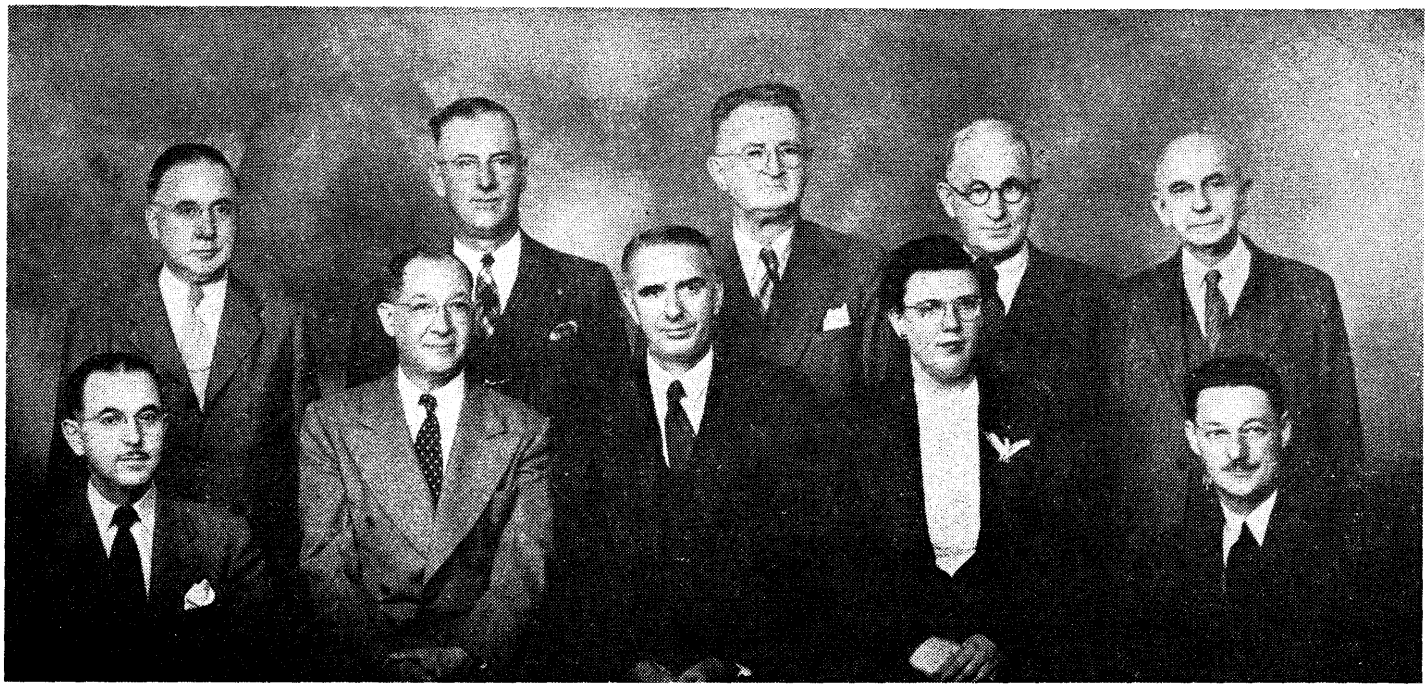


DEPARTMENT OF THE ATTORNEY-GENERAL — 1944

Front row, left to right: Napolitano, Assistant; Breitbard, Deputy; Cowan, Attorney-General; Bangs, Assistant; Niehoff, Assistant.

Back row, left to right: Donahue, Assistant; Fellows, Assistant; Folsom, Assistant; Stubbs, Assistant and Inheritance Tax Commissioner; Small, Assistant.

Marshall, Assistant, and Wheeler, non-legal Special Assistant and Investigator par excellence, absent on duty when picture was taken.

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

---

for the calendar years

1943--1944

ATTORNEYS-GENERAL OF MAINE, 1820-1944

Erastus Foote, Wiscasset	1820
Jonathan P. Rogers, Bangor	1832
Nathan Clifford, Newfield	1834
Daniel Goodenow, Alfred	1838
Stephen Emery, Paris	1839
Daniel Goodenow, Alfred	1841
Otis L. Bridges, Calais	1842
W. B. S. Moor, Waterville	1844
Samuel H. Blake, Bangor	1848
Henry Tallman, Bath	1849
George Evans, Portland	1853
John S. Abbott, Norridgewock	1855
George Evans, Portland	1856
Nathan D. Appleton, Alfred	1857
George W. Ingersoll, Bangor (died)	1860
Josiah H. Drummond, Portland	1860
John A. Peters, Bangor	1864
William P. Frye, Lewiston	1867
Thomas B. Reed, Portland	1870
Harris M. Plaisted, Bangor	1873
Lucilius A. Emery, Ellsworth	1876
William H. McLellan, Belfast	1879
Henry B. Cleaves, Portland	1880
Orville D. Baker, Augusta	1885
Charles E. Littlefield, Rockland	1889
Frederick A. Powers, Houlton	1893
William T. Haines, Waterville	1897
George M. Seiders, Portland	1901
Hannibal E. Hamlin, Ellsworth	1905
Warren C. Philbrook, Waterville	1909
Cyrus R. Tupper, Boothbay Harbor (resigned)	1911
William R. Pattangall, Waterville	1911
Scott Wilson, Portland	1913
William R. Pattangall, Augusta	1915
Guy H. Sturgis, Portland	1917
Ransford W. Shaw, Houlton	1921
Raymond Fellows, Bangor	1925
Clement F. Robinson, Portland	1929
Clyde R. Chapman, Belfast	1933
Franz U. Burkett, Portland	1937
Frank I. Cowan, Portland	1941

DEPUTY ATTORNEYS-GENERAL

Fred F. Lawrence, Skowhegan	1919-1921
William H. Fisher, Augusta	1921-1924
Clement F. Robinson, Portland	1924-1925
Sanford L. Fogg, Augusta (retired 1942)	1925-1942
John S. S. Fessenden, Portland (Navy)	1942-1942
Frank A. Farrington, Augusta	1942-1943
John G. Marshall, Auburn	1943
Abraham Breitbard, Portland	1943-1944

ASSISTANT ATTORNEYS-GENERAL

	Warren C. Philbrook, Waterville	1905-1909
	Charles P. Barnes, Norway	1909-1911
	Cyrus R. Tupper, Boothbay Harbor	1911-1913
	Harold Murchie, Calais	1913-1914
	Roscoe T. Holt, Portland	1914-1915
	Oscar H. Dunbar, Jonesport	1915-1917
	Franklin Fisher, Lewiston	1917-1921
	William H. Fisher, Augusta	1921-1921
	Philip D. Stubbs, Strong	1921-
*	Herbert E. Foster, Winthrop	1925
	LeRoy R. Folsom, Norridgewock	1929-
	Richard Small, Portland	1929-1935
*	Ralph M. Ingalls, Portland	1938-1940
	Frank J. Small, Augusta	1934-
	Ralph W. Farris, Augusta	1935-1940
	William W. Gallagher, Norway	1935-1942
	Richard H. Armstrong, Biddeford	1936-1936
*	David O. Rodick, Bar Harbor	1938-1939
	John S. S. Fessenden, Portland (enlisted Navy, 1942)	1938-1942
	Carl F. Fellows, Augusta	1939-
*	Frank A. Tirrell, Rockland	1940-1940
	Alexander A. LaFleur, Portland (enlisted Army, 1942)	1941-1942
	Harry M. Putnam, Portland (enlisted Army, 1942)	1941-1942
	Julius Gottlieb, Lewiston	1941-1942
	Neal A. Donahue, Auburn	1942-
	Nunzi F. Napolitano, Portland	1942-
	William H. Niehoff, Waterville	1940-
*1	Richard S. Chapman, Portland	1942
*1	Albert Knudsen, Portland	1942
*1	Harold D. Carroll, Biddeford	1942
*	John O. Rogers, Caribou	1942-1943
	John G. Marshall, Auburn	1942
	Jean Lois Bangs, Brunswick	1943

*Temporary Appointment.

*1 Limited appointment to handle cases arising under R. S. 1930, Chapter 138, Sec. 31-33, without cost to the State of Maine.

LIST OF COUNTY ATTORNEYS

Terms expire Dec. 31, 1944

Androscoggin	Armand A. Dufresne, Jr.	Lewiston
	Asst. A. F. Martin	"
Aroostook	James P. Archibald	Presque Isle
Cumberland	Richard S. Chapman	Portland
"	Asst. Daniel C. McDonald	"
Franklin	Benjamin Butler	Farmington
Hancock	Ralph C. Masterman	Bar Harbor
Kennebec	William H. Niehoff	Waterville
Knox	Stuart C. Burgess	Rockland
Lincoln	Harold W. Hurley	Boothbay Harbor
Oxford	Theodore Gonya	Rumford
Penobscot	Randolph A. Weatherbee	Bangor
"	Asst. Frank Fellows	"
Piscataquis	Jerome B. Clark	Milo
Sagadahoc	Ralph O. Dale	Bath
Somerset	W. Philip Hamilton	Madison
Waldo	Hillard H. Buzzell	Belfast
Washington	Oscar L. Whalen	Eastport
York	Harold D. Carroll	Biddeford

STATE OF MAINE

Department of the Attorney General
Augusta, December 1, 1944

To His Excellency Sunmer Sewall, Governor,
and to the Executive Council
of the State of Maine:

In accordance with the provisions of the Revised Statutes of Maine, I am submitting herewith my report for the years 1943 and 1944.

FRANK I. COWAN
Attorney General

SECTION ONE

REPORT

In my report for the years 1941 and 1942 I covered to a certain extent the period since 1932 when the Honorable Clement F. Robinson, as Attorney General, filed his last report. My former report contains the tabulations which the State requires in regard to the number of cases handled by the County Attorneys and by the Attorney General from November 1, 1932 to November 1, 1942. Some errors and omissions occurred in those tabulations due to the fact that some evidence had been lost but they are complete enough so that their value has been preserved.

Since Mr. Robinson's report in November of 1932, there has been a substantial change in the administrative departments of the State. Several new functions, such as the sale of liquor by the State and compensation for unemployment have been added. The cigarette tax has increased the labors of the Tax Division of the State. Increased activities in the Welfare Department have occurred. Additional duties have been placed on other departments by the Legislature and these additional duties have called for added legal assistance.

I have asked several members of the Attorney-General's Department to file reports showing the activities in the departments to which they are assigned which have called for a larger and larger need of legal assistance. The information contained in these separate reports should prove of benefit to the Legislature.

In my 1942 report, I called attention to the fact that the people of the State of Maine were unaware of the cost to them of the State's Legal Department. This was due to the fact that the custom had grown up of employing attorneys to advise department heads and having the expense of those attorneys charged to the administrative budget of the several departments. I suggested that the total anticipated expense of the Attorney-General's Department be set up in

the budget of that one department and that contributions from other budgets be discontinued. The Commissioner of Finance went a long way toward accomplishing that result in 1943 but there are still several of the assistants, all or a part of whose salaries are included in the administrative budgets of various departments. This system increases the apparent cost of the departments affected while various other departments which get their legal assistance directly from the Attorney-General and Deputy Attorney-General, do not show such an item of cost. The departments that show higher apparent cost are Health and Welfare (two attorneys), Highway (one attorney handling right-of-way matters and paid by the Highway Department and one handling workmen's compensation cases with the larger portion of his salary and expenses paid by the Highway Department), the Liquor Commission (one attorney), and the Unemployment Compensation Commission (one attorney).

In the case of the Unemployment Compensation Commission, there is a special law which permits it to employ its own counsel. His salary and expenses are taken care of in the administrative budget set up for and allowed by the Federal Government. However, I declined to issue a commission as Assistant Attorney-General to any person who is not under my direct supervision and control, and since it is eminently desirable that the counsel for the Unemployment Commission shall have the authority of the Attorney-General with him at all times, selection of counsel for that department has been by mutual agreement. I may say in passing that the attorneys so obtained have been of the very highest caliber.

GENERAL ACTIVITIES OF THE ATTORNEY-GENERAL

In my last report I summarized briefly the duties of the Attorney-General and called attention to the fact that under our present procedure he takes office under circumstances that sadly handicap him during the first six months of his term. His duties have increased greatly in the last few years and he is legal advisor to the two branches of the Legislature and to the Governor and Council, as well as to the heads of State Departments. During the Legislative sessions he needs to be constantly in attendance to give such assistance as may be required. At the same time, the regular duties of the position, to which he is new, are going on. He may very well find himself under the necessity of trying several murder cases during that period. Moreover, he may find himself somewhat handicapped financially as has occurred in the past because extraordinary expenses have unbalanced the budget of his predecessor. For these reasons, I suggested that the Legislature consider changing the date at which the new Attorney-General takes office.

I also called attention to the fact that it would be to the great advantage of the State of Maine to have a full-time Attorney-General. I renew that suggestion. However, such a change must carry with it a change in salary. Many years ago the position was considered financially worthwhile because the incumbent received statutory fees in addition to a small salary. These fees have been gradually eliminated and for the last ten years there have been none. I am informed that before the elimination of these fees, the net income of the Attorney-General from the position was a substantial figure, several times the amount of the salary. Today a person serves as Attorney-General or as Governor of the State at great financial sacrifice to himself. I strongly urge that the Legislature take into consideration the annual earning power in private practice of the type of man whom they want as Attorney-General and make the salary proportionate to the kind of legal intelligence which they want to get. In considering that question, they should bear in mind that the State is a tremendously complicated corporation and that the decisions of the Attorney-General

make very substantial differences in the outcome of its financial affairs. They should also remember that the purpose of the office of Attorney-General is not to spend the State's money, as is the case with several departments, but to conserve it.

QUALITY OF DEPARTMENT MEMBERS

I am very happy to call attention to the type of men whom I have induced to accept service with the State. Mr. Breitbard, the present Deputy Attorney-General, and Messrs. Niehoff and Marshall, who are respectively advisors to the Liquor Commission and to the Unemployment Commission, are brilliant lawyers, all of whom took very substantial financial sacrifices to enter the employ of the State. I feel that the State owes them a debt of gratitude for their patriotic service.

When I speak of the above three in the way I do, I know that every member of the Department will agree with me. These three men are like the men who carry the ball on a football team. They are versatile, quick-minded, courageous, and hard-hitting and the members of the team who play in the line have no feeling of jealousy if these men get the major portion of the acclaim. The other members of the Department are all able lawyers, fully capable of carrying their loads. Jean Bangs, that brilliant woman member of the 90th and 91st Legislatures, the first of her sex to be an Assistant Attorney-General in the State of Maine, has well-justified her appointment.

LeRoy Folsom is the Nestor of the Department. He has for many years acted as legal advisor to the Health and Welfare Department and since its separation, to the Department of Institutions. Miss Bangs has been very ably assisting him in those departments for the last eighteen months.

The Honorable Philip D. Stubbs is known to every lawyer in the State and to many laymen, and has a reputation that is nation-wide for his handling of the Inheritance Tax Division. He has been Inheritance Tax Commissioner for all the years that that Division has been administered directly under the Attorney-General. Maine is one of but six or eight states in the Union which have made this great ad-

vance in procedure. The lawyers throughout the country who handle estate taxes find their work greatly simplified when they advise concerning an estate in Maine or in one of the other states in which the inheritance tax is taken care of by the Department of the Attorney-General. They inform me that where matters of fact and matters of law can be handled directly by the same individual, there is a great saving in time and an increasingly large saving in lawyers' fees to their clients.

Mr. Frank Small has been ably assisting Mr. Stubbs for many years.

Under the old system of collecting the inheritance tax, the Judges of Probate had primary responsibility. There was no machinery set up for compelling compliance with the law and in hundreds of cases no tax was ever paid. In 1941, I made a survey of the situation and became convinced that there was a lot of money due the State which should be collected. I therefore engaged the services of Nunzi F. Napolitano, Esq., gave him a commission as Assistant Attorney-General, and assigned him to the Inheritance Tax Division with instructions to collect any of such back taxes as he could. Mr. Napolitano's report appears herein and shows succinctly how valuable his employment has been.

In 1941, I engaged Harry M. Putnam, Esq., and assigned him to handle Workmen's Compensation cases. Mr. Putnam entered the Army in 1942 and I secured the services of Alexander A. LaFleur, Esq. Mr. LaFleur, a reserve officer, was, in his turn, called into the Army late in 1942 and I then secured the services of Neal A. Donahue, Esq., who has been handling the Workmen's Compensation cases for the last two years.

SPECIFIC ACTIVITIES

1. The Attorney General was present in Augusta at every session of the 91st Legislature. To assist the department heads and to relieve the Revisor of the Statutes of some of his duties, while he was working on the 1944 revision, I appointed Samuel Slosberg, Esq., of Gardiner, a Special Assistant Attorney-General, to draft bills for the regular session in 1943. Mr. Slosberg had been a member

of the Legislature and had served on the Committee on the Revision of the Statutes. His services to the Legislature were of such a high quality that when the term of office of the Revisor of Statutes expired, in the early spring of 1944, Mr. Slosberg was appointed to complete the revision.

2. The 91st Legislature has had two special sessions. The first was a war session to provide a more simplified procedure for the future of men and women in the armed forces. The Attorney-General, the Secretary of State, and the Governor, working together, produced a bill which was in general accepted by the Legislature and I feel perfectly safe in saying that there is no State in the Union that has a better absentee voting law than the State of Maine, and it is possible that none can equal it.

The second special session held on September 18, 19 and 20, 1944, was called for the purpose of enacting the new Revision of the Statutes. Several post-war bills were introduced and passed. Governor Sewall and the Legislature deserve great credit for the special statute providing for two new dormitories for the State School at Pownal, these two being recognized as the first steps in a general construction program for the State Hospitals laid out by Commissioner Harrison Greenleaf.

The House of Representatives on September 19 passed an order instructing the Attorney-General "to make an investigation into the circumstances surrounding the care, custody and control of the late Wilbur Stanton, formerly of Windham, during the period of his confinement at the Augusta State Hospital from August 15th to the time of his death, and make his report thereof available to any member of the Legislature."

Mr. Stanton was released on August 30th and died on September 1st. On September 2nd I started such an investigation.

The inquiries which I made immediately disclosed conditions within the hospital wholly unknown to the people of the State. Evidence in regard to mistreatment of patients was so strong that when certain conclusions at which I had arrived were made public, many people could not believe them. Indeed some perfectly honest citizens went into the public press in condemnation of my conclusions.

