; for Marion, \$200; for Mt. Desert, \$200; for Northfield, \$200; for Smyrna, \$600; for Vinalhaven, \$1,400; for Solon, \$400; for Sullivan, \$200; for Eustis plantation, \$400; for Lubec, \$2,800. These towns (and plantation) repaid the State for the sums advanced for them, and now seek to recover the same back. They (by counsel) set up several reasons of law and fact why they should do so.

First—It is said that there was no law permitting towns to pay bounties when these sums were advanced by the State. It is true that no statute ever authorized towns, in advance of paying or agreeing to pay, to do it. The Legislature was fearful of possible excesses if such power was granted. But every one expected that legalization would come. It did come in all the sessions of the Legislature during the war and immediately after the war was closed. The ratification was full and complete, rendering legal all that in this regard these towns have done. The preamble of the legalizing act of 1863 indorsed the unauthorized action of the municipalities in this respect as “just, humane and necessary.” Well might the towns be expected to go on in such well-doing after that time.

Second—It is said that the sums charged against these towns by the State were not real payments of bounties to men enlisted upon the quota of 1863. This position is not sustained by the evidence. Be sure, the charges on the books in the Adjutant General’s Office, as made up some time after the war, might indicate, to the mind of a stranger to the facts of the case, that the sums were due the State for filling the quotas for the towns, instead of for bounties paid. That is a matter of form only. The meaning, in the light of the facts, is different. The fact is otherwise. We are well and conclusively satisfied that, as far as these claimants are concerned, the charge is in point of fact for so much money actually paid by the State to actual men, assigned upon the quotas of the towns for the October call, and that the State only paid it to such men as the towns had not paid it to, and to men only where an omission or refusal to pay would necessarily have been a disappointment to the soldier; and the payments were methodically made through authorized official paymasters in the service of the State, each recruit giving receipts in duplicate for the money advanced to him. And, upon a pretty full and careful investigation, we do not perceive that in a single instance did these towns in question fail to be

allowed the one hundred dollars per man, under the equalization bounty act of 1868, upon all the men whose town bounties were prepared for them by the State.

But the counsel for the claimants, whose brief is exhaustive and able for his clients, takes the position that the State might have regarded the volunteers as recruited for the February call and pay them for itself, instead of regarding them as recruited for the October call and pay them for the towns.

But the authorities who bore the heavy responsibilities of executive duty at the time, thought and decided otherwise, and it would seem too late in the day to go back and reverse their official action. If to be done in one case, the claim might be asserted in all cases where a discretionary course was pursued during the war, and the consequences be generally detrimental. Nor do we perceive any wrong or injustice in the decision that a first call should be first filled. The State, by the act of 1864, (chapter 227), could not pay exceeding \$100 bounty upon the October call, nor could it pay to recruits beyond the call of February, 1864, unless the towns had first filled their October quotas; and several other calls came along in quick succession. It is true, that at army headquarters in Washington, no distinction was kept up between the two calls of October and February, the two being upon their books consolidated in one, but our Legislature made and kept up a distinction, which was regarded by the Adjutant General's office and also by the United States Provost Marshals who were upon duty in this State. Further, such a policy as now advocated by the claimants would have entailed confusion and complications, inasmuch as most towns furnished men exceeding the number called for upon either quota, and some of them men exceeding the call upon both quotas; and that is true of these particular towns. And it must be borne in mind, that any policy or method or routine at the time adopted was made applicable, not only to these towns, who are now petitioners, but to all the towns in the State.

Third—It is said that the paying towns did not know that they were paying the State for actual bounties advanced to their actual men. We do not see how they could have understood it otherwise. The correspondence put into the case shows that in one or two instances town officers may not have fully appreciated what the demands upon them were, as they wrote for fuller information, and there is no reason to doubt that the needed information and explanation were supplied. The letters found in the Adjutant General's office from the towns, generally indicate an understanding and an appreciation of the situation. For instance, the selectmen of Alexander, under date of August 1, 1864, writing for explanation, say: "we voted in town meeting last fall to issue town scrip to the recruits of \$200, but did not get a man;" and then go on to say, that, under the encouragement that the State would pay



bounties, they had overfilled the two quotas, which was true. It will thus be seen, the town could get men but not money.

The selectmen of Bradley, August 19, 1864, write: "we have this day sent one thousand dollars to the State Treasurer, to reimburse the State Treasurer for bounties paid on the following named persons, who have enlisted from this town to fill our October quota," naming the five men.

The Brooksville selectmen, August 1, 1864, write: "will you please inform us the amount required of the town to reimburse to the State Treasurer to fill our quota under the call of October?"

Mt. Desert, August 12, 1864, writes: "we have this day paid to the Treasurer of State two hundred dollars to make up the quota of the town of Mt. Desert for October call, and name Albert L. Brown as the one to be placed on the book. John M. Noyes, Selectman, &c."

Marshfield selectmen, August 8, 1864, write to the Adjutant General: "we can only say that it is almost impossible to enlist men at present, and we shall return to the State Treasurer the money that has been paid to our men (and claim them on the October quota) in a few days."

It seems that, in both the office of the State Treasurer and that of the Adjutant General, letters were written and receipts given, as if the claim was for money "to fill the October quota," and as before said, the books in the Adjutant General's office were kept by his book-keeper in the same way. In the vast mass of business then carried on in the Adjutant General's office, the bulk of letter writing was done by clerks. That was an unfortunate wording, and undoubtedly led, as the correspondence shows, to some inquiries for information. But the fact was made certain and clear. Take, for instance, the Adjutant General's letter to Vinalhaven, put in by the counsel for the claimants, where he writes thus: "In answer to yours of the 3d inst, I will answer, that if you were to reimburse \$1,400 to the State Treasurer and return the names of any seven persons who are now credited on the October call, the matter will be settled." So we find on the files a subsequent certificate thus: "Augusta, August 24, 1864, this may certify that I have caused the following named men to be entered to the town of Vinalhaven, to fill the October quota of that town, and have reimbursed to the State Treasurer the sum of \$1,400 for the same." Then follows the names of seven men, the letter signed by Elisha Smith for said town. Now these seven men were actual volunteers, living in that town, recruited by that town, and, being on the October quota, promised to be paid by that town, but paid by the State, and the State reimbursed by the town. There are numerous certificates of a like effect by the different localities, but the already great length of this report forbids a further notice of them.

Fourth—It is contended that the money was obtained of the

towns by the State by threats and misrepresentation. This pretense is based upon a letter or two read at the hearing, like this one to the selectmen of Lubec, dated July 21, 1864: "Towns must reimburse to the State Treasurer \$200 each for men to fill their October call, otherwise all credits beyond the February call will be transferred to towns that will pay.

Yours &c.,

JOHN L. HODSDON, Adjutant General.

Per C a—"

The language of this letter would seem to indicate that a previous notice of the sum due had been given, or that it was written upon a supposition of the writer that the towns were already aware of the amount of their respective indebtedness to the State, and was intended merely as an earnest and emphatic dunning letter. The statute of 1864 (chapter 227), provided that no person residing in this State, and enlisting in this State since Feb. 2, 1864, should be credited to a place outside of his residence until the October and February quotas of his own town were filled. And the general orders before named, and others, contained urgent requests from the military department, that men should only enlist upon their own local quotas. See general orders 22, 23 and 26, Appendix A, before named. All these facts were constantly spread before the people of this State in numerous official circulars and by the press, and are presumed to have been seen or heard of in those exciting times by almost everybody. We are satisfied that the payments were made by the towns, because at the time it was deemed to be reasonable and just. Most of the towns who are now claimants had themselves paid the town bounty to many of their October volunteers, and had voted to pay and were willing to pay to the balance of them. Could it be supposed that the town of Arson would pay to twenty men upon her October quota and be unwilling to pay to the other two? or that Mt. Desert would pay to eleven out of twelve and leave but one man unpaid? or that Solon would pay twelve out of her fourteen and turn her back upon the other two? or that any town would pay to a portion of her October recruits and not to all of them? The letters of such towns show no such thing. The selectmen of Harrington write, under date of April 20, 1864, that they had paid a town bounty of \$300 to a number of men on the October quota, and had enlisted several more and "sent them on," to whom "they intend to pay the town bounty after receiving a guarantee that they been credited to our town." The certificate of the election, dated August 17, 1864, shows that some of these men "sent on" were the identical men paid by the State and reimbursed by the town. The selectmen of Solon, July 26, 1864, write the Adjutant General as follows: "Will you have the goodness to see if the town of Solon, has anything to reimburse to the State, and if anything, how much. Please write immedi-