Two experts were imported but the task assigned to the first was to divert attention from the subject of mistreatment, as his report shows, and the second confined his brief study to a view of the hospital buildings and the records. As a result, neither gentleman was of much assistance. So I prepared a report of my own.

3. The Androscoggin River pollution case continued to take up a great deal of time. On January 17, 1944, a hearing was held before Mr. Justice Mansur of the Supreme Judicial Court, and the Brown Company, the Oxford Paper Company and the International Paper Company were adjudged guilty of causing the conditions which produced the nuisance. Outside of having a careful day-by-day study made of river conditions during the summer, no further Court action has been pressed because of the war. The Brown Company has, however, recognized the necessity of taking steps to abate the nuisance and it has now secured a loan from the R. F. C. that will enable it to convert its New Hampshire plant from sulphite to the Kraft process. This will take about a year, if the government grants immediate priorities. In as much as paper is a number one war essential, it is necessary that we exercise patience for a little further time while the conversion is being made.

4. The problem created by various State officials and employees being taken into the armed forces called for careful attention. The matter was simple when it had to do with employees who were under the Personnel Board. Some cases of appointive and elective officials, however, created real difficulties, and, in several instances, it was necessary to rule that joining the armed services constituted an abandonment of the position held even though the joining was involuntary. This was true where the nature of the position was such that while there was one incumbent another could not be appointed to carry on the duties.

5. The problem of general stream pollution has come in for very extensive study. The Attorney General has worked with Mr. Hale, the Acting Director of the Sanitary Engineering Division of the Bureau of Health, in trying to solve the problem without destroying or retarding industries. A conference of the directors of Associated Industries was held in July, 1944, which resulted in that group setting up a plan for stream purification.

6. The numbers game and various other gambling rackets were sources of trouble. A large amount of time was given to investigations and there were several mass raids with prosecutions and convictions.

7. The discovery was made that there were several inmates of the State Prison who were incarcerated there under illegal sentences. Others had not been given their proper credit for good behavior. Considerable litigation was carried on in connection with the first of these two matters and a proper system for good time credit was set up.

8. The statutes covering the Inland Fisheries and Game Laws came in for serious study. It was found that they had many weaknesses and contradictions which need to be corrected. A redrafting of these laws is going on at the present time under the direction of Assistant Attorney-General John Marshall, and the result will be submitted to the 92nd Legislature.

9. About six years ago a government ship, the "ILEX," rammed the Bath-Woolwich Bridge causing several thousand dollars' worth of damage. A claim was filed in Congress but Congress informed us that we had a remedy through the Courts and refused to act. I had an action brought in the Federal District Court which refused to entertain jurisdiction. The case was carried to the U. S. Circuit Court of Appeals and thence to the U. S. Supreme Court where the same answer was given. I then had a new bill introduced into the Congress with a statement of fact showing our inability to do anything through the Courts. Congress passed this, authorizing the State to bring suit on condition that the Federal Government be permitted to bring a cross action against the State. In as much as I am of the opinion that the State has a good case, and the Federal Government has not, I recommend that the 92nd Legislature pass an Enabling Act.

10. There have been many sources of dispute between the State and the various Federal agencies, due oftentimes to lack of understanding of either State or Federal Law by newly appointed Federal officials. We have found, however, that most of the Federal agencies are anxious to coöperate

and we have been careful not to stand too strictly on our rights lest we impede the war effort. There has been the closest of cooperation between the Attorney-General's Department and the F. B. I. Just recently the Judge Advocate General's Department of the Army moved to correct procedure where deaths have occurred as a result of military operations, and the Navy is working on the problem now. We have nothing but praise for most of the Federal officials with whom we have come in contact.

11. The Department of Education has found that its basic statutes are in an exceedingly confusing condition. A great deal of time has been taken up by the Attorney-General and the Deputy Attorney-General, and sometimes by some of the assistants, getting the difficulty straightened out. It is recommended that the education laws of the State be entirely overhauled.

12. Governor Baxter has made several more gifts of land in the neighborhood of Mount Katahdin to the State. The Attorney-General is one of the three members of the Baxter State Park Authority. The Authority has had several meetings and the Attorney-General has personally visited the Park four times during the last two years to get first hand information in regard to conditions.

13. The question of whether a marriage is valid when performed on a Federal Reservation is one that has caused a great deal of concern in the office of the Attorney-General in view of the great number of military weddings. We have been unable to arrive at the conclusion that such a marriage is valid. There is no Federal marriage law, and the recent decisions of the U. S. Supreme Court have seemed to go farther and farther in separating Federal Reservations from any kind of State jurisdiction. Under the circumstances, we seriously doubt whether a person authorized to solemnize marriages within the State has authority to solemnize marriages in any Fort.

14. In the Spring of 1944 there was a strike of nurses at the Maine Eye and Ear Infirmary. As a result the Board of Nursing Examiners sat in judgment on several of these nurses. The Deputy Attorney-General sat with the Board and acted as advisor on matters of law. Later a mandamus action was brought against the Board by a young woman

who had trained in an osteopathic hospital in another State. She made a demand for permission to take the examinations, and permission was refused because she had not graduated from a hospital recognized by our State Board. The matter is still pending in Court.

15. The Division of Health has had occasion to consult with the office of the Attorney-General a great deal in attempting to regulate the venereal disease statute and numerous other questions.

16. In July an Army bomber crashed in the Westbrook Street Trailer Colony in South Portland. This Colony immediately adjoined property of the State School which is itself adjacent to the Portland Airport. A large number of lives were lost. As a result of this accident I had a careful study made of all the Government Trailer colonies and many of the Federal housing projects in the State. It was found that some of these were set up without regard to health and building ordinances. Mr. Niehoff of the Attorney-General's Department was delegated to bring the facts to the attention of responsible Federal officials to the end that corrections might be made.

17. The Attorney-General's Department has enjoyed the closest and most friendly relations with all enforcement agencies, both Municipal, County and State, and especially with the State Police. It is exceedingly regrettable that this very fine agency is so seriously handicapped by lack of men. The State Police need a considerable addition to their numbers. Having those, continuous schools could be carried on and the men highly trained in various special lines. A highly trained police force composed of carefully selected and intelligent men can easily pay for itself.

18. The Military Defense Commission has been busily engaged assisting in the construction of municipal airports. The Attorney-General has insisted that in every case the title work should be carefully done and he has himself studied all the abstracts and checked on the correction deeds.

19. (a) Since 1820 the Legislature has been passing almost as many Private and Special Acts as Public Acts. However, there has never been a complete general index or an index digest of the Private and Special Laws. Many

matters of great importance are hidden in the numerous volumes containing those statutes. I found that there are almost daily demands for study of Private and Special Laws in the office of the Attorney-General. An enormous amount of time was being lost in searching through the numerous volumes. I, therefore, have had an index digest made of all those laws from 1820 to 1944 inclusive, and since the digest will be of great value to the courts and attorneys, have had additional copies printed. It is my suggestion that the Legislature provide for sale of these extra copies.

(b) A great many legislative enactments having a public interest have been passed as Resolves. There has been no hard and fast rule as to whether matters should be by Public Law, Special Law, or Resolve. It has depended largely on the whim of the member of the legislature who introduced the measure, or on the notion of the person making up the volume of Session Laws. A typical example is to be found in P. L. 1917, c. 89, which is an authorization for the issue of a $50,000 State bond to the Trustees of the Maine Insane Hospital. This bond was a reissue of a bond for the same amount originally authorized in c. 70 of the Resolves of 1887.

In the Resolves of 1917, c. 47 is the authorization for the issue of a $100,000 bond to the Maine State College of Agriculture and Mechanic Arts, which bond was a reissue of a bond originally authorized by c. 105 of the Resolves of 1887.

It was my intention to have the Resolves from 1820 to 1944 reviewed and an index made of at least so many of them as have a public interest, but opportunity was not found for doing the work.

(c) If I could have found time, I would have made a digest of the reports of our law court from the date of issuance of Lawrence's Digest down to the present time. I was unable to do this work. I strongly recommend that the next Legislature authorize that this be done and that the digest be carried on from time to time (perhaps at the same time the Revisions of the Statutes are made) under the supervision of the Attorney-General and at the expense of the State.

20. In 1943 court actions were brought to determine whether or not several of the closed banks of the State owed the 1934 tax. The Law Court determined that several of them did not owe the tax, but the situation was sufficiently open in connection with the Augusta Trust Company and the Houlton Trust Company so that a compromise settlement was made with those banks, and a substantial amount of money obtained for the State Treasury.

21. Beano, which was legalized by the 91st Legislature at the regular session in 1943, has proved a constant source of trouble to the Attorney-General's Department due to attempts of professional operators to crowd the statute. The game has been an expensive nuisance to the State. A higher fee could make it self-supporting, at least.

22. The Attorney-General attended the convention of the National Association of Attorneys-General at St. Louis, Missouri, in 1943, and at Omaha, Nebraska, in 1944. There have been other conferences which I didn't have time to attend myself to which I have sent members of the Department. Notable among these are a conference in Boston and another in Chicago on the problem of water control. To these I sent Mr. Marshall. Mr. Niehoff has attended several meetings where State and Federal relations have been subject to discussion.

There have been many other questions presented to the Attorney-General, many of which would be interesting to the people of the State, but probably they are not of sufficient importance to justify incorporating in this report.

HOMICIDES

As a result of experiences during the previous two years, I asked the 1943 Legislature to amend the statute in regard to medical examiners. I further asked the Legislature to provide that the expense of expert witnesses in homicide cases shall be borne by the State and charged to the budget of the Attorney-General. There were several reasons for this, the most important of which, from my point of view, was that if the Attorney-General controls the employment of experts, he will not be handicapped by the veto action of any Board of County Commissioners. If the State needs expert witnesses of any kind in a homicide case, he can pro-

vide them, and that without asking permission of a local Board composed of laymen who will be primarily anxious to save money for their counties and may not be able to appreciate the need for these experts. A second reason was that it seemed to me unreasonable that a small and impoverished county should be called upon to bear the entire expense of a prosecution just because the murderer happened to perform his deed in that county. The new plan has worked satisfactorily and the expense to the State has been very moderate.

During the years 1943 and 1944 there has been an unusual number of murder trials. In 1943 the cases of Renwick, Palmer, Kingsbury, Porter, Clark and Ferrand were disposed of. In the year 1944 the cases of Gillo, Ashworth, Johnson, Nicholesi, Badger and St. Ours were disposed of. There were several other cases investigated which did not justify prosecutions for murder, or where the evidence has not yet been developed. The latter cases are still open.

Some years ago, as a result of observation and some experiences while defending criminal cases in my youth, I arrived at certain conclusions in regard to the proper handling of murder cases. Several years now of investigations and actual prosecutions have convinced me that those conclusions have merit. I believe that there are certain fundamentals that should be observed by the State in every such case. They are as follows:

1. Never prosecute a person for murder unless absolutely convinced of the guilt of the respondent. No matter how strong the evidence may look, if the prosecuting attorney is doubtful, it may be that he has failed to properly evaluate some piece of evidence, or has erroneously correlated certain facts.

2. Demand for the respondent the best legal talent available. In the first place, the State has taken the burden of bearing the expense of the defense and it should get its money's worth. In the second place, since the accused is presumed innocent until proved guilty, and the State has assumed the responsibility of making sure the respondent has a fair trial, it must not do a shoddy job. The fact that a man is accused of crime does not change his status as a human being and does not put him outside the pale.

3. Acquaint the attorney for respondent with all the pertinent evidence which is in the hands of the State. That attorney may be able to show through analysis of the evidence that the respondent is not guilty, and no man should be convicted on evidence so weak it must be concealed from the attorney for the respondent and brought in furtively during the trial. How the evidence shall be used depends, of course, on the intelligence of the users, but it must be used honestly. There must be no surprises. Moreover, experience has proved to me that if the case has been properly prepared and the respondent's attorney has been given the benefit of the State's evidence, the latter will find it difficult to resort to trickery, if, by some chance, a lawyer who would stoop to cheap trickery happens to get in on the case.

I have proved the foregoing rules by the hot fires of numerous trials. A list of the attorneys who have defended murder cases in Maine during the last four years reads like "Who's Who in Jurisprudence." In every case I have delivered to them a complete statement of the evidence on which the State relied for a conviction. In every case all witnesses for the State have been instructed to tell their stories freely to attorneys for the defense.

Numerous hard court battles have been fought, ranging in time from four days to two weeks. Never once have I regretted turning the State's evidence over to the defense for study and such use as to them seemed best, and never once has a defense attorney misused that evidence.

The record of prosecutions and convictions during the past four years is proof enough in itself that I have avoided no responsibilities, and that with me, at least, the above rules have worked. In no four-year period of which I am aware have there been more prosecutions for murder in this State, and I know of none in which there has been a higher ratio of convictions.

Respectfully submitted,

FRANK I. COWAN

Attorney-General

SECTION TWO

Reports of the Assistant Attorneys General

SERVICES RENDERED BY COUNSEL ASSIGNED TO THE DEPARTMENT OF HEALTH AND WELFARE

LeRoy R. Folsom
Assistant Attorney-General

Jean Lois Bangs
Assistant Attorney-General

To the Honorable Frank I. Cowan,
Attorney-General of the State of Maine:—

A State Board of Charities and Corrections was created and its duties prescribed under the provisions of chapter 196 of the Public Laws of 1913. The duties of the board were largely limited to an investigation and inspection of "the whole system of public charities and correctional institutions in the state and the work of any department of the same." The board was given very broad powers of investigation and was vested with other duties of an advisory nature.

The Legislatures of 1915 and 1917 extended the duties of the board to cover the field for the enforcement of the laws relating to protection of children and also designated the Board of Charities and Corrections as the State Board of Children's Guardians. These laws provided that neglected children might be committed to the custody of institutions which were prepared to accept the responsibility for the care for such children at the expense of the town of settlement, or at the expense of the State if no settlement. The Legislature of 1917 also passed an act to "provide for mothers with dependent children" and known as the "Mothers' Aid Act," and placed the administration of the law under the supervision of the Board of Charities and Corrections.

The Legislature of 1919 passed an act which provided that neglected children could be committed to the custody of the State Board of Children's Guardians and made the state

liable for the care and maintenance of such children. It provided, however, for a partial reimbursement from the town of settlement of the committed child, if any, amounting to one-half of the expense of such care and maintenance but not exceeding an average of two dollars ($2.00) per week of payments on account of such child.

The Legislature of 1927 changed the name of the State Board of Charities and Correction to "Department of Public Welfare" and vested the Department of Public Welfare with all the rights, powers, privileges, duties and responsibilities which had been vested in the State Board of Charities and Corrections.

PROTECTION OF CHILDREN

Prior to the passage of chapter 267 of the Public Laws of 1929, complaints instituted in the various courts for the protection of children were not referred to the state department except at the discretion of the enforcing officers. It frequently happened that children were committed to the custody of the state without the knowledge of the state department. The 1929 law provided that in all cases involving the protection of children at least ten days' notice of the date of hearings must be given to the department. This was designed to give the department an opportunity to investigate all such cases prior to the date of hearing and be prepared to make such recommendations as would best promote the welfare of the children involved.

Due to the constantly increasing number of children being committed to the custody of the department with the increasing expense to the state and municipalities, it became apparent to the Department of Public Welfare that it should be represented by counsel at hearings on complaints for neglect of children. Such representation was not only for the purpose of preventing commitments in cases where other solutions of the problems could be obtained without detriment to the welfare of the child, but also to aid in the enforcement of that part of the law which provides that a parent may be prosecuted for failure to support his child or children.

Prior to the passage of the 1929 act more than 300 children became wards of the state by court decree each year.

The average combined cost to the state and municipalities at that time was approximately $225 per year for each child. Accordingly, the services of an attorney were requested, and LeRoy R. Folsom was selected. He was appointed as Assistant Attorney-General in November, 1929, and assigned as counsel for the department of Public Welfare. The value of the services of an attorney was demonstrated by the fact that the commitment of children dropped from 302 in 1929 to 193 in 1930; and this was without detriment to the welfare of the children involved. The number of hearings in which the department was represented by counsel in court averaged approximately 175 per year for a number of years. At the time Mr. Folsom was appointed there was no uniform procedure for handling complaints in the various courts with reference to this subject. Through the efforts of counsel a uniform procedure was finally adopted and this procedure is still in effect in the various courts of the state.

The Federal Social Security Act provided funds for Child Welfare Services, and in 1936 a division of Child Welfare Service was set up in the department of Health and Welfare. In spite of the efforts of this division and the attorney for the department, the number of children committed increased considerably during the "depression period" as shown by the statistics hereinafter included.

The thought of the Board of Public Welfare that employment of counsel would result in the recovery of considerable sums of money from delinquent parents was not justified at the time. Efforts to force parents to pay were not effective for two reasons: first, people of the type who would live under such circumstances as to render it necessary to remove their children from the home were not people from whom money could be collected for the care of the children outside the home; second, there was no provision in the law relating to commitment of children which empowered the court to order the parents to pay specific sums for the care of the children at the time the children were committed. In 1937 the Legislature amended that section of the law relating to complaints "in cases of neglect of children" and provided that when a child is committed to the custody of the state, the court may order the parent or parents to pay certain weekly sums to the state for the care and mainte-

nance of the children. Even though this amendment was in effect and many court orders were issued, not much progress was made until better labor conditions began to prevail.

In 1942 a new system of reporting and checking was set up by counsel and adopted in the Division of Accounts and Audits in the Department of Health and Welfare. Under this system counsel receives a monthly report of the amount paid by each family. The following statistics indicate the effectiveness of the services rendered by the attorney for the department during the past twelve years:

COURT HEARINGS

Year	No. Hearings	No. Children Involved	No. Children Committed	Collections from Parents
1930-31	No record	No record	193	No record
1931-32	"	"	188	"
1932-33	"	"	188	$ 2,437.26
1933-34	"	"	244	2 644.57
1934-35	175	438	301	2,348.86
1935-36	183	430	364	1,193.80
1936-37	177	402	223	2,142.09
1937-38	172	377	263	2,418.00
1938-39	175	425	339	1,850.80
1939-40	208	414	241	1,760.85
1940-41	160	308	206	4,512.07
1941-42	171	335	270	1,892.80
1942-43	147	340	222	11,606.23
1943-44	162	320	209	16,538.86

(The effect of the so-called depression on parental behavior is clearly reflected by a comparison of the number of children committed from the period 1930 to 1933 inclusive with the number committed during the period 1934 to 1941 inclusive.)