ately and let us know, and we will attend to it if there is anything due the State."

The town of Marion writes, under date of July 26, 1864, that their quota for October call was three, that they recruited three men, paid two each \$200, and add about the third man," there was not any certificate of mustering service sent, or any call made for his \$200, therefore it was not paid; if the State has paid it the town is ready to reimburse it." Lubec is much the largest claimant of these 19 towns, but her agent, Mr. Mowry, writes under date of April 21, 1864, "I am still in funds to pay as they call for the town bounty as voted for the October call, or what money that may be wanted for men to make up our quota." May 2, 1864, he writes: "The town voted to pay \$200 to each man who would enlist and was mustered into United States service, to fill up the October call of 1863. The former board paid five men, and the present board have paid six men, and all who fill up that quota are to receive the \$200." Again, under July 26, 1864, he writes: "I have no doubt the State Treasurer may have paid some men belonging to this town, and as soon as I know the amount and to whom, will make arrangement to pay up the same."

Other letters could be added, but these clear and significant ones explain the matter as fully as need be. It will be readily noticed therefrom, how it might often happen that the State paid the bounty to a recruit instead of his getting it from his town before leaving his home.

Out of these 19 towns the only towns that did not themselves directly pay a town bounty to any volunteers on October call, were Alexander, Fort Fairfield, Linneus, Milford and Smyrna. But Alexander, as seen before, voted to pay. The State paid for Fort Fairfield \$2,400, finally getting but \$1,000 therefor, procuring 12 men for her by re-enlistments on the field; and if Fort Fairfield should recover the \$1,000 of the State, it would have to be divided among the great many men she furnished, as it appears that under the act of 1868 she received more money from the equalization bounty fund than she ever paid for bounty to her men. This latter remark is true, we think, of Smyrna and Alexander and perhaps of one or two others of the nineteen towns. It appears that all of the above towns had paid some bounties on other calls. Milford paid bounties heavily during the war, and probably would have those to whom the State paid for them, but for the fact that they were cases (probably) of re-enlistment upon the field. While, therefore, it might appear that those five towns, or some of them, have more ground to stand upon in asserting their present claims than the others, still we see no very substantial nor legal difference between the classes of cases.

Lastly, it is contended by the claimants that they should be paid back, in order to stand upon an equality with other towns. One

hundred and forty-six delinquent towns were called upon. Twenty-one only responded and paid. It is regarded as unequal that twenty-one towns should pay and one hundred and twenty-five towns should fail to pay. It is not necessary to discuss the position of the non-paying towns. Some would not, some could not pay. It must be at the same time borne in mind, that all the remaining municipalities in the State, either directly or indirectly, did pay the October volunteers on their quotas in full. The equality between the towns can never be exact. While the nineteen towns are bearing an unequal burden with one hundred and twenty-five towns, their burden is equal with all the remaining places in the State, being two or three hundred in number, more or less. Again, there would not be an equality among even the nineteen towns, should they recover back, for while some of them paid to most of the men who were assigned to their October quotas, others paid none of theirs at all. And here the Attorney General invokes the act of 1868, and section 15 of article 9 of the amended constitution of Maine, (see laws of 1876, p. 23), as a bar and satisfaction of the present claims, where it is provided that the amount paid towns "shall be in full payment for any claim upon the State on account of its war debts by any such municipality." While this clause might not bar any claim for money fraudulently taken or received by the State, it certainly has great force at least upon any question as to how far it would be a good public policy to go into a review and reconsideration of these old questions. We see in the evidence before us nothing to indicate in the least any wish or motive, on the part of any of the political departments of the days of the war, to do aught but justice to the State and all its inhabitants.