RE-ORGANIZATION AND EXPANSION OF THE DEPARTMENT OF WELFARE

The so-called Code Act of 1931 created a new department known as the Department of Health and Welfare. This department absorbed all the duties, powers and functions before exercised by the Department of Public Welfare, the Department of Public Health, and the various boards of trustees of the state institutions and all the duties of the Governor and council in connection with the so-called "state pauper" cases. This act provided for the administration of its various powers, functions and duties by the creation within the department of the Bureaus of Social Welfare, Health and Institutional Service. Prior to the effective date

of this act the attorney for the Department of Public Welfare had acted as counsel for the various boards of trustees whenever his services were desired. This act having the effect of bringing these institutions into the one Department of Health and Welfare greatly increased the duties of the attorney for the department. The larger part of the work for the institutions has been the collection of claims against individuals for care in such institutions and the investigation of cases in which inmates appeared to be interested in estates of deceased relatives or others.

PAUPER SETTLEMENTS

Under the Code the functions of the Governor and council in determining liability in pauper cases were transferred to the Department of Health and Welfare during a period of great business depression. During that period the expense to the state increased from $160,000 yearly to approximately $1,200,000 a year. This situation involved the determination of pauper settlement in a large number of difficult cases, the final determination of which was referred to the counsel for the department. The questions raised in the determination of pauper settlement are varied and technical. During the period of the depression several acts were passed amending the pauper settlement laws in such manner as to involve the state in a liability for several types of cases which were formerly the liability of the municipalities. For example, the law providing that a person may lose his settlement in a municipality by an absence of five years and the derivative settlement law of 1937 are illustrations of changes which increased the number of so-called state cases very materially.

In order that the state's interest in pauper cases, which are the subject of litigation, might be protected, the pauper law was amended in 1941 providing that the state should be notified of any suit pending in any court in which a question of pauper settlement was pending and in 1943 another amendment was passed which permits the department to enter its appearance in any such cases and become a party defendant thereto.

The law providing for Aid to Dependent Children places a portion of the liability for the expense upon the munici-

pality in which the children so aided have their pauper settlement. As already stated under the portion of this report which relates to Protection of Children, the municipality, in which children committed to the custody of the state have a pauper settlement, is liable to reimburse the state for two-thirds of the expenses of the care and maintenance of such children. Counsel for the department is called upon to pass upon questions of pauper settlement in these two categories as well as in the cases of state paupers.

BUREAU OF HEALTH

The inclusion of the Department of Public Health as a Bureau of Health in the Department of Health and Welfare added to the duties of counsel for the department the necessity of advising the director of the Bureau of Health and the division heads in his department in the interpretation of all laws relating to health matters. The several divisions of the Bureau of Health are vested with the enforcement of the laws which provide for the inspection of a number of activities and there are constant requests from the Director of Health and heads of divisions asking for interpretation of new laws as they go into effect. During the past two years many questions have arisen in connection with the administration of the law providing for the control of venereal diseases. It has been necessary during this period to draft forms and formulate procedures for the effective administration of the law.

FEDERAL RELATIONS

The passage of the Federal Social Security Act of 1935 and subsequent State Legislation accepting the terms of the titles of that act which provide for grants in aid for Old Age Assistance, Aid to the Blind and Aid to Dependent Children, added a large volume to the legal work of the department. Before the state could avail itself of federal participation in either of the programs comprehensive plans outlining policies, procedures, rules and regulations were drawn and submitted to the Social Security Board for its approval. In the drafting of such plans and the manuals which must accompany them many legal questions were involved. Discussions of these questions required conferences not only with the administrative heads of the department but also with the regional legal staff of the Social Security

Board. After such plans and manuals have been accepted by the Social Security Board the legal work is not ended because of more or less frequent changes in the procedures and policies by the Board itself and the resulting conferences required.

DIVISION OF PUBLIC ASSISTANCE

Prior to the passage of the Social Security Act the state had programs providing for Aid to the Blind and to Mothers with Dependent Children. The law relating to Aid to the Blind was amended to meet the requirements of the Social Security Act by adding some new elements of eligibility. The so-called Mothers' Aid Law was repealed and a new act was enacted relating to and known as the "Aid to Dependent Children Act." This act broadened the eligibility list as it appeared in the Mothers' Aid Law so much that many new questions relating to eligibility have arisen. It was necessary to pass an entire new law relating to Old Age Assistance and the administration of this act carried with it many questions of eligibility.

The administration of these three acts is vested in a division of the Health and Welfare, known as the Division of Public Assistance. It is readily seen that in the administration of these acts many questions of eligibility which require the advice of counsel are constantly arising. It is true that procedures in the operation of these programs have become fairly well established and questions relating to eligibility have somewhat lessened. However, in view of the fact that the department has passed upon over thirty-seven thousand cases since January 1, 1938 and new applications are received at the rate of approximately two hundred per month, it would be impossible to estimate the number of cases which are brought to the attention of counsel each year.

The Old Age Assistance Act contains a section which provides that the state shall have a preferred claim against the estates of the deceased Old Age recipients and that the collection of such monies as may be available from such estates is a duty imposed upon the office of the Attorney-General. About 15% of the Old Age recipients leave property. In many cases there is not enough to pay in full for

burial expenses, costs of last sickness and costs of administration. If it appears from the property report submitted by the field worker that there is more than enough to pay the funeral expenses, the case is reported to the counsel for the department for consideration and further investigation with appropriate probate court action if necessary. Since the program was initiated approximately 1,400 cases have been investigated by counsel for the department, to whom 477 cases were reported during the year ending June 30, 1944.

Collections and reimbursements for the account of Old Age Assistance are from three sources: 1, the estates of deceased recipients of Old Age Assistance; 2, from recipients who sell their property and desire to reimburse the state for the amount which they have received for Old Age Assistance; 3, from persons who have become possessed of property through the death of relatives or other persons and who desire to reimburse the state for the amount which they have had in the form of Old Age Assistance.

The accompanying statistics indicates the growth in the volume of these cases and the collections or reimbursements obtained from the same.

COLLECTIONS BY ATTORNEY-GENERAL'S DEPARTMENT FROM ESTATES OF DECEASED RECIPIENTS OF OLD AGE ASSISTANCE THROUGH PROBATE COURT ACTION AND REIMBURSEMENTS FROM ALL SOURCES

Year	Amount	Cases	Average	Reimbursement from All Sources
1938-39	$ 1,725.00	21	$ 82.14	$ 1,725.00
1939-40	6,104.71	43	141.97	9,923.18
1940-41	8,995.81	45	199.90	16,848.26
1941-42	19,877.29	75	265.03	24,403.20
1942-43	23,864.36	110	216.94	25,347.99
1943-44	42,691.42	144	296.46	47,770.21
	$103,258.59			$126,017.84

DEPARTMENT OF INSTITUTIONAL SERVICE

By chapter 223 of the Public Laws of 1939 the Bureau of Institutional Service within the Department of Health and Welfare was abolished. A new department known as the "Department of Institutional Service" was created. This department took over all of the powers and duties which had been vested in the Bureau of Institutional Service with-

in the Department of Health and Welfare. Mr. Folsom was assigned as counsel for the new department, continuing his duties with the Department of Health and Welfare. The legal work with the new department is a continuation of the services rendered the former Bureau of Institutional Service and is principally concerned with the collection of claims against persons in the various institutions which are permitted to charge for care and maintenance of their inmates. It frequently happens that inmates of state institutions are found to have a direct interest in the estates of relatives or other persons and it becomes necessary to protect the state's indirect interest in the estates involved. Since no statutes of limitation run against the state it is at times possible to collect quite sizable sums of money for care of inmates over a considerable period of time. Counsel for this department is always available for advice to the Commissioner of the department or the heads of the various state institutions. The following statistics indicate the volume of the collections and reimbursements made to the institutions through efforts of the counsel.

INSTITUTIONAL COLLECTIONS

Year	Augusta State Hospital	Bangor State Hospital	Misc.	Total
1932-33	$ 849.90	$ 1,913.17	$ 1,368.00	$ 4,131.07
1933-34	4,112.24	3,736.78	4,954.91	12,803.93
1934-35	6,070.38	2,761 72	2,408.31	11,240.41
1935-36	2,576.83	4,169.80	1,050.14	7,796.77
1936-37	7,063.76	3,593.34	3,276.86	13,933.96
1937-38	5,103.24	4,948.84	491.03	10,543.11
1938-39	4,949.97	3,163.30	2,418.91	10,532.18
1939-40	2,401.86	10,376.56		12,778.42
1940-41	13,207.37	2,463.96		15,671.33
1941-42	7,807.44	7,620.39	856.86	16,284.69
1942-43	7,041.33	2,433.60	600.00	10,074.93
1943-44	11,555.96	10,668.06	736.65	22,960.87
	$72,740.28	$57,849.52	$18,161.67	$148,751.47

WORLD WAR ASSISTANCE AND SERVICEMEN'S ALLOTMENTS

The Legislature of 1929 enacted a state administered law to provide for the relief of needy dependents of veterans of the World War. The administration of the act was vested in the Department of Public Welfare. A division of World War Relief was set up in that department for the administration of the act. This act was variously amended from time to time. In the administration of the act many ques-

tions of eligibility were referred and are still being referred to counsel for the Department.

The Legislature of 1943 repealed the previous acts relating to World War Relief and enacted a new law entitled "An Act Relating to the Support of Dependents of Veterans of World War I and World War II." This act changed some of the former provisions of eligibility and empowered the Department of Health and Welfare to set up "such rules and regulations with respect to the administration" of the act as the Department should deem advisable. In contemplation of the many problems which will undoubtedly arise with the return of veterans of World War II, the Department has set up rules and regulations and established legal procedures for the guidance of the staff of the Department of Health and Welfare. In the process of this project many legal questions have arisen which required more or less constant conferences with counsel for the Department. The fact that women members of the armed forces of the United States will be included among the veterans of the World Wars is likely to raise some rather intricate questions with respect to eligibility of dependents. Undoubtedly the future administration of the World War Assistance program will increase the services required of counsel for Department.

Counsel for the Department also acts as legal advisor to the State Service Officer connected with the Department of Health and Welfare in matters pertaining to: Servicemen's Dependents' Allowances in the case of committed children and servicemen who are members of families who are clients of the Department; interpretation of the Civil Relief Act for servicemen; technicalities in connection with evidence required in the filing of claims with the Veterans Administration; recovery of insurance and other benefits for next of kin of those persons who are killed in action, and related subjects.

INDIAN AFFAIRS

Under the provisions of the so-called "Code Act," the administration of Indian Affairs was transferred from the Forestry Department to the Department of Health and Welfare. These affairs are under the direct supervision of the

Director of Social Welfare and the Indian Agent. Counsel for the Department acts in advisory capacity to the Director and the Indian Agent.

CONCLUSION

As indicated in the foregoing report, the increased demands for the services of the Attorney-General's Department occasioned by a substantial increase in the cases handled by the Department of Health and Welfare, plus the added services performed by that department as created by the Legislature, so added to the volume of legal business and advice which is necessary to the proper administration of the affairs of the Department of Health and Welfare and Institutional Service that one attorney could no longer efficiently perform all necessary services. Accordingly, in May, 1943, Miss Jean Lois Bangs, an Attorney of Brunswick, was named by the Attorney-General as associate counsel for the Department of Health and Welfare. She immediately took charge of all cases relating to the protection of children, and other duties have been specially assigned to her from time to time.

A great deal of the work handled by counsel requires travel to all parts of the state for the purpose of attending court hearings; consultation with the field workers in the thirty-nine district and branch offices; and contact with other attorneys in the handling of their cases in which the Department of Health and Welfare is involved. By having two attorneys in the Department, it is possible to arrange their schedules so that one of the counsel will be, at all times, at the office of the Department in Augusta, and available for consultation with the Commissioner and any of the division heads and supervisors for the consideration of the varied legal problems that arise each day.

Respectfully submitted,

LEROY R. FOLSOM
JEAN LOIS BANGS

To The Honorable Frank I. Cowan, Attorney-General:

When I assumed office as Counsel for the State Liquor Commission in June, 1942, I found the statutes under which the Commission operates to be very unsatisfactory. The various laws were ambiguous and contradictory in many instances. Realizing that the laws with respect to intoxicating liquors are all subject to differences, I felt that it was necessary to coördinate the various interests, such as licensees and those advocating repeal. I held many conferences during a period of six months with representatives of brewing companies, hotel, restaurant, retail and wholesale licensees. I also had several conferences with Reverend Frederick Smith, representing the Christian Civic League of Maine. As a result of these conferences we were able to present to the Legislature in 1943 an act which sought to clarify many of the ambiguous and contradictory provisions in the liquor law. The Legislature enacted this act which I had prepared, without any opposition from any of the interests. These clarified acts are now embodied in the law. They are of great assistance in the administration of the affairs of the Liquor Commission.

I sat with the Commission on 160 hearings on the revocation or suspension of licenses. From June, 1942, to December 31, 1942, the Commission revoked 15 licenses and suspended 18 for various infractions. From January 1 to December 31, 1943, the Commission revoked 29 licenses and suspended 44 for various infractions. From January 1 to September 1, 1944, the Commission revoked 19 licenses and suspended 21 for various infractions.

Because of the conditions brought about by the war, many difficult and perplexing problems arose. These, however, were satisfactorily solved and we adhered strictly to the provisions of our laws. We have had considerable difficulty with some of the agencies of the Federal Government, who sought by various regulations to control some of the activities of the Commission. These efforts on their part were unsuccessful and by coöperation these problems were solved.

Our present liquor laws are a hodge-podge of words and phrases. I suggest that either a committee of the Legislature or someone in the Attorney-General's Department

should be authorized to codify all the laws with respect to intoxicating liquors and present to the Legislature for enactment one act covering this subject and repealing all existing laws.

The members of the State Liquor Commission as well as the personnel have coöperated fully with me. The Commission has at all times operated within the provisions of the law and has adhered strictly to the statutes.

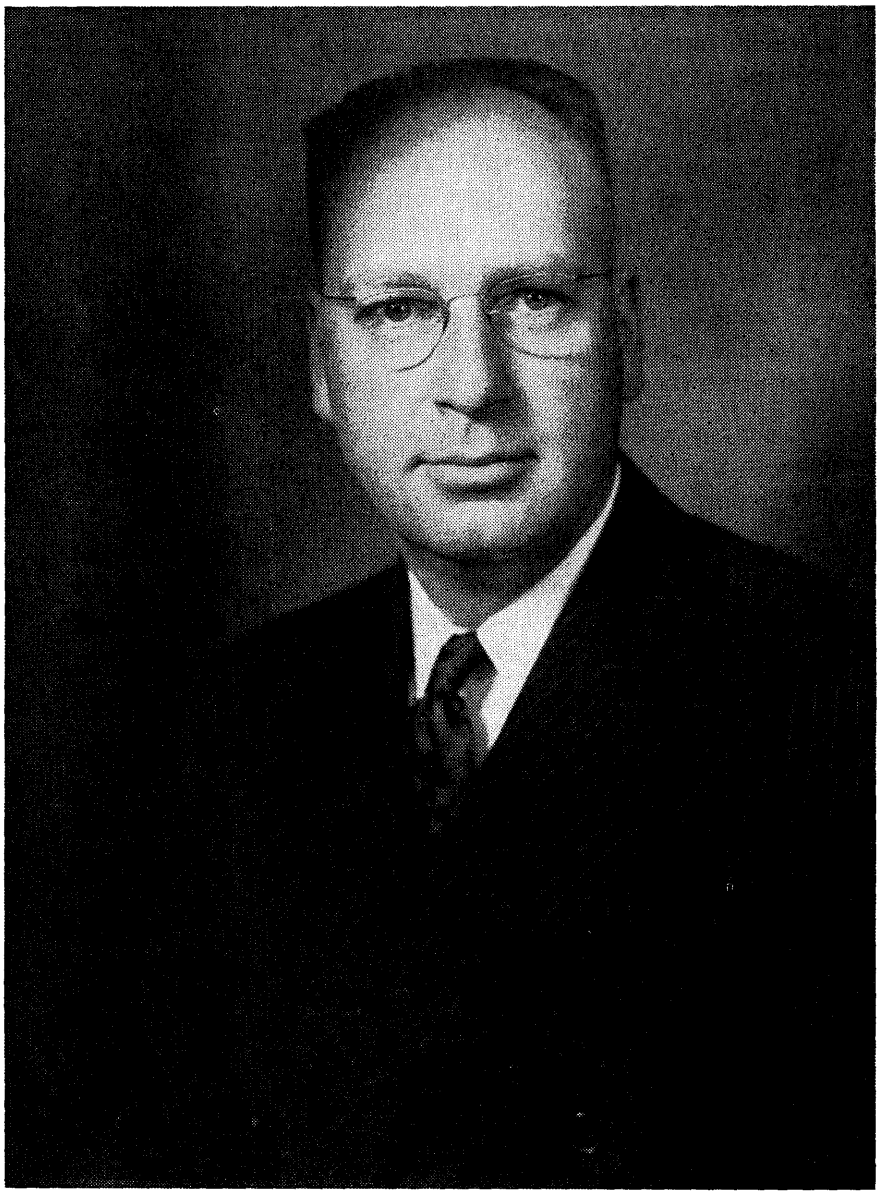
I instituted nine suits on liquor license bonds. Collection was made on one of these bonds. Two suits were disposed of by the Law Court. The balance of the suits are now pending in the Kennebec County Superior Court.

A copy of all the legal opinions rendered by this Department to the State Liquor Commission appears elsewhere in this Report.

Complete new sets of applications for licenses have been drafted by me that conform with the provisions of the statutes. I have also drafted new bonds that conform with the decision of the Law Court.

Respectfully submitted,

WILLIAM H. NIEHOFF
Assistant Attorney-General and
Counsel for the State Liquor Commission



JOHN G. MARSHALL
Assistant Attorney-General

November 10, 1944

Honorable Frank I. Cowan
Attorney-General for the
State of Maine,
State House,
Augusta, Maine

Dear Mr. Cowan:

It is a pleasure to submit the following report on my assignment as the legal representative for the Attorney-General's Department with the Maine Unemployment Compensation Commission.

There are many erroneous impressions of the true meaning and function of unemployment compensation. Therefore, it is pertinent to write a brief composition on the Maine Agency. First: Every person employing eight or more employees for a period of twenty weeks in any calendar year is engaged in subject employment and the employees in that work are covered by the act. There is excepted employment which is engaged in agriculture, educational and charitable undertakings. (This description is general, rather than specific, for the purpose of brevity, so one should read the act in all cases where specific information is needed.) All subject employers are obliged to pay contributions on the wages paid to their employees. These contributions are held by the Agency for the specific benefit of employees. This is not a relief fund. It is not an intended subsidy. It is, in a sense, a reserve fund of insurance on the adversity of unemployment over which the employer as well as the employee has no voluntary control. In order to obtain this insurance under existing law, the employee must meet certain definite qualifications or requirements; first, he must have earned at least one hundred forty-four dollars in his previous calendar year or base year of employment. He must be out of work involuntarily. He must be available for work of a similar nature and kind. The program does not embrace benefits for physical disability or illness. If he qualifies and continues to be without suitable work, he may draw insurance benefits for sixteen weeks for as much as eighteen dollars a week, if he has the maximum wage credits.

The members of the Commission, the employees in the department and the Legal Department, are charged with duties of collecting the contributions and supervising the proper payment of benefits to eligible employees, within the right and spirit of the law.

As this is being written, there is approximately thirty million dollars available in the insurance or benefit fund. The social and economic meaning of this fact is obvious to any thoughtful citizen. This will relieve some of the shock resulting from any Post-War depression.

There are many employees in the state not covered by the present law, which indicates a rather unreasonable discrimination and also causes an unfair social and economic gap in the insurance program. I would urge the adoption of legislation reducing the present coverage from eight employees to one employee.

The Legal Department has collected over one hundred thousand dollars in delinquent contributions during the past two years. This has all been done through the use of correspondence or by civil actions. Not one of these cases has ever been contested in the Courts. The Maine law provides for the use of criminal process in any case where an employer does not pay his contributions but this process has been necessary in only one case.

The Maine law authorizes the Commission to adopt rules and regulations. The Legal Department advised the Commission that such rules and regulations should be adopted only after very careful compliance with the provisions of the statute so that the general public may have notice of the proposed regulations to be adopted. The Commission should hold a public hearing in order to obtain full information on the effect of the regulations and the notice of the adoption should be published and a certified copy filed with the Secretary of State. All of the present rules and regulations of this department have now been adopted by a strict adherence to the requirements under the statute.

The Legal Department has attended all of the hearings held before the Commission on appealed cases. The Maine law provides an excellent method for holding hearings on questions concerning coverage and employer-employee rela-

tionships. During the present year, we have conducted many inquiries for the purpose of determining the status of employees of contractors and sub-contractors forming a part of the usual work of business of subject employers in the state. The appeals referee in the department subpoenaed parties, records and reports and we were able to obtain all the necessary information on which we could make determinings. Only one case has been appealed to the Courts from these proceedings. In conclusion, the docket of cases pending for the Commission consists of those currently entered during the fall terms of 1944. All requests by the Commission, members of the department and interested persons, for rules and opinions that have been directed to me have been answered.

Every member of the Commission, all of the department employees and the members of the regional office of the Social Security Board in Boston have given me their complete coöperation and obliging efforts. I am grateful to all of them and to you for my having had the benefit of this experience.

Respectfully,

JOHN G. MARSHALL

Honorable Frank I. Cowan,
Attorney-General,
Augusta, Maine

Dear General:

I wish to report on my work in connection with the Inheritance Tax Division and with the Attorney-General's Department as a whole since my appointment, November 1, 1941.

Upon assuming my duties as your assistant, I was specially assigned to the Inheritance Tax Division to assist the Honorable Philip D. Stubbs, Inheritance Tax Commissioner, to dispose of a large number of delinquent estates, and in other respects to generally assist him in the administration and enforcement of the Inheritance Tax Laws. Since my position was a new one, it may be well to explain the reason for its creation.

The Inheritance Tax Laws, as they existed prior to July, 1933, (effective date of the present laws) had many weaknesses as compared with the present, more effective system. At that time, the Probate Courts had exclusive jurisdiction over inheritance and estate taxes, with the State playing a secondary part.

In those days, the Attorney-General's Department had to rely entirely upon the Registers of the Probate Courts for all of its information concerning estates. In other words, the State had no direct connection or relation with the executors and administrators or parties in interest except through the Probate Courts. This was only one of the many unsatisfactory features of the old laws. As a result, many estates became delinquent solely because of the very weaknesses of the law and system then existing.

In support of this view, I need only quote one of our distinguished former Attorneys-General, Honorable Clement F. Robinson, in his annual report for 1929-30 in which he wrote: "A revision of the provisions of our law for collecting inheritance taxes is needed, and I recommend that the Legislature should consider this whole problem."

To meet a crying need for a change, the Legislature of 1933 enacted the present inheritance and estate tax laws,

creating the position of Inheritance Tax Commissioner upon appointment by the Attorney-General, and vesting him with exclusive power to assess and collect all inheritance and estate taxes and to generally enforce all laws pertaining thereto.

Naturally, the effect of this revolutionary change brought about the creation of a new department within a department—the Inheritance Tax Division. It was a complete change from the old system, necessarily imposing many new and additional burdens and duties upon those connected with this particular department.

When this change occurred, there were many estates pending under the old law which had to be brought within the provisions of the new law, not to mention the many thousands of new estates then coming into existence down to the present time. While the greater percentage of those older estates were eventually disposed of, there still remained a large number that needed immediate attention to conclude and remove from our active files, irrespective of whether inheritance taxes were due or not.

Therefore, in order to alleviate this condition, and otherwise assist the Inheritance Tax Division in meeting its many and new complex legal problems arising under the new law, I was appointed an Assistant Attorney-General.

The following is a record of the delinquent estates attended to by me:

Total	Disposed of	Pending	Taxes Paid	Interest Paid
		ANDROSCOGGIN COUNTY		
73	58	15	$ 3,833.13	$ 522.94
		AROOSTOOK COUNTY		
38	24	14	232.80	
		CUMBERLAND COUNTY		
155	126	29	14,309.26	2,747.77
		FRANKLIN COUNTY		
25	17	8	162.19	28.55
		HANCOCK COUNTY		
2	2		1,718.87	
		KENNEBEC COUNTY		
5	5		1,063.21	163.94
		KNOX COUNTY		
2	2		150.14	38.43
		LINCOLN COUNTY		
23	15	8	769.17	270.43
		OXFORD COUNTY		
1	1		134.26	116.97
		PENOBSCOT COUNTY		
11	11		3,436.44	261.13

		PISCATAQUIS COUNTY		
None				
		SAGADAHOC COUNTY		
2	2		49.82	
		SOMERSET COUNTY		
1	1		400.00	
		WALDO COUNTY		
3	3		3,320.40	
		WASHINGTON COUNTY		
36	21	15	2,033.54	305.33
		YORK COUNTY		
64	55	9	4,024.07	733.21
	1	(By Escheat)	1,268.30	
		TOTALS FOR ALL COUNTIES		
441	343	98	$36,905.60	$5,188.70

The above list reports the actual number of estates acted on, and not the total of existing delinquents. From the above pending number, however, which includes those hereafter referred to, we should in due course recover an additional twenty to twenty-five thousand dollars by the end of this calendar year.

PENDING TAX MATTERS

Among the above pending estates, there are two in particular involving a total of approximately $15,000 which I anticipate will escheat to the State of Maine by the end of this year. One of these estates is pending in York County and the other in Cumberland County. My investigations thus far have shown that there are no possible heirs in either case.

Carleton V. Cook, Executor, vs. *Inheritance Tax Commissioner,* is a case involving the sole question as to whether Carleton V. Cook, a grandson of the testatrix, is entitled to an exemption of $10,000 under Sec. 3, Chap. 148, R. S. 1933, as amended by Chap. 304, P. L. 1941, or an exemption of $500 as ruled by the Inheritance Tax Commissioner. The case was submitted to the Law Court on report on an agreed statement, and written arguments filed at the October term of said court.

Re: *Ellms Estate, Penobscot County.* This estate involved a trust fund, created by will more than twenty years ago, for the benefit of the testator's wife who was a patient in a certain state hospital from 1901 until the date of her death in 1942. In the course of my work, I found, from a study of the Probate records, that the Trustee had failed to pay for the maintenance and support of the said patient in

accordance with the provisions of the testamentary trust. Whereupon, I conveyed my information to Mr. LeRoy R. Folsom, Assistant Attorney-General and legal advisor to the Department of Health and Welfare. Mr. Folsom continued the investigation, and found that the Trustee should have paid an amount in excess of $5,000 to the State of Maine if he had properly complied with the terms of said Trust.

Subsequently, Mr. Folsom and I collaborated in drafting a Bill in Equity against the Trustee to compel him to carry out the terms of the Trust, to wit, to pay the State of Maine such sums as was due it for the support and maintenance of the cestui que trust.

Finally, after considerable effort on the part of Mr. Folsom, the sum of $4,500 was paid by the Trustee in full compromise of all claims in favor of the State. In this connection, the Inheritance Tax Department is now awaiting the filing of a final account by the Trustee, and it is expected that a substantial sum will be collected in inheritance taxes.

Re: *Bolduc Estate, Androscoggin County.* Investigation in the above estate disclosed that the Inheritance Tax papers and will were drafted by an insurance agent. After a personal interview, it was learned that he had been writing wills and drafting Inheritance and Probate papers in many instances for a large number of people in his vicinity, and charging them a small fee, in spite of many protests made by various attorneys in that locality.

In this particular case, I learned that he had drafted the will, in addition to the inheritance tax papers, and was also named as an appraiser by the Probate Court. I immediately drafted a petition to revoke his Warrant of Appraisement on the ground that he was not a disinterested person, as he is required to be by Statute. After a hearing before the Probate Court on September 8, 1944, he was removed as Appraiser upon revocation of his Warrant.

At this point, I wish to add that I have instituted a total of ten suits and twenty citations in connection with inheritance tax matters, all of which have been amicably adjusted without the necessity of formal hearings or trials.

CRIMINAL CASES

I have handled for the Attorney-General fifteen cases involving Petitions for Writs of Habeas Corpus and Writs of Error brought by inmates of the state prison against Warden John H. Welch. For the most part, these cases involved the non-conformity of sentences with the Statute concerned and insufficiency of indictments. In some of these cases, it was found that the Petitioner had been given an indeterminate sentence instead of a definite term as provided by Statute.

In one of these cases, Duplisea, petitioner, vs. John H. Welch, Warden, reported in the Atlantic Reporter, the petitioner was serving a sentence of not less than eight years, nor more than sixteen years, for assault with a dangerous weapon with intent to kill, R. S. 1930, Chap. 129, Sec. 27.

Upon denial of his Petition for a Writ of Habeas Corpus, he took exception to the December term, 1943, of the Law Court, claiming that the sentence was invalid because the offense charged was not recognized as anything more than assult at Common Law; that, therefore, he should be released, having already served the maximum for assault. Justice Murchie, in an extended opinion, ruled the sentence as valid and overruled the exception.

I have also assisted the Attorney-General in the investigation and prosecution of the Ashworth Murder Case which was tried at the May term, 1944, of the Superior Court at Alfred, York County.

In connection with the criminal actions brought by the inmates heretofore mentioned, it might be well to refer briefly to one involving an indictment brought under R. S. Chap. 130, Sec. 8, "whoever, with intent to commit a *felony,* breaks and enters. . ." In this instance, the Petitioner was indicted for breaking and entering with intent to steal, take and carry away the goods and chattels of another. The indictment was dated October, 1938, and after conviction upon said indictment, he was sentenced to the state prison for a term of not more than four years and not less than two years. In his Petition for a Writ of Error, he contended that the indictment did not sufficiently allege an intent to commit a *felony,* in that it did not specify that the value of the property intended to be stolen exceeded the

value of $100, citing Chap. 92, Laws of 1933, which amended Sec. 8 of Chap. 130, above, making it a felony to steal property valued in excess of $100, and a *misdemeanor* if less than $100.

Following this case, I talked with several of our County Attorneys who informed me that they have always followed the same form of indictment and that this question has never been raised. However, it would appear that in order to avoid any future complications under this Statute it would be well if the same were amended to include expressly the words "or any larceny," so that the Statute may read "whoever, with intent to commit a felony, *or any larceny,* breaks and enters. . . ." This would be in line with many other jurisdictions.

IMPORTANT ISSUES

Many interesting questions have arisen in the past several years which bear some mentioning at this time. They are as follows:

1. Is a child of an adopted child a lineal descendant and, therefore, entitled to an exemption of $10,000 under R. S. 1930, Chap. 80, Sec. 38?

The Inheritance Tax Division has ruled that the child of an adopted child is not a lineal descendant; that the adoption Statute only intends to include the adopted child. This question has been raised by attorneys on several occasions and in support of their contentions they have cited a few decisions from foreign jurisdictions which, in my opinion, still leave the question incompletely answered, notwithstanding the decision in Warren vs. Prescott, 84 Maine 483.

2. Several months ago, the question of apportionment of taxes arose in a certain estate. The decedent, a resident of Maine, left an estate in Maine approximating $60,000 which she devised and bequeathed to a son and daughter. Ten years prior to her death, she had created a revocable living trust in Brooklyn, New York, involving $300,000.

It developed that the estate owed the Federal Government a substantial sum of money for estate taxes, in addition to Maine Inheritance Taxes. The Executor, in order to avoid complete liquidation of the assets in this state, asked us if there were anything that we could do to compel the Trus-

tees in Brooklyn to pay its proportionate share of the taxes. In compliance with his request, we communicated with the Trust Company, and were informed that, inasmuch as we had no Statute providing for the apportionment of taxes such as exists in New York State, it would be impossible to comply with our suggested settlement. As a result, the Executor was forced to liquidate practically all of the Maine estate in order to meet his obligations to the State of Maine and to the Federal Government.

As a consequence of this case, I made a partial study of this question and found that the State of Massachusetts enacted such a statute in June, 1943, which substantially follows the wording of the New York statute. I believe that it will be of inestimable advantage to the State of Maine to have such a law enacted in this State, since we have many estates where trusts are created by Maine residents in foreign jurisdictions, most of which have such a law.

RECOMMENDATIONS

1. Continued maintenance of an adequate staff in the Inheritance Tax Division to cope with the ever-increasing legal problems and duties in the administration and enforcement of the Inheritance Tax Laws.

2. Adoption of an Apportionment Statute as now exists in New York and Massachusetts and many other states.

3. Amendment of the Adoption Statute, R. S. 1930, Chap. 80, Sec. 38, so as to state expressly whether children of an adopted child of a decedent are lineal descendants of such decedent.

4. Amendment of Sec. 3, Chap. 148, R. S. 1930, as amended by Chap. 304, P. L. 1941, (Inheritance Tax Laws) so as to make uniform the amount of exemption of grandchildren, whether they take by will or by right of representation, thereby removing all possible doubt of the constitutionality of the present provisions pertaining thereto.

Respectfully submitted,

NUNZI F. NAPOLITANO,
Assistant Attorney-General

Augusta, Maine
October 10, 1944.

WORKMEN'S COMPENSATION FOR STATE EMPLOYEES

September 7, 1944

The State has been an assenting employer since the Workmen's Compensation Act was enacted in Maine, in 1915. Claims and benefits under the Act are paid by the several departments under supervision of the Attorney-General's Department.

The necessary hearings before the Industrial Accident Commission were at first handled as routine and were mostly in defense against excessive or improper claims. As Deputy Attorney-General, William H. Fisher, now of the Superior Court, attended these hearings and represented the State's interest.

Thereafter, Franklin Fisher, as Deputy under the then Attorney-General, now Chief Justice Guy H. Sturgis, attended to the matters having to do with compensation for injured State employees.

Later, Richard Small, of Portland, as Assistant Attorney-General, handled the cases in connection with his private practice. He was succeeded by Ralph Farris of Augusta, who served until 1941, when he became a member of the Maine Senate. Harry Putnam, of Portland, was then appointed Assistant Attorney-General, and administered the affairs of the Commission until he became Executive Secretary to Governor Sewall.

For a short time after Mr. Putnam was transferred to the executive office, Alexander LaFleur, of Portland, represented the State before the Commission in addition to his other duties for the Attorney-General's Department.

In February of 1942, Neal A. Donahue, of Auburn, former Municipal Court Judge, was appointed Assistant Attorney-General to handle the matters connected with Workmen's Compensation for State employees.

The policy has been to see that employees injured while in the State's service receive the compensation payments and medical care to which the Act entitles them as well as to defend against abuses and unlawful claims.

The number of accidents and claims has gradually increased until the outbreak of the war, when curtailment in

activities necessarily limited the number of men employed by the State in the Highway Department.

Below appears a statement of the number of cases, compensation paid and medical bills paid for the calendar year January 1, 1943 to December 31, 1943, inclusive, and for the calendar half-year from January 1, 1944 to June 30, 1944, inclusive.

1943

Department	New Cases	Amount of Compensation Paid	Medical Bills Paid
Adjutant General	2	$ 100.00	$ 9.00
Bureau of Accounts and Control	1	—	9.00
Department of Agriculture	1	—	
Department of Audit	1	—	28.00
Education Department:			
Farmington State Normal School	2	—	—
Gorham State Normal School	2	—	—
Vocational Training	1	—	—
Inland Fisheries and Game	13	1,154.14	213.45
Forestry Department	3	54.00	70.00
Health and Welfare Department	4	135.00	187.19
Highway Department	152	27,927.30	6,901.93
Industrial Accident Commission	1	—	—
Institutional Service:			
Bangor State Hospital	2	238.29	357.50
Central Maine Sanatorium	6	6.30	—
Pownal State School	1	—	—
State School for Boys	3	—	80.00
Western Maine Sanatorium	1	—	—
Legislature	1	—	19.00
Liquor Commission	7	—	230.75
Secretary of State	1	—	5.00
State Police	9	619.71	396.35
Superintendent of Buildings	5	—	59.00
Unemployment Compensation Comm.	—	486.19	—
TOTAL	219	$30,720.93	$8,566.17

1944

Department	New Cases	Amount of Compensation Paid	Medical Bills Paid
Accounts and Control	1	—	—
Adjutant General	4	$ 471.00	$ 733.30
Agriculture Department (Reimbursed $154.00 from Insurance Co. re Rex Gould case)	3	566.00	232.00
Education Department	2	138.04	—
Fish and Game Department	10	871.68	1,900.74
Forestry Department	1	—	—

Health and Welfare Department	4	—	124.00
Industrial Accident Commission	1	—	—
Institutional Service:			
Augusta State Hospital	1	85.40	—
Bangor State Hospital	1	—	7.00
Central Maine Sanatorium	1	—	—
Military & Naval Children Home	—	329.42	—
Pownal State School	4	—	—
State School for Boys	2	—	20.00
State School for Girls	1	—	3.00
State Reformatory for Women	1	—	—
Northern Maine Sanatorium	1	—	—
State Reformatory for Men	1	—	86.34
Liquor Commission	3	1,401.30	303.75
Police Department	11	143.50	447.75
Public Buildings	2	210.00	19.00
Sea and Shore Fisheries	—	468.00	—
State Library	1	—	21.00
Unemployment Compensation Comm.	—	242.30	—
State Highway Department	59	15,456.76	6,359.10
TOTAL	115	$20,383.40	$10,256.98

During this period the State Highway Department was reimbursed $2,300. by an Insurance company in the Willie H. Daigle Case.

Respectfully submitted,

NEAL A. DONAHUE

Assistant Attorney-General

SECTION THREE

OPINIONS RENDERED

Hereafter appear a few of the written opinions rendered by the Department of the Attorney-General which have to do with administrative matters and which are used as precedents in this office in advising the various branches of the State Government in handling current problems.

July 2, 1943

Harrison C. Greenleaf, Commissioner Institutional Service

Support of Inmate of Pownal State School committed by Municipal Court

Section 450, Ch. 1, P. L. 1933, provides for support of inmates of Pownal and reads in part as follows: "All indigent and destitute persons in this state, who are proper subjects for said school, and have no parents, kinsmen, or guardian able to provide for them, may be admitted as state charges and all other persons in this state, who are proper subjects for said school, when parents, kinsmen, or guardian bound by the law to support such persons are able to pay, shall pay such sum for care, education, and maintenance of such persons as the department shall determine . . . ; and the state may recover from any person admitted to said school, if able, or from persons legally liable for his support, the reasonable expenses of his support in said school."

On November 3, 1942, this office rendered an opinion that Chapter 245, P. L. 1941, An Act Relating to Commitment of Feeble-minded Juvenile Delinquents, did not result in Pownal State School becoming a penal institution. It does, however, create a new method of commitment to the school.

It is the opinion of this department that the provisions of Section 450, Chapter 1, P. L. 1933, above quoted apply to commitments under Chapter 245, P. L. 1941. If the parents, kinsmen or guardian of .... are able to pay for her support and arrangements for amicable settlement cannot be made, legal action to collect might be advisable.

FRANK A. FARRINGTON
Deputy Attorney-General

July 2, 1943

J. J. Allen, Controller Accounts & Controls

Pay-as-you-go Tax

I have your memo of June 30, 1943, asking for a ruling "as to the authority of the Controller to withhold the so-called Pay-As-You-Go Tax from the pay of State of Maine employees."

Under date of December 30, 1942, this office gave an opinion to Mr. Kane, the former State Controller, to the effect that as a contribution to the war effort and to simplify the problem of the collecting authority for the United States Government, it would be proper to withhold the "Victory Tax" from the pay of State employees, but that the withholding of this tax for the Federal Government and the forwarding of the money to the Federal collecting agency must not be regarded

as a waiving of the rights of the State to object at any time on the ground that the Federal law constitutes an illegal direct taxation against the States or to raise any other objection, with the further suggestion that the Controller should secure the benefit of an order of the Governor and Council before making the deductions.

The present Legislature passed an Act, which is Chapter 224, P. L. 1943, authorizing the withholding of "the federal Victory Tax so-called" from the salaries and wages of all state, county and municipal officials and employees and further authorizing the treasurers of State, the county treasurers, and the treasurers of the several municipalities to act as custodians of such monies and to pay them over to the Collector of Internal Revenue as required by the Federal Law. The Act further stated that its purpose was "to give to the federal government a temporary grant and not to relinquish any rights of the state of Maine."

Since the passage of that Act, which takes effect July 9, 1943, the Congress of the United States has expanded the "Victory Tax" law and has included in the expanded law provision for withholding current income taxes of the people of the country. The "Victory Tax" still continues, but under certain circumstances set out in the Federal Act it is not apparent to the tax-payer.

In my opinion the provisions of P. L. 1943, Chapter 224, were not intended by the Legislature to cover any specific percentage of federal tax, but were intended to protect the treasurers in withholding from wages and salaries and paying over to the proper Federal collecting agency any Federal tax which includes the "Victory Tax" or which follows the same general administrative features as the "Victory Tax." The new withholding tax law not only includes the "Victory Tax," but it is based on the same fundamental ideas and includes all of the essential administrative features of the "Victory Tax." You are therefore, in my opinion, justified in making the deductions provided by the Federal statute, and the treasurers of the State, the counties, and the municipalities have full authority under our statute to act as custodians of moneys so withheld and to pay them over to the Collector of Internal Revenue.

FRANK I. COWAN
Attorney-General

July 7, 1943

To: Governor Sewall, the Secretary of State, the Secretary of the Jointly Contributory Retirement System, and President Hauck, Chairman ex officio of the Board of Trustees of the University of Maine

Subject: Status of the University of Maine

I have three inquiries for opinions as to the attitude which the State should take toward certain activities of the University of Maine and the extent to which certain State Statutes apply to this institution. These questions are as follows:

1. In view of the opinion of the Law Court of the State of Maine in the year 1909, in which appears a declaration that the University of

Maine is a private institution in the same way that Bowdoin, Colby and Bates Colleges are private institutions, must the Secretary of State require that the University of Maine pay for registration of automobiles used in carrying on its functions?

2. Can the professors and instructors employed for the purpose of carrying on the functions of the University of Maine be regarded as eligible for membership in the "Jointly Contributory Retirement System for State Employees except Teachers," which is Chapter 328 of the Public Laws of 1941, approved January 24, 1942?

3. Does the fact that the Governor appoints all the Trustees of the University of Maine mean that that institution is an agency or instrumentality of the State?

Because a question has arisen in the minds of some as to how we should view the decision of the Law Court in the light of acknowledged facts, I will discuss the character of a college with endeavor to show that a recognition of the dignity of its position must enter into any attempt to define its exact status in relation to general government.

A college is not simply the land and buildings which it occupies. A college is also a spirit—an idea—the congregated mentalities of a group of men devoted to the ideal of study and teaching surrounded by a group of immature minds seeking development. A college can exist without buildings to house it—without books, test tubes, or any of the commonly accepted impedimenta of an institution of learning. Aristotle conducted one of the most famous colleges the world has ever known, the School of the Peripatetics, so-called because the teacher walked about, through the parks of Athens, followed by his pupils, to whom he gave instruction as he walked.

Jesus of Nazareth certainly conducted a college, yet neither he nor his pupils were ever sure of having a shelter in which to sleep or regular meals spread for their enjoyment, to say nothing of lack of textbooks.

Mark Hopkins astride a log with a single pupil seated at the other end has been frequently cited as the ideal college.

Why then should we be troubled about the situation of the University of Maine? There should be no difficulty to intelligent minds in looking on that college as a public institution so far as its physical properties are concerned; but in its spiritual aspects as possessing all the integrity of soul that belongs to one unhampered by political considerations.

No college can have a proper existence in this democracy unless its spirit is absolutely free. The subjects that shall be taught may be set down by the lawmakers, but how those subjects shall be taught must be left to the intelligence and the consciences of the operating faculty.

It must have been this idea which Judge Cornish had in mind when he wrote his famous opinion in 1909, declaring that the University of Maine is as much a private institution as is Bowdoin, Colby, or Bates. When he compared the University with the State Normal Schools and

said that the former is apart from the State while the latter are a part of the State, he was not referring to physical properties. He must have known that in 1870 the Corporation had conveyed to the State all its lands. He must have known that the Charter of the College had been amended so that all the Trustees were appointed by the Governor. He certainly knew, for he spoke of it in his opinion, that the College was dependent for its support on two sources, viz: grants from the Federal Government and grants from the State of Maine.

Moreover, it is reasonable to suppose that Judge Cornish, and the other members of the Law Court who concurred in his opinion, were aware that Federal grants were dependent on a recognition by the Congress that the University of Maine was a public institution. What, then, could have inspired this man, recognized by all as one of the wisest of our judges, and himself an alumnus of Colby College, to write an opinion which might seem to jeopardize the financial future of a great institution of learning? Was it a spirit of ill will or of malice? The very suggestion of such small-souled conduct is an insult to the memory of a great judge.

Was it ignorance of the consequences? Those who remember Judge Cornish, and those whose only knowledge of him is derived from a study of his written opinions know that he prepared no decisions for the Law Court without a careful consideration of the state of society for which the decision was made. He laid down the rule of law as he esteemed it to be, but he recognized that he was living in a changing world, and that the law is a set of rules made by man for his own guidance and is not a set of mandatory decrees, promulgated by an autocrat, which man must follow, no matter how inflexible they may be, or how little they are adapted to meet changing conditions.

What, then, did he have in mind?

Simply this, and carefully expressed. That the University of Maine, like any other institution of higher learning, is more than a mere "school." No matter how inadequate some of the students may feel, there are those there who welcome the opportunity for exploration along uncharted lines—who recognize that they are privileged to attend a college where independence of thought and experimentation in new fields is encouraged.

There had been, just prior to the 1909 decision, a renewal in the legislature of the State of the struggle to make the University wholly subservient to politics. A bill had been introduced, and strongly supported, to require that a certain schedule of studies be followed. This was the third time, so a historian has declared, that such an attempt had been made to reduce the dignity of the College to that of a mere public school, dependent for its course of instruction and what textbooks it should use on the whim of a majority in the State Legislature.

It was to protect the soul of this great institution of learning, and to provide for all time a bulwark against the jealousies, ignorance and prejudices of persons hostile to the institution that our Law Court acted. The Court deliberately ignored the question of legal title to

physical properties. So far as the judges were concerned, the land and buildings were mere appendages,—things of convenience but certainly not things of necessity. The college can leave that land, and abandon those buildings, just as Colby College is in process of doing today, but such removal will have no effect on the soul of the institution. That soul is hidden, secret, having its own private rights, uninvadable. It is apart from the field of politics—free from the bondage of patronage. Congresses and Legislatures can make available money and lands for the use of the College, and can lay down rules as to how that money and those lands shall be used, but they cannot say how the soul of the College, the idea to teach, the ideal for the betterment of the human race, shall function. Those things are beyond the ken of the illiterate—the material minded—the mere money-changers of the world. With their gifts of gold or their political power, they can shape the buildings, and create athletic fields, but they cannot compel minds inspired with the ideal of teaching to function along lines which they prescribe.

To prevent a future group of shortsighted persons from evicting these independent minds and putting the College in shackles of ignorance (thus destroying or at least retarding the development of its soul) the judges spoke. Their decision has to do solely with the spiritual, not at all with the physical.

The State, in its attitude toward the University of Maine, must recognize two things. First—the spirit of the College is free—and must function in that pure atmosphere where thought and study are unhampered by material considerations. Second—the physical assets of the College are the property of the State, and as such are to be regarded and treated as public properties.

The faculty, expressive as they are of the spirit of the College, are not public employees. They make such rules, not contrary to law, as they wish for their own guidance or convenience, subject, of course, to the supervision of the Trustees.

The Trustees are liaison officers between the spirit of the College and its body. They perform material functions, but are not themselves charged with the duty of teaching. They have custody of the lands, buildings and equipment set aside by the State for the use of the College in performing its functions of study and teaching.

To the extent necessary to make it the beneficiary of Congressional and State grants of money, the University of Maine may be classed as a State institution. The lands, buildings and other physical assets, title to which is in the State, are instrumentalities of the State.

The College itself, this ideal, is an untrammeled spirit, free to accept or refuse the gifts that governments or others bestow upon it. This free spirit can never be regarded as the instrumentality of any political body, because the moment it becomes such, that moment it starts to decline—to lose its virtue—to become a mere instrument in the hands of politicians.

From such an ignoble end it is hoped a large and rapidly growing alumni body will ever defend it.

It must of necessity follow from the above line of reasoning that inasmuch as physical assets of the University, whether actually standing in the name of the State or standing in the name of the Corporation, are in fact the property of the State; and since the State does not charge taxes against or registration fees for the use of its own properties, any automobiles used by the University of Maine in the performance of its functions are not subject to registration fees. Any opinions heretofore given by this Department seemingly in any way in conflict with this opinion are hereby modified to conform to the conclusion expressed herein.

The question as to whether general employees of the University of Maine shall be considered as eligible for the benefits of the Jointly Contributory Retirement System, must be answered in the affirmative.

The question as to whether professors and instructors in the University of Maine are eligible for the benefits of the Jointly Contributory Retirement System must, at the present time, be answered in the negative. The Legislature has on several occasions used language which recognized "officers and employees of the University of Maine" (see P. L. 1937, Ch. 221, the Personnel Statute) as employees of the State in the unclassified service. We cannot interpret this language as broad enough to include professors and instructors within the provisions of the Jointly Contributory Retirement System without more specific language by the Legislature.

The question as to whether or not the fact that the Governor appoints all the Trustees of the University in itself is the determining factor in making of the University a State instrumentality or agency must be answered in the negative. The Trustees have a dual function, and the method of their selection is simply one of convenience. It is their duty to ensure that the State property entrusted to their care shall be used for the purposes determined by the people of the State speaking through their Legislature, and to that extent they are acting in a departmental capacity. They are then guiding and directing the institution in that part of its functions in which it is making use of State property and is acting by delegation as an agency or instrumentality of the State.

Their second function has to do with protection of the College as a guiding lamp for those who seek knowledge. That function I have discussed above in sufficient detail. Any failure on their part to recognize their dual capacity and that, once they have been appointed as trustees and have qualified as such, they must exercise that latter function in a manner that will keep it absolutely clear of any political interference would be a definite refusal to recognize in full the responsibilities of their position. My answer must, therefore, be that insofar as proper handling of the physical functions of the University is concerned, the State does possess the right of direction and control, and the Trustees should at all times take that into consideration in making their decisions. To a more limited extent, the same thing is true in regard to certain courses in the University, which are definitely set up by legislative enactment, such as the course in agriculture and the course in

home economics. To the extent that the College encourages independent thought and the development of general education, the Trustees are bound to exercise their functions in the same fashion that the governing boards of Bowdoin, Colby and Bates Colleges exercise theirs, with absolute independence of thought and action and with a firm insistence that the ideals of general education shall not be made subservient to any political body, either state or national.

FRANK I. COWAN
Attorney-General

July 27, 1943

Robert B. Dow, Esq.
Attorney at Law
Norway, Maine

Dear Bob:

Your letter of the 26th relative to increase of pay of county employees has been received.

Chapter 103, P. & S. Laws of 1941, approved January 24, 1942, permits a 10% increase for county employees, provided no such increase shall raise the pay to more than $30. per week. Chapter 229, P. L. 1943, provides that the salaries of clerks and county officers in Oxford and Penobscot Counties "shall be increased 15%" for the duration of the war.

The 1943 act assures a 15% raise and was not, in the opinion of this department, supposed to be in addition to the 10% raise permitted by the previous law. The 15% raise should be based on pay as set before raises were allowed under the prior law.

Very truly yours,

FRANK A. FARRINGTON
Deputy Attorney-General

August 3, 1943

Roscoe L. Mitchell, M. D., Director Bureau of Health

You have inquired whether or not the State Department of Health can make a regulation modifying or enlarging the rights of licensed practitioners in the field of osteopathy, chiropractic and medicine, so far as certain health programs, carried on with the assistance of the Federal Government are concerned.

The rights of medical practitioners are all set forth in the Public Laws of the State of Maine. You are familiar with the rights of the licensed physician to administer drugs and to practise surgery.

The law relating to the practice of osteopathy is found in Chapter 21, Section 64 of the Revised Statutes of 1930, which allows the practitioner to use such drugs as are necessary in the practice of surgery and obstetrics, including narcotics, antiseptics and anaesthetics.

Chapter 21, Section 75, provides for the limit of the practice of chiropractics, but it does not authorize its holder to practise obstetrics, so far as the same relates to parturition, nor to administer drugs or

perform surgical operations with the use of instruments; but a chiropractor may be licensed to practise surgery after passing the State Board of Medical Examiners.

The last two paragraphs define the rights of the practitioners of osteopathy and chiropractic. The State Health Department could not make a rule, nor regulation, which would enlarge upon these rights, nor take anything away from those that are defined in the present law.

JOHN G. MARSHALL
Assistant Attorney-General

August 11, 1943

Philip D. Stubbs, Inheritance Tax Commissioner

P. L. 1933, Chapter 148, Section 32, provides as follows:

"Inspection of documents filed with commissioner. Papers, copies of papers, affidavits, statements, letters and other information and evidence filed with the commissioner in connection with the assessment of taxes upon legacies and successions shall be open only to the inspection of persons charged or likely to become charged with the payment of taxes in the case in which such paper, copy, affidavit, statement, letter or other information or evidence is filed, or their representatives, and to the commissioner, his deputies, assistants and clerks and such other officers and persons as may, in the performance of their duties, have occasion to inspect the same for the purpose of assessing or collecting taxes."

It is my understanding that the reason for the language in this section requiring privacy was to check a practice that had grown up in this State under which certain salesmen of corporate stocks got information in regard to inheritances from the State departments, and, armed with this knowledge, proceeded to solicit the beneficiaries.

The intent of the Legislature is clearly expressed in the Statute quoted, and inasmuch as the Inheritance Tax Commissioner is charged with the purpose of assessing and collecting the inheritance taxes, all papers, copies and other information filed with the Commissioner must be kept by the Commissioner and no copies of such papers, copies of papers, or information are to be sent to any other departments except as provided in said Section 32.

In view of the general nature of the duties of the State Auditor and his assistants and his duty to make or have made a post-audit of all State accounts, Section 32 must not be interpreted as barring him or them from inspection of the records in the office of the Inheritance Tax Commissioner.

FRANK I. COWAN
Attorney-General

August 11, 1943

Guy R. Whitten, Deputy Commissioner Insurance

Controversies between companies and individuals

It is my opinion that the State has no jurisdiction in the matter of private controversies that may arise in individual cases between insur-

ance companies and the persons with whom they do business. If the conduct of a company has been such that in the opinion of the Insurance Commissioner it is unsafe for any person to deal with that company, then the Commissioner may very well be justified in interfering. I have a private opinion as to whether or not, in the case to which you refer in your memorandum of August 6th, the company should pay the claim in American or Canadian funds; but that private opinion is based purely on what little evidence has been laid before me, which is by far insufficient on which to make a judicial decision. Even if I had a definite opinion, based on sufficient evidence, it would be an impertinence on my part to express it in this particular case. The only proper place to take such questions is the court. Any attempt by a State or Federal department to tell a business concern how it shall operate, under conditions such as those which you have stated to me, would be tyranny of the worst sort. It is true that in the Federal Government at least, there is a very pronounced trend toward directing the internal affairs of all business concerns. That trend is undemocratic and savors of either Communism or Naziism, which in substance are not very different.

FRANK I. COWAN
Attorney-General

August 17, 1943

Harry V. Gilson, Commissioner — Education

You ask for an interpretation of Section 64 of Chapter 19, R. S. 1930, as amended. The particular part of said section is the next to the last sentence, which reads as follows:—

"Provided, however, that said committee, by a majority vote of its full membership, after due notice and investigation, may, for cause, discharge a superintendent of schools before the expiration of the term for which he was elected, and after such discharge the salary of said superintendent shall cease."

"Said committee" is the joint committee.

In answer to your question 1, it is the opinion of this Department that the answer is "No." It was not the intent of the law that a majority of one superintending school committee should control the total votes of that committee. The sentence quoted above presupposes that the discharge shall be only on majority vote of the full membership of the joint committee. To allow the total number of votes of one superintendent committee to be cast in accord with the majority results in cancellation of dissenting minority votes and defeats the intent of the law.

It is the opinion of this department insofar as the mechanics of voting are concerned that the answer to question 2 is "Yes."

FRANK A. FARRINGTON
Deputy Attorney-General

August 19, 1943

Harry V. Gilson, Commissioner

I have examined the records of meetings of the superintending school committee for the City of Belfast for the years 1942 and 1943 and also the records of the meetings of the joint superintending school committee for the Belfast-Searsport School Union for the same period. I find that under date of May 18, 1942, a meeting of the joint board was held at which meeting there were present a majority of the members of the Belfast board and the three members of the Searsport board. At that meeting, according to the records (and no question has been raised as to the accuracy of the records) it was unanimously voted to elect Horatio S. Read as superintendent of the joint boards for a period of two years, from June, 1942, to June, 1944.

The statute provides that "The election of a superintendent of schools as herein provided shall not be effective unless said election shall be approved by the superintending school committee of the town in said union having a majority of the teachers in the towns comprising the union, etc." The statute does not require, nor does it suggest that the "approval" shall be by a vote of the committee of the town taken at a separate time or place or separately recorded. The only provision is that there shall be "approval" by the committee of the town, and in my opinion we are justified in assuming that when a majority of the committee of the City of Belfast was present and all those present "by unanimous vote" cast their ballots for Mr. Read, the purposes of the statute were accomplished, inasmuch as there is no question but what Belfast has a majority of the teachers and pays not less than one-half of the salary "exclusive of any sums paid by the state for the purpose."

We then come to the question as to whether or not Mr. Read was properly discharged.

The statute provides as follows: "Provided, however, that said committee by a majority vote of its full membership after due notice and investigation may for cause discharge a superintendent of schools before the expiration of the term for which he was elected, and after such discharge the salary of said superintendent shall cease."

Inasmuch as Mr. Read took office under the provisions of this statute we need not consider the question of breach of contract by the town. He was bound by all the provisions of the statute under which he took office.

The statute further provides: "The superintending school committee of any town may authorize one of its members to act for the committee in the meetings of the joint committee, and in such case the member so authorized may cast the votes for the full membership of his committee." This provision comes in the first sentence of Section 64 of R. S. Chapter 19, whereas the provision in regard to discharge occurs in the latter part of that same section. It is my opinion that the sentence beginning "Provided, however" and having to do with discharge is a limitation on the provisions of the first sentence of the section

authorizing one member to act for the whole committee, and that in proceedings to discharge a superintendent the vote of the City of Belfast cannot be cast by one member who has been designated for that purpose by a simple majority vote of his school committee. If the "votes" can be cast by one member so selected, then it is my opinion that he must record the "votes" of each member of the superintending school committee which he is representing, so that in this particular instance, where the record shows that there were recorded against Mr. Read 11 votes from Belfast. the record should have been 7 votes from Belfast against him and 4 votes for him. On this interpretation he would have received 4 votes from Belfast and 3 from Searsport in his favor, a total of 7 votes, and 7 votes would have been cast by members of the Belfast board against him, so that a tie would have resulted. Inasmuch as the statute expressly provides that a discharge must be "by a majority vote of its full membership," it is necessary to hold that Mr. Read has not been discharged as superintendent of schools of the Belfast-Searsport School Union and is still authorized to carry on the functions of his office.

Very truly yours,

FRANK I. COWAN
Attorney-General

N. B. The City of Belfast refused to accept the above opinion and took the matter to Court. The Court upheld the position of the Attorney-General.

August 24, 1943

J. A. Mossman, Commissioner Finance

I have your memo of August 9th asking the following question:

"Would it in your opinion be proper for the Governor and Council to advance general funds of the State to the Maine State Office Building Authority to cover such preliminary expenses as are necessary?"

The statute (P. & S. 1941, Chapter 76) provides for a building which will in the course of time pay for itself. Inasmuch as there is no money available for the preliminary expenses, it will be proper to make advances from the general funds of the State and repay the general funds from the income of the building. This, it seems to me, is a different situation from that which arises when there is an authorization of general expenditure with no provision of funds for payment. Under the latter circumstances, since there is no provision for amortization of moneys spent, it is necessary to go to the contingent fund.

I think there is no difference in procedure between the State House Building Authority Act and the Turnpike Authority Act. The Turnpike Authority Act simply authorizes that which would be a necessary procedure in any case.

FRANK I. COWAN
Attorney-General

September 1, 1943

Alfred Perkins, Commissioner Insurance

I have your memo of August 30th in regard to Mutual Casualty insurance on State of Maine risks.

It is my understanding that in years past this office has avoided giving a formal opinion on this subject. If the mutual casualty company to which you refer is a State of Maine company, which will necessarily be under the direct attention of the Insurance Commissioner, I see no reason at all why the State of Maine cannot insure with it. The courts of Maine have never passed on the only question that has really bothered people in the past, which is that of possible membership in a mutual organization and liability for losses on the part of the company. However, the courts of New York have stated affirmatively that that State can buy mutual insurance, and it is my understanding that courts in some other States have come to the same conclusion. I see no reason why we cannot safely follow their example.

FRANK I. COWAN
Attorney-General

September 1, 1943

David H. Stevens, State Assessor Taxation

This office has a memo from Mr. Lewis of your office dated July 1, 1943, and another dated September 1, 1943, in regard to T1R1NBKP Rockwood Strip, Somerset County, together with exhibits. I am returning the exhibits herewith.

I believe that the matter referred to is one that must be corrected by the legislature. There is no authority in the Tax Assessor nor in the Governor and Council, to straighten out titles.

FRANK I. COWAN
Attorney-General

September 1, 1943

Harry V. Gilson, Commissioner Education

Your memorandum of December 15, 1942, in regard to use of public school buildings in Auburn for holding classes in religious education has, as you know, been discussed by us on several occasions. We have tried to work out a rule that shall follow the principle of division of Church and State and still will not conflict with the proper desire of people of a community to hold religious exercises in locations that may in some cases be the only ones available for public gatherings. We have found it necessary to consider the propriety of people in country districts holding religious services on Sunday in country school houses, where no church is located within several miles or where, if there is a church, it is not available for use by this particular group. We have also been compelled to consider cases such as that which has arisen in Brunswick, where a parochial school has burned and the religious sect which operated that particular school informs us it has not been able to obtain priorities to erect a school building during the summer.

Our survey of the whole situation throughout the State seems to lead us inevitably to the conclusion that if any religious group wishes to hold religious services, it is perfectly free to make use of any privately owned buildings or halls, the owners of which are willing to have them meet there, or to erect places of worship or schools for religious instruction. That right is definitely protected by both the Federal and the State Constitutions. However, public school buildings are provided from funds derived from taxation of all the people. The question of sectarianism and the question of religious affiliation cannot be raised in connection with the taxation of any one of our citizens. Whether a man is Christian, Mohammedan or Jew, and what particular dogma he follows in his worship are wholly immaterial. He is taxed and his money is used for the erection of school buildings. Those buildings are dedicated to purposes of secular education as distinguished from religious education. Knowing as we do that controversies over religious dogmas have been one of the great sources of trouble in this world, and recognizing the fact as we do that we ourselves as a people have not yet advanced to that point where we can treat with complete toleration the religious views of our neighbors, it seems to me that we are compelled by our knowledge of the facts to maintain a strict construction of the law. In my opinion, a school board in any municipality of this State cannot lawfully permit the use of a public school building by any group for any particular type of religious training. Such, I believe, was the intention of the framers of the State Constitution, and such, I believe, has been the intention of our legislature in all the enactments that it has made since the foundation of our government.

FRANK I. COWAN
Attorney-General

September 1, 1943

Carl W. Maxfield, D.M.D., Secretary
Board of Dental Examiners,
31 Central Street,
Bangor, Maine.

Dear Doctor,

I have just written to Dr. ..... to find out if he has anything further in connection with the newspaper ad for a dentist. I asked him specifically, if he has one of the letters enclosing an application and a dollar. I suggested to him that if he has he either send it to me or give it to you to send to me.

R. S. Chapter 21, Section 34, as amended by P. L. 1935, Chapter 97, Section 5, still continues to provide that "said board may revoke a certificate . . . if the person named therein . . . is guilty of immoral or unprofessional conduct. . . "

As far as I know, the courts of Maine have not passed on this particular point; but the court of California in the case of *Parker* v. *Board of Dental Examiners*, 216 Cal. 285, held that the acts of dentists in aiding an unlicensed person to practise dentistry and in unlawfully using a fictitious name in practising dentistry, constitutes unprofes-

sional conduct within their statute, authorizing revocation or suspension of a dentist's license. I have not the slightest doubt that our court would hold that operating with this dental concern as proposed in the description of an interview which Dr. ..... sent to you, is unprofessional conduct and that you have full right to revoke the license of any dentist in the State of Maine who coöperates in any such activity.

Very truly yours,

FRANK I. COWAN

Attorney-General

September 11, 1943

David H. Stevens, Assessor — Bureau of Taxation

Payment of Poll Taxes to Jackman Plantation

Reference is to your memorandum of September 10th.

It is my opinion that the State Tax Assessor would be justified in making refunds to Jackman Plantation of poll taxes paid by electors registered in Jackman, who vote in the voting precinct maintained at Rockwood.

The Legislature, by Chapter 19, P. L. 1935, authorized the setting up of this polling place as part of the machinery for Jackman. The fact that the voter does not actually cast his ballot within the territorial limits of Jackman should have no bearing on the refund of poll taxes.

FRANK A. FARRINGTON

Deputy Attorney-General

September 15, 1943

William D. Hayes, Auditor — Audit

In answer to your question about the right of the Governor and Council to accept a surety company bond where the statute provided for two sureties, I call your attention to Chapter 60 of the Revised Statutes, Section 160, which provides that any company with a paid-up capital of not less than $250,000. duly incorporated and organized for the purpose of transacting business as surety on obligations of persons, that has complied with the requirements of the law which would permit such company to transact business in the State, may be accepted as surety upon the bond of any person or corporation required by the laws of the State to execute a bond, and if such surety company shall furnish satisfactory evidence of its ability to provide all the security required by law, no additional surety may be exacted.

The legislature has left the matter of approving certain bonds with the Governor and Council. The legislature must have intended that these officials would demand a bond with surety or sureties that would guarantee the best fulfilment of the obligation. In my opinion, a surety company qualified to do business in the State of Maine would furnish the best guaranty of such an obligation. I would not say that the Governor and Council would be right in refusing in all cases to accept a bond containing individual sureties; yet where there is the slightest

doubt of the abilities of the sureties to fulfil their obligations during the term of the guaranty, the Governor and Council would be absolutely right in insisting upon the alternative, to wit, a surety company bond.

JOHN G. MARSHALL
Deputy Attorney-General

September 15, 1943

William D. Hayes, Auditor — Audit

Registers of Deeds Absent from their Offices while in Military Service

Registers of deeds entering the military services of their country, who do not resign from their offices, would be considered absent. Chapter 15, Section 5, R. S. 1930, provides for the absence of the registers without limiting the term definitely. This section also authorizes the register to appoint a clerk for whose doings and misdoings he shall be responsible, who shall be sworn. The clerk would not be obliged to execute and deliver a bond, but would be required to take the oath provided for under this section, and the bond of the register would be liable for any misdoings of the clerk.

There is nothing in the statutes providing for the cessation of the salary of the register during his absence. Therefore it would seem that, so long as the register was absent from his office and had appointed a clerk in accordance with the provisions of Chapter 15, the register would be entitled to receive his pay.

JOHN G. MARSHALL
Deputy Attorney-General

September 16, 1943

David H. Stevens, State Tax Assessor — Bureau of Taxation

Payment in lieu of Taxes

I have your memorandum of September 7th, reporting on a conference in Governor Sewall's office. At that time, I gave you my opinion, which I have not had occasion to change, that at the present time the State lacks the legal machinery necessary to insure payments to it by municipalities of money received from the Federal Government under the Lanham Act in lieu of taxes.

FRANK I. COWAN
Attorney-General

September 17, 1943

George J. Stobie, Commissioner — Inland Fisheries and Game

I have your memo of September 16th, enclosing copy of a letter from Dr. W. E. Kershner of Bath, in regard to fishing in various bodies of water. It is true that Section 4 of the Inland Fish and Game Laws, 1943 Revision, provides, "All petitions shall be in the office of the commissioner of Inland Fisheries and Game before the first day of September of each year." However, in addition to procedure after petition, the statute provides "or upon the initiative of the commissioner of Inland Fisheries and Game."

The language of the first sentence in Section 4 is considerably involved and probably it is far from being grammatically correct. However, the meaning is not difficult to deduce. The sentence provides for petitions to be filed with the Commissioner; in each case, the notice must come to him before September 1st. If he has received such petition before September 1st, or, if he has not received such petition, then upon his own initiative, he may hold hearings on the subject matter at such times and places as he may select, save that the time must be "during the period from September 15 to December 14."

Therefore, although it is too late for you to receive a "petition," because of the provision in the statute about the time of filing, you are expressly authorized by the statute to act on your own initiative.

FRANK I. COWAN
Attorney-General

September 23, 1943

William D. Hayes, State Auditor — Audit

Chapter 131, P. L. 1943

You have inquired about Chapter 131, P. L. 1943, which amended P. L. 1939, Chapter 206 by striking out "July" "Beginning July 1, 1940" and provided for renewals, etc. Inasmuch as Chapter 131 did not become effective until July 9, 1943, what effect would this have on licenses issued in accordance with the law of 1939 and the fees therefor?

Opinion

Although the 1943 law was in the form of an amendment, it nevertheless repealed the provision in the 1939 law providing for the period covered by the license then. There was no saving clause to provide for unexpired licenses, so there could not be any implication that such was the intent by the legislature. See *Staples* v. *Peabody*, 83 Maine 207, and *State* v. *Pulsifer*, 129 Maine 423.

"All the privileges permitted by a license, and all the protection afforded thereby, although yet unexpired, are generally cancelled by repeal." 37 Corpus Juris 214, paragraph 68.

Our Supreme Court wrote in *State* v. *Pulsifer*, 129 Maine 423, "A mere license by a State is always revocable." The principle of law is clear that the State could here revoke the permission which it had granted. It is quite true that the legislature in the later act, which provided for a different method of licensing, does not expressly provide for the revocation of licenses outstanding under the former. Such express declaration is not however necessary, if it is obvious that such is the intent. The provisions of the later law in so far as they govern the issuing of licenses, are inconsistent with the provisions of the former act and obviously were intended to supersede them. The later act provides in express terms for the repeal of all acts or parts of acts inconsistent with it; and, even though this provision were absent, there would be a repeal of this part of the act by implication.

Consequently, the osteopaths in Maine must have been obliged to become licensed on or before July 1, 1943, and to pay therefor the fee

prescribed by statute in effect at that time. No provision of the law of that date or in the act passed in 1943 permits a lesser amount to be paid for a fraction of a year; but on or before January 1 of 1944 and continuing thereafter until the law is changed, the osteopaths in Maine will be obliged to pay the license fees for either a new license or a renewal in accordance with Chapter 131. The use of the word "renewal" in Chapter 131 does not change or modify anything hereinbefore written.

JOHN G. MARSHALL
Deputy Attorney-General

September 23, 1943

Harrison C. Greenleaf, Commissioner — Institutional Service

In answer to your communication of September 21st relative to the use of some of the inmates at the South Windham Reformatory for employment outside the Reformatory grounds and particularly for the use of their labor in harvesting and processing of corn in the Gorham area, it would appear that the following things should be considered as necessary before affirmatively adopting a program of this kind.

First, in view of the fact that the last legislature reported unfavorably on a proposal to permit the usage of this kind of labor in the State, and the fact that there is no express provision in our law for using the inmates of penal institutions for labor in private undertakings, it would appear to be absolutely necessary to have an Executive Order under the War Powers Act by the Chief Executive of the State, covering this situation.

Secondly, there are certain constitutional limitations relative to servitude, and to obviate any violation here in such an undertaking, it will be absolutely necessary to have a written declaration by any inmate engaged in this endeavor, stating that he has volunteered to do the work and that he has been in no way forced, or ordered, to do so as a part of his penal service, and that it was in no way against his will.

Thirdly, any inmate or inmates permitted to work under such a program inaugurated pursuant to the foregoing suggestions should at all times be under the constant jurisdiction and supervision of an authorized guard of the institution in which these individuals are legally confined.

FRANK I. COWAN
Attorney-General

September 27, 1943

William D. Hayes, State Auditor — Audit

Cancellation of Bonds of State Employees and Officials leaving the Employment of the State

After a conference with Mr. Cowan, the Attorney-General, about the method of handling the cancellation of bonds of State employees and officials, the following is the recommendation of the Attorney-General's Department to all Departments.

First: In the cases where employees resign or otherwise leave the service of the State, each and every department head should notify the Personnel Department and the State Department of Audit immediately on the date of the termination of this employment, in writing. The Auditing Department would then be in a position to determine whether or not the conditions of the bond of the employee had been breached, and if not, the auditor should be authorized to notify the surety company, or other sureties, that the bond was cancelled, and any unearned premium could then be recovered for the State.

Second: When State officials or heads of departments, who have been appointed by the Governor, resign or leave the positions held by them, the Governor should notify the State Auditor, so that the same procedure can be followed as suggested in the foregoing paragraph.

Under Chapter 320, P. L. 1933, the State Auditor and the Commissioner of Finance are authorized to determine the amount of the bond and the extent of the coverage necessary for each official or employee obligor, and the foregoing suggestions would seem to coordinate the necessary supervision that the State Auditor is supposed to exercise in these situations. Before the bond is cancelled, the State Auditor should be in a position to know whether there had been any default or defalcation at the time the obligor terminates his or her employment with the State. In cases where the State Auditor is in doubt as to any default or defalcation on matters of law, he should at all times consult the Attorney-General's Department before cancelling the bond. However, if the State Auditor finds no default or defalcation, he would simply notify the bonding company, or other sureties, and would have the authority to sign the cancellation order and the release to the bonding or surety company or sureties.

This is entirely a matter of policy, and it is thought that it would expedite the method of cancelling bonds and save unearned premiums, and yet protect the State on the obligations of the obligors. If it is to be adopted, the Governor and Council should pass on it as a matter of procedural administration and circularize the same among all the departments.

JOHN G. MARSHALL
Deputy Attorney-General

September 27, 1943

David H. Stevens, State Assessor Bureau of Taxation

Potato Tax

In response to your inquiry whether or not persons in the State of Maine engaged in the dehydration of potatoes shall deduct 1¢ per barrel from the purchase price of potatoes bought by the dehydrating plant:

Subject to the conditions hereinafter set forth, the answer is that the tax shall be so collected by the dehydrating plants, the same as any other purchaser, under the provisions of Chapter 84, P. L. 1937, as amended.

The terms used in this chapter shall be construed as follows: " 'Potatoes' shall mean and include all potatoes of the grades as recommended by the Bureau of Agricultural Economics of the U. S. Department of Agriculture, and such other grades as may from time to time be promulgated by the Department of Agriculture in the State of Maine; 'barrel' shall mean 165 pounds of potatoes; 'shipper' shall mean any person, partnership, association, firm or corporation engaged in the shipping of potatoes or transporting his own potatoes whether as owner, agent or otherwise." The language used is sufficiently broad to include a person purchasing potatoes and dehydrating the same for the purposes of selling or shipping the same later.

Section 3 of said Chapter 84 provides the following: "There is hereby levied and imposed a tax at the rate of 1¢ per barrel on all potatoes *raised* in this state." Then, in the same section 3, there appear to be only two exceptions, to wit, any potatoes to be used by the grower, for seed purposes or for home consumption.

In conclusion, there are two conditions that exist upon which one determines the issue of taxation. First, do the potatoes used by the dehydrating plants come within the grade classifications defined under Section 2 of Chapter 84? Secondly, were the potatoes *raised* in the State of Maine? If both these questions are answered in the affimative the shipper shall charge and collect from the seller at the rate of 1¢ per barrel, to be deducted from the purchase price.

JOHN G. MARSHALL
Deputy Attorney-General

October 1, 1943

Harry V. Gilson, Commissioner Education
Attention: Mr. Hutchinson

Reimbursement for Secondary Tuition of State Wards

In answer to your inquiry of October 1st about Section 206, Chapter 19, R. S. 1930, and its relation to Chapter 335, P. L. 1943, so far as the reimbursement of towns is concerned, for tuition for high school pupils:—It is our opinion that the Commissioner of Education shall apportion to such town a sum equal to two-thirds of the amount thus paid by such town, but not in excess of the statutory limit for any one year, and Chapter 335, P. L. 1943 simply allows the Health and Welfare Department to reimburse the town for the amount expended by the *town* for secondary tuition of State wards. This would mean, in most cases, the one-third that is paid by the town after being reimbursed two-thirds of the cost by the Commissioner of Education.

The two sections or chapters are not in conflict; but the Department of Education and the Department of Health and Welfare will simply make these reimbursements in accordance with the terms of their respective provisions.

JOHN G. MARSHALL
Deputy Attorney-General

October 6, 1943

Inland Fisheries and Game
Attention—Mr. Malloy

In answer to your inquiry of October 5th, as to whether or not an officer has the right to present the State's case and examine witnesses before a lower Court, my answer is that under our law, only a person duly admitted to the practice of law has that right. However, the Judge or Trial Justice may permit an officer to suggest questions to him which he in turn will ask of the respondent or other witnesses, and in some instances it would not be considered improper for the Judge to permit the officer to ask questions or cross examine witnesses.

There is a rule which is quite carefully adhered to in our courts, that is where even a lawyer is a necessary witness the courts rule that he should withdraw as counsel and appear only as a witness. But even this rule may be relaxed where the nature of the lawyer's testimony relates only to an incident or evidence on a minor issue.

JOHN G. MARSHALL
Deputy Attorney-General

October 11, 1943

Alfred W. Perkins, Commissioner Insurance

This department has previously expressed an opinion to the State Auditor relative to the bonding covering required, or to be required from the Insurance Commissioner and it is assumed that the contents of that opinion have been communicated to you.

A review of the statutes reveals that you are obliged to execute a bond to qualify for the office of Insurance Commissioner. Another statute makes the officeholder of Insurance Commissioner an *ex officio* member of the Industrial Accident Commission. The latter statute does not specifically require a bond, nor does it exempt the holder therefrom, nor does it read that the bond executed by the Insurance Commissioner covers the *ex officio* position. Consequently, the decisions of our Courts were read as reported in the leading legal digest systems and it was learned that the bond executed by the holder of one office does not cover other offices held *ex officio* by that officer in the absence of statutory expression accordingly.

Under Chapter 320, P. L. 1943, the Legislature has expressed its will to have all officials and employees adequately bonded and to that end, considerable authority is vested in the Auditor and the Commissioner of Finance as follows: "They shall further from time to time designate bonds which should be increased or decreased, and shall designate what, if any, additional bond should be required either from an official or employee who changes his employment within State departments or from a newly appointed or elected official or employee."

A further provision of this chapter reads as follows: "The state auditor and the commissioner of finance shall select the type of bond, in form prescribed by the insurance commissioner, which shall be

given." This language has been construed to mean that the auditor and the commissioner of finance, after approval by the Governor, shall have the authority to make these designations. Such a list has been submitted to the Governor and his approval has been obtained.

The bond executed and delivered by you to qualify as Insurance Commissioner will remain in effect until its normal expiration date, but that would not comply with the designation now made by the Auditor and the Commissioner of Finance for coverage in your *ex officio* position as a member of the Industrial Accident Commission and to that end, it is our opinion that you should give a bond to cover that position, or have the Bonding Company provide a sufficient rider on your present bond to provide for coverage in that manner. It is the duty of the Insurance Commissioner to prescribe a form of rider in the event that method is used.

JOHN G. MARSHALL
Deputy Attorney-General

October 13, 1943

Hon. Joseph H. McGillicuddy
Treasurer of State of Maine
Augusta, Maine

Dear Sir:

The following questions have been filed in this office:

1. Has the Treasurer of the State of Maine authority to lodge securities belonging to the State of Maine in the Federal Reserve Bank of Boston, or in any other location outside of the confines of the State of Maine?

The answer to this must be in the negative. The Treasurer is the elected custodian of the moneys and funds of the State, and as such he has the authority and responsibility of taking care of them. His general authority under the statutes is cited in R. S. Chapter 2, Section 75, as most recently amended by P. L. 1943, Chapter 192. It will be noted, however, that the statute expressly limits his authority for the deposit of "moneys, including trust funds of the state" to "banking institutions or trust companies, or mutual savings banks organized under the laws of this state, or in any national bank or banks located therein."

P. L. 1943, Chapter 192, cited above, enlarges his authority for the investment of the State's moneys but does not enlarge his authority for making deposits. Since bonds, notes, certificates of indebtedness or other obligations of the United States of America in which he is authorized to invest the State's moneys represent those moneys, and since further they are in such form when purchased by the State of Maine that they are readily convertible into money, it necessarily follows that a restriction on deposit of moneys outside of the State of Maine applies equally to securities purchased with those moneys.

2. The second question that has been asked is whether or not securities purchased under the above cited amendment to the

statute are subject to the individual order or request of Joseph H. McGillicuddy, Treasurer of State?

The answer to this must be in the affirmative. The Treasurer of the State of Maine is sole custodian of its funds. He has the power and responsibility of depositing said funds, and of changing such place of deposit as his judgment dictates.

Very truly yours,

FRANK I. COWAN
Attorney-General

October 14, 1943

Hon. Sumner Sewall, Governor — Executive
Attention: Miss Whelpley

Incompatibility of Certain Offices

Question. Is the office of deputy sheriff incompatible with the holding of a commission as notary public, under the Constitution of the State of Maine?

Answer. It is.

The office of deputy sheriff is a part of the executive division of our government. The holder of a commission as notary public exercises some of the functions of the judiciary under the judicial branch of our government. Therefore, it being expressly stated in the Constitution of Maine that there shall be separate and distinct branches of government, the exercise of the functions of more than one branch of our government by one individual is incompatible.

JOHN G. MARSHALL
Deputy Attorney-General

October 29, 1943

Daniel T. Malloy, Chief Warden — Inland Fisheries and Game

You have inquired about the rights of the wardens to use certain methods to stop cars on the highways, the owners, operators or occupants of the same being under suspicion of having violated the fish and game laws of the State. The officers would be taking considerable personal risk if they undertook to obstruct the highway by placing any object in the highway which might be struck by a person, and particularly a person who himself had not violated any law.

At the outset, it should be stated that the officer is always liable for civil wrong committed in exceeding his authority in making arrests, whether it be for making the arrest in the first place, without the use of force, or in making a perfectly proper arrest, but in the latter instance, of using excessive force. In a government of this kind in which we live, the rights and liberties of citizens are jealously guarded, and one court has written that it is better that a hundred culprits escape than that the rights and liberties of one individual should be illegally abused. Yet officers of the law are charged with the specific duty, and of course, they must take some risks themselves in the exercise of this duty. The manner in which they attempt to enforce the law is dependent, in the first instance, on whether the offense committed is a misdemeanor or a felony.

Our courts are bound by the acts of the legislature in determining whether or not an act is a felony or a misdemeanor. The legislature has said that any offense punishable by imprisonment for less than twelve months is a misdemeanor, and all offenses, the punishment for which is for a longer period than twelve months, are felonies.

Generally speaking, violations of the fish and game laws would be classified as misdemeanors, except in those cases where the violation of the fish and game laws also involves a violation of law which might be a felony, and the latter type of case would be that in which life and limb were involved.

Except in cases of self-defense, an officer has no right to proceed to the extremity of shedding blood in arresting, or in preventing the escape of one whom he has arrested, for an offense less than a felony, even though the offender cannot be taken otherwise. This gives rise to the question: What could a warden rightfully do in a case where he was attempting to investigate a fish and game violation and was confronted with danger on the part of the violator to the warden's own life and limb? If the violator of the law attacks the warden to the point where it amounts to assault with a criminal intent to inflict bodily harm upon the warden, then the case comes out of the classification of a violation of the fish and game laws and becomes a different offense, which would then give the warden the right to use such force as is reasonably necessary to subdue and arrest the violator.

In cases of misdemeanors, or cases where the warden reasonably believes that an offense is being committed in his presence, such as hunting at night, illegally transporting game, and other similar cases, the warden is entitled to make an arrest without a warrant; but in cases where violations involving the fish and game laws are reported to him and, after a reasonably prudent investigation, the warden believes that such a violation can be proved in court, he should then obtain a warrant before making the arrest, as the misdemeanor was not committed in his presence.

In cases involving the use of automobiles by alleged violators of the law, the statute now provides that it is a misdemeanor on the part of the operator to refuse to stop when signalled by the warden. If the operator does not stop when so signalled, and the warden believes that only a misdemeanor has been committed, the only thing a warden can do is to obtain the number of the registration of the car, and from there undertake to determine the name of the operator and proceed under that statute. The warden would not be entitled to use force such as would endanger the life and limb of either the operator or the occupants of the vehicle, in attempting to stop the car; but if the violation of the operator of the car reasonably appeared to be a felony in the mind of the warden, then he could use force to overtake the violator and arrest him or otherwise prevent his escape.

This brings us to the question: What is reasonable belief that a felony has been committed? It must not be a guess, nor idle supposition. The opinion of the warden must be based upon such facts in his possession as would lead him to believe that any reasonable man would

also believe that a felony had been committed. A great deal could be written on this last subject, but probably a discussion with the wardens from time to time would serve in better stead to clarify the meaning of "reasonable belief."

Self-defense on the part of the warden. If the officer is assaulted he is not bound to fly to the wall (this means to retreat): but, if necessary to save his own life or to guard his person from great bodily harm, he may even kill the offender; this rule applies, even though the arrest is being made for a misdemeanor.

Aside from the law, in cases involving arrest, the tendency has been to strive to accomplish this end, not by force, but by skill on the part of the officer or investigating authorities. Of course, there have been instances where officers were confronted with dangerous persons, and the danger was so great that all likelihood of arrest was in doubt, to the point that officers knew in advance of the imminent danger occurring when their presence was discovered; but aside from those cases, the officers have been, by constant work and diligent thinking, able to develop and prepare a much better case against the violator than they were with the use of force alone in the first instance.

I realize that this is a very brief discussion of this problem, and, as when we discussed the matter the other day, I believe it would be better to have a discussion with the wardens on this subject at such time or times as small groups of them can get together.

JOHN G. MARSHALL
Deputy Attorney-General

November 3, 1943

Honorable George S. Brown
Brunswick, Maine

Dear George,

I have your letter of October 28th in regard to the Brunswick common. R. S. Chapter 2, section 10, authorizes the federal government to acquire "by purchase, condemnation or otherwise any land in this state required . . . for any of the purposes of government."

It is apparent from this that the government can acquire title to land in the State by condemnation in any case and by purchase where there is authority to give a deed. My feeling in regard to Brunswick Common land is that it has the properties of park land. If so, the Town of Brunswick cannot convey it without specific authority from the legislature, inasmuch as lands dedicated to the public are the property of the whole public, that is, the whole State, and not the exclusive property of the municipality in which they lie.

I find that Ruling Case Law (which is a good law text), volume 20, page 645, section 13, classes squares, parks and commons together and states that they cannot be sold or leased by the municipality, stating further that the legislature has no power "as against the dedicators" to authorize such disposal.

There are a number of cases in the country in connection with which courts have discussed this question. Last January, as you will recall, I had to hold that the deeds given by Houlton and Presque Isle to the United States Government were nullities, since the statute authorized communities to acquire lands for airport purposes but did not give them authority to dispose of those lands. For that reason a special act was passed by the legislature ratifying the sale.

In connection with the Brunswick common, the language of the original proprietors in 1742 is very general. "To lay in general and perpetual commonage to the said Town of Brunswick for ever," does not leave us very much to go and come on in trying to determine whether the proprietors dedicated this land for an express purpose or a general purpose.

In view of the fact that the courts have expressed doubt about the authority of the legislature to authorize the sale of a common against the wishes of the dedicators, it is probable that the safe thing for the Federal Government to do is to condemn the land. That, however, is a matter for the Federal attorneys themselves to decide.

Sincerely yours,

FRANK I. COWAN
Attorney-General

November 5, 1944

J. A. Mossman, Commissioner of Finance

I have examined P. L. 1943, Chapter 349, reading as follows: "The adjutant general shall receive an annual salary of $4,500; he shall receive no other fee, emolument or perquisite."

I have compared this statute with the other salary statutes of the State. I note your suggestion that the clause, "He shall receive no other fee, emolument or perquisite," must mean that "as adjutant general he shall receive, etc." We find in the attorney-general's statute, for instance, the words, "in full for all services and in lieu of all fees." In the statute regarding the treasurer we find the words, "He shall receive no other fee, emolument or perquisite." I find in no other statutes in regard to salaries any suggested restraint on receipt of any additional pay for services outside the duties of his office. This might indicate that the State treasurer and the Adjutant General are prohibited from receiving any additional pay for additional work. However, the whole history of the State is to the contrary. It has always been recognized that if a person could handle matters that did not in any way conflict with his official duties and were not prescribed for him by statute or by a superior (that is, if he voluntarily assumed additional duties, the performance of which did not in any way detract from his handling of his position) there was nothing to prevent his being paid for the extra work. In other words, the apparently restrictive language applies to his own official duties and to nothing else.

The way this has worked out is illustrated in R. S. Chapter 125 in many places. Several of the heads of departments are given salaries

and it is also provided that they shall be paid traveling expenses when they are on State business. With some other officials there is provision of a salary, but no mention of traveling expenses; yet it is very apparent that if the State sends one of its officials or employees on an errand in connection with his duties, and the performance of that errand requires the payment of railroad fares or hotel bills in a place other than that where his office is located, the State must pay those extra expenses. It is contrary to sound public policy for the State to refuse to pay them.

You are therefore justified in assuming that your interpretation of Chapter 349, P. L. 1943, is a reasonable one and that there is nothing to prevent an Adjutant General from receiving compensation for services outside of his official duties, if those services are voluntarily assumed by him and the performance thereof does not in any way interfere with the functioning of his official position.

FRANK I. COWAN
Attorney-General

November 9, 1943

Jacob Philip Rudin, Chaplain, USNR
Navy No. 128
c/o Fleet Post Office
San Francisco, California

Dear Sir:—

I have your communication of October 21st asking whether a marriage by trans-Pacific telephone would be recognized as legal in the State of Maine. You do not state whether both parties to the marriage would be together at one end of the telephone wire and the clergyman performing the ceremony at the other end, or whether one of the parties would be in this country and one over on the other side of the ocean, so I cannot answer your question quite as asked.

It is the general opinion in this State that a marriage by proxy of residents of the State of Maine is not a valid marriage under our laws, although it is possible that such a marriage, which was valid under the laws of the jurisdiction in which the parties lived at the time of the marriage, would be recognized as valid in this State. I don't know that the question of a marriage where the parties are out of sight of one another and where the only means of communication during the ceremony is by telephone would be recognized by our courts or not. I would consider it extremely doubtful. The actual physical presence of the official performing the marriage ceremony in the company of both the contracting parties would, I believe, be considered a requirement by our courts.

Very truly yours,

FRANK I. COWAN
Attorney-General

November 9, 1943

William D. Hayes, State Auditor Audit

I wrote to Judge Chaplin, Judge of Probate for Cumberland County, on November 2nd, asking for his interpretation of the statute re public administrators. He has had the Register of Probate reply under date of November 5th, and the interpretation of the law which appears in Mr. Peabody's letter is exactly in accordance with the construction which this office had already put on it. I quote from the letter:

"We construe this Statute to give the Public Administrator the sole right to take out administration except where the widow, widower, or next of kin files a petition for administration prior to the issuing of letters to the Public Administrator, as set forth in the latter part of this section. The creditor has no standing to petition or be appointed administrator.

"It will be noted, however, that the authority of the Public Administrator only extends to the estates of persons who die intestate in the County, that is, resident or domiciled therein, and not to cases where a non-resident of the State leaves property within the State of Maine. In the latter case, we construe the law to be that a creditor may petition for administration under the facts stated in section 30 even though he leaves no widow, widower or next of kin in the State of Maine."

FRANK I. COWAN
Attorney-General

November 10, 1943

Harrison C. Greenleaf, Commissioner Institutional Service

I am returning herewith your proposed Executive Order in regard to the use of inmates of institutions. The only change I have suggested is in Paragraph 3, where I have substituted the word "permitted" for the words "required of the inmate."

I have added a fourth paragraph which should receive further thought, but in its present form reads as follows:

"Inmates of institutions shall not be permitted to be so employed against the objection of other persons employed on the same job, nor shall any persons convicted of homicide or offences of a flagrant nature or of sex offences be permitted to avail themselves of the privilege of such employment."

We have persons who are incarcerated in our prisons and others in corrective institutions who are potentially dangerous. The law does not permit us to keep them there indefinitely, but we would be properly subjected to severe criticism, if we released them for outside work under any except the gravest emergency. Such emergency cannot be regarded as existing as yet. I presume that the regulations which you contemplate in sections 1 and 2 will be sufficiently firm so that only those persons could be released for this activity (which is, after all, a great benefit to them) whose crimes are of a minor nature.

In section 1 the words "they deem" in the next to the last line are ambiguous, in that they seem to refer back to the inmates, and I suggest that you edit the language somewhat.

I have added sections 5 and 6 to the Order. As I have written them, they read as follows:

"5. The time spent by the inmate, as herein provided, outside the confines of the institution shall be included in the time spent in serving his sentence, but any violation by the inmate of the terms of this order or any rules or regulations issued hereunto shall forthwith terminate the privileges extended to the inmate under the terms of this order.

"6. A failure of any inmate employed as herein provided to return at the required time to the institution to which he was sentenced (or in which he was being confined when he was extended the privilege of outside work under this order) shall be regarded as an escape."

Inasmuch as the State is endeavoring to assist in meeting an alleged man-power shortage, I cannot conceive that the question of union membership will be raised. Certainly the State cannot consent to the attaining of rights to control the activities of the inmates by any person except the duly constituted officials under whose control they are.

Inasmuch as union membership is in itself a special privilege and applies only to a very small part of the population of the State and to very few industries, I believe the question should not be raised in connection with these inmates who are loaned to industry by the State. We can very easily find ourselves getting into a situation where we seem to be taking other than an impartial attitude. Such a position is one that we, as State officials, should be careful to avoid, lest we be embarrassed later in our dealings with the people of the State.

I presume that inmates will be so employed that it will be unnecessary to hire extra guards to watch them. If such guards are necessary, there can, of course, be no advantage at all in issuing the order.

FRANK I. COWAN
Attorney-General

November 10, 1943

Harrison C. Greenleaf, Commissioner Institutional Service

In this same cover you will find comment on the proposed Executive Order. There is a possible objection to your farming out inmates of institutions, even when they sign a waiver of their rights to serve their sentences in jail and expressly ask for transfer to another place or another method of treatment. The State Prison, the State Reformatory for Men, and the State Reformatory for Women are penal institutions. In the absence of express statute, there is a very real doubt in my mind whether the Governor, under the terms of the Civilian Defense Act, can authorize a change in the place where a prisoner shall serve his sentence. Chris Roberts is very eloquently and forcefully calling to our attention the fact that penal statutes must be strictly followed.

Inasmuch as this suggestion does not apply to the State School for Boys and the State School for Girls, neither of which is, in our opinion, a penal institution, I am giving this as a separate memo.

FRANK I. COWAN
Attorney-General

November 10, 1943

Herbert E. Locke, Esq.
Depositors Trust Building
Augusta, Maine

Dear Herbert,

Your letter of September 7th in regard to abortions has been lying on my desk awaiting the day when I would have time to call you for discussion of the matter, as you suggested. In order that it may not seem to you that I have ignored your letter, I am taking this opportunity to make a brief reply.

1. *Abortion cases.* The county attorney should be notified in all cases. The day has not yet arrived when the doctors will have the burden of deciding whether or not the State is entitled to their honest coöperation. When they have evidence of crime, it is their duty to disclose it. They must not lose sight of the fact that they themselves are practising their profession by reason of a license from the State. . . .

Very truly yours,

FRANK I. COWAN
Attorney-General

November 10, 1943

Mrs. Alice S. Hawes, Clerk
Board of Registration of Nurses
54 Saunders Street
Portland 5, Maine

Dear Madam:—

I have your letter of November 10th. Our statutes do not provide for any appeal from a decision of the Board of Registration of Nurses cancelling or suspending a registration. Such an appeal would have to be in the form of an action brought in the courts.

Very truly yours,

FRANK I. COWAN
Attorney-General

November 10, 1943

George J. Stobie, Commissioner Inland Fisheries and Game

There is nothing in our statutes providing for dragging for the body of a drowned person. R. S. Chapter 38, Section 14, has to do only with the matter of search for a "lost" person.

The duty of searching for the bodies of persons known to have been drowned seems to be one that has not been taken away from the sheriff, whose office, as you know, is one of great historical importance

and in whom, until the powers were taken away from him by express statute, reposed the general duty of taking care of the interests of the people of the counties. The statute has now put on the Commissioner of Inland Fisheries and Game the responsibility formerly held by the sheriff of searching for persons who have gone on hunting or fishing trips, or trips for any other purpose, in the woodlands of the State and have not returned within a reasonable time. This statute, however, does not deprive the sheriff, a common-law officer, of any of his powers and responsibilities except those expressly so stated.

FRANK I. COWAN
Attorney-General

November 24, 1943

Carl R. Smith, Commissioner of Agriculture

Interpretation of the Stipend Law, as amended under c. 87, P. L. 1943

I have your memo of November 19th containing the following statement of your understanding of this law:

"It is my understanding that the Stipend may be paid on the basis of 1941, or any normal year prior to 1941, but if in 1943 any Fair paid out more premiums than were paid in 1941 (or 1940) that Fair should be paid on the basis of the premiums paid in 1943, or whichever were greater, 1941 or 1943."

You have correctly interpreted the statute. There is one addition that you have not mentioned. The statute authorizes you, in the case of a payment based on a year prior to 1941, to pay "a stipend or such proportionate part of such stipend" as you may determine. This gives you broad authority to determine how much of a stipend you shall pay under such circumstances and simply limits the maximum amount.

Your interpretation of the statute in the following words, "or whichever were greater, 1941 or 1943," is a liberal one and places a strained construction on the words, "shall cease to pay," but nevertheless it seems to me that it more nearly interprets the intention of the legislature than would a conclusion that if an association pays a small premium in 1943, it is thereby debarred from having this stipend based on an earlier year. . . .

FRANK I. COWAN
Attorney-General

November 24, 1943

Honorable Sumner Sewall, Governor Executive

Miss Ross has sent to this office the letter of Henry L. Stimson, Secretary of War, bearing date November 1, 1943.

Any recognition by the Governor that the United States accepts exclusive jurisdiction, as set out in the third paragraph of Secretary Stimson's letter, should quote Chapter 248 of the Public Laws of 1939 in full and should contain a statement by the Governor that the juris-

diction acquired by the Federal Government is not exclusive, but is limited by the terms of said Chapter 248.

I am returning herewith Secretary Stimson's letter and the copy thereof.

FRANK I. COWAN
Attorney-General

November 24, 1943

Harrison C. Greenleaf, Commissioner Institutional Service

I have your memorandum of November 15th in regard to an Executive Order for employment of inmates of State penal and corrective institutions, and note the form of the suggested draft of the Order.

Mr. Purinton came in to discuss this matter with me yesterday. There are three things that I wish to make clear.

1. The Attorney-General has a peculiar responsibility in this particular question, because it has to do with the method of punishment of citizens of the State who are incarcerated because of crimes committed and also has to do with permitting inmates of non-penal institutions to work outside of the institutions under conditions where it is possible that somebody might raise an objection or a criticism and claim that it was actually forced labor. Personally, I think the idea is a very good one and that in so far as possible we should permit every one of these people to assist within the limits of their abilities in carrying forward the war effort. (Whether or not there is a maladjustment in free labor and a maladministration in Washington which results in that possible man-power shortage is a question that does not enter into this discussion.)

2. The proposed form of the Order, as appears in the copy attached to your memo of November 15th, contains all the safeguards that occur to me as being practicable for inclusion. Other persons considering the matter might think of other words that could properly be incorporated, but I don't think of anything else that would need to go in, so I approve the form of the Order.

3. There is no question in my mind but what the Governor has the power and authority to issue this Order under the terms of the Civilian Defense Act. However, we know that he has acted with great care in issuing orders under that Act and that he has been very reluctant to go a single step farther than seemed absolutely necessary. He did not want these great powers and accepted them only because he felt it was his duty. My question, September 23rd, was not one in regard to the power and authority of the Governor, but whether or not he would want to issue this Order in the face of a refusal by the legislature at its last session to pass specific legislation covering the matter. (See 91st Legislature, L. D. # 621, House Paper 1166.) I was not present at the discussion of the proposed act. I note from your memorandum that the bill was reported "Ought not to pass," because you felt, and so advised the committee, that the number of people in the institutions was so low that there would not be any labor available beyond that needed for doing the necessary work in the institution itself. If that

was the reason for the bill being reported "Ought not to pass," or if some such reason as that, originating in the State itself, was responsible for lack of passage, then I see nothing in the action of the legislature that should tie the hands of the Governor.

FRANK I. COWAN
Attorney-General

December 1, 1943

Harold E. Crawford, Municipal Auditor

I have your memo of November 30th in regard to court officers. I believe that the language of paragraph six of chapter 126, section 4, on page 1533 of the Revised Statutes, must be interpreted to mean that "for said attendance and service" "upon the supreme judicial court or the superior court," the deputy sheriff and court messenger are to receive $5. a day. This is entirely separate from any other work they may do or services they may perform while not in attendance on the court. If the court sits for half a day or less, the officers nevertheless are entitled to a day's pay, because they are holding themselves in readiness for service, and it is not their fault if the judge is not in the courtroom. During such times as the judge is not in the courtroom and as he does not require the immediate attendance of the deputy sheriff or the messenger, these officials are entitled to any fees they may be able to earn from services that will not interfere with their court duties. The same is true of any services they may perform after court adjourns at night or before it comes in, in the morning.

FRANK I. COWAN
Attorney-General

December 1, 1943

Hon. Lester M. Bragdon
York Village, Maine

Dear Lester,

I have your letter of November 16th in regard to automobile inspection. The legislature passed Chapter 72, P. L. 1941, changing the dates of inspection from May and November to April and October. Under the procedure that has been in use for several years, an act to be amended is printed in full and the amendment printed in black-faced type.

At the same session the legislature passed Chapter 205, making further amendments to the original act. At that time the amendment which appears as Chapter 72 had not become law, and it could not be known that it would become law until ninety days after the legislature adjourned. Chapter 205 was set up in the ordinary fashion. Whether or not anybody noticed that there was an apparent conflict between 205 and 72, I don't know, and I cannot express any opinion on the subject.

In cases such as this, which, I may say, occur frequently, we take the original act and add to it all amendments made at a session of the legislature. If there is no conflict between the amendments themselves, we have assumed that there was no conflict in the laws, since the legislature plainly expressed itself on the matter of amendments.

The cases that you speak of as being dismissed came up in the Bangor Municipal Court, so I am told. It is possible, of course, that the Law Court might sustain the opinion of the judge of that court. If so, it would mean that many statutes on our books have been misinterpreted for many years.

Sincerely yours,

FRANK I. COWAN
Attorney-General

December 1, 1943

Frederick B. Dodd, Esq.
84 Harlow Street
Bangor, Maine

Re: Town of Topsfield Deposit of Ministerial School Fund in Eastern Trust and Banking Company

Dear Fred,

I have before me a copy of an opinion given by Deputy Attorney-General John G. Marshall under date of November 15, 1943; a copy of a letter to Bill Newman from Dave Stevens bearing date November 16th; and a copy of a letter from yourself to Stevens, bearing date November 29th. Chapter 78, Section 2, of the Private and Special Laws of 1939 is not so clear as we wish it were. However, it is drawn on a pattern apparently designed some years ago and has been interpreted by this department in the same way that Mr. Marshall has interpreted it.

Other statutes having to do with "deorganized" towns and with the Emergency Municipal Finance Board have been interpreted as setting the State up in the capacity of trustee of any public funds which have been in the custody or under the authority of the officials of towns that have become defunct. (Rightly or wrongly, we have felt that we should interpret the deorganized town statutes in connection with the Emergency Municipal Board statutes, inasmuch as they all apply to municipalities in bad financial circumstances, and some of the more recent acts of the legislature have not made a clear distinction.)

The problem we have in connection with Topsfield is similar to one that has arisen in regard to other places. Two years ago I instructed the State to return to a new municipality the school funds that had been taken over. At that time I drew a line, making it as clear as I could, and established a precedent of the State holding the funds as trustee and when the necessity of so holding had ceased, turning the funds back to the munipality.

The ministerial school funds were, as a matter of fact, I believe developed out of "amounts raised by said town for school purposes or out of amounts paid by the state for school purposes," so that they do, it seems to me come within the provisions of Chapter 78, Section 2.

If you feel free to give me any further comment on this question, I shall be glad to have it.

Sincerely yours,

FRANK I. COWAN
Attorney-General

December 3, 1943

William D. Hayes, State Auditor

Interpretation of the Decision in Frankfort v. Waldo Lumber Co. 128 Maine 1

The opinion of Judge Barnes is very beautifully and powerfully written, and if the reader is not careful, he will read into the opinion matters that are not actually there.

Judge Barnes has clearly and succinctly stated the law. I think that nowhere would there be any question about the correctness of the legal maxims he has laid down. However, what he says in the Town of Frankfort case is not that taxes may be collected at any time and that the statutes of limitations do not run against the collection. What he says is that the tax lien cannot be lost, because it is a right of the State, and that if the statute of limitations has not run against the method of collection, the tax may be collected.

I believe it is generally accepted law that a tax lien is never lost. The legislature has set up certain limited times within which a certain act must be performed in order to collect that tax. A question has always existed in my mind as to whether or not the legislature cannot at any time enlarge the period or provide new machinery for collection of taxes, so that the tax collecting agencies can reach back into the remote past and enforce the rights of the State against owners of property who are at present immune because the period during which the collector can operate has expired.

FRANK I. COWAN
Attorney-General

December 7, 1943

Laurence C. Upton, Acting Chief, State Police

Re Beano

Your memo of December 1st in regard to Beano enforcement, addressed to Commissioner Mossman, has been referred by him to me.

Section 5 of Chapter 355 of the Public Laws of 1943 (the Beano Law) was apparently inserted to take care of any extra expense that might fall on the State Police in the administration of said law. As a necessary expense, the employment of investigators is well recognized. The Chief of Police has full authority to employ such persons, to be paid out of the funds derived from Beano licenses.

In case the revenues from the licenses are insufficient to pay the expense of administration, recourse should be had to the Governor and Council for sufficient funds.

FRANK I. COWAN
Attorney-General

December 7, 1943

Roscoe L. Mitchell, M. D., Director of the Bureau of Health

Subject: Venereal Diseases Statute

Our attitude must be that the first paragraph of Section 37 of the Public Laws of 1933, Chapter 1, as it appears in the 1943 amendment

(P. L. 1943, Chapter 358) is separable from the rest of said act. Its declaration that certain diseases are infectious and communicable is not in any way to be modified by the language of the remaining paragraphs of said Section 37, nor by the provisions of Sections 38 and/or 39.

Section 38 is a method provided for determining whether a suspected person is or is not suffering from certain infectious and communicable diseases. The person may not willingly submit to examination. The legislature has furnished authority for making such an examination against the will of the suspect. Whether or not Section 38 is an unconstitutional invasion of the rights of the person examined is for the Supreme Court to say. Once the legislature has spoken, the statute is presumed to be valid till the Supreme Court has declared otherwise, and it is our duty to carry out the legislative provisions.

Section 39 provides for treatment of a person found infected. The remarks above in regard to Section 38 apply equally to Section 39.

There is nothing in Chapter 358 that limits in any way the duties of the Bureau of Health in its war on infectious diseases. The statute simply adds four diseases to those previously declared infectious and communicable and tries to furnish an additional method for suppressing them.

FRANK I. COWAN
Attorney-General

December 8, 1943

Hon. W. Mayo Payson
Corporation Counsel, City of Portland
Portland, Maine

Dear Mayo,

I have your letter of December 6th in regard to the venereal diseases statutes. Dr. Mitchell of the State Bureau of Health has consulted with this office frequently in regard to the above statutes.

The doctor's difficulty, and the difficulty of this office, has been in devising a way of using P. L. 1943, Chapter 358. Apparently, it ties in with Chapter 330 and with the 1933 laws. I cannot believe that Chapter 358 must stand alone. It is a rewriting of certain sections of the 1933 laws. Moreover, the wording of the first paragraph of the rewritten Section 37, which provides that the four diseases therein named "are hereby declared to be infectious and communicable diseases, dangerous to the public health," cannot, to my mind, be other than an addition of those diseases to the list heretofore declared infectious and communicable.

Whether or not the machinery set up in Chapter