Perhaps we have pursued this subject at undue length. But the importance of the case, and the fact that the same claims have been frequently before the Legislature, as well as the comprehensive requirements of our commission would seem to require it.

We have, therefore, to say, that if the State stood as a defendant, in a court having between it and these towns a jurisdiction at law and equity to decide the issue, the claimants upon either equitable or legal grounds would not be entitled to recover. Of course, upon any question of mere public policy, which we have merely alluded to, we are not asked to advise, as of such matters the Legislature and the Executive are the most suitable judges to act for themselves.

JOHN A. PETERS,  
ARTEMAS LIBBEY,  
WM. WIRT VIRGIN,

DECEMBER 23, 1878.

EXECUTIVE DEPARTMENT. }  
 AUGUSTA, March 8, 1879. }

*To the Honorable Justices of the Supreme Judicial Court:*

In compliance with an order passed at a regular session of the Executive Council, and in accordance with my own wishes, you are requested to give your opinion at as early day as practicable, as to the proper meaning of chapter 115, section 6 of the Revised Statutes relating to the traveling expenses of members of the Council, Senators and Representatives of the Legislature.

First, Does the language used in that section, "and two dollars for every ten miles' travel *from* his place of abode" mean, that each member shall be entitled to receive two dollars for every ten miles going from his place of abode to the place of meeting, and also two dollars more for every ten miles travel returning therefrom? Second, If there be two or more public thoroughfares or mail routes, between the abode of a member and the place of meeting of the Legislature, the distance by the one being ten, twenty, or a hundred miles, and by any other twice or thrice the distance, by which route is he entitled by law to mileage?

ALONZO GARCELON.

By the Governor:

P. A. SAWYER, *Deputy Secretary of State.*

BANGOR, March 10, 1879.

*Hon. Alonzo Garcelon, Governor of Maine:*

SIR: To the questions proposed we have the honor to answer as follows:

By Revised Statutes Chapter 115, Section 6, "each member of the Senate and House of Representatives shall be paid an annual salary of one hundred and fifty dollars for the regular annual session of the Legislature, and two dollars for every ten miles' travel from his place of abode *ONCE* in each session." The limitation of once in each excludes the idea of more than once. "He is entitled to mileage on the first day of the session," and this mileage is all to which he is entitled.

That such is the true construction, is made manifest by recurring to the provisions relating to fees and costs in Chapter 116. It is there seen that when the Legislature intended fees for travel both ways, this intention is expressed in language, which leaves no doubt on the subject.

Thus by Section 5, the travel of the sheriff and his deputies is four cents a mile, "the travel to be computed from the place of service to and from the place of return by the *usual* way." Appraisers on execution levy are entitled to "travel at the rate of cents a mile going and returning home." Jurors and witnesses by

Section 11, are allowed "six cents a mile for their travel out and home."

When there is to be travel but one way, it is specially so limited as by Section 6, when a coroner is allowed "ten cents a mile for travel from his residence to the place of inquest," while by the same section the juryman is to receive "four cents a mile for travel each way."

The members of the House and Senate are therefore not by existing law entitled to two dollars for every ten miles of travel returning home to their respective places of abode.

The travel of members of the Legislature to the place of meeting, is to be computed as that of sheriffs and others, "by the usual way."

JOHN APPLETON,  
C. W. WALTON,  
WILLIAM G. BARROWS,  
CHARLES DANFORTH,  
WM. WIRT VIRGIN,  
JOHN A. PETERS.  
ARTEMAS LIBBY,  
JOSEPH W. SYMONDS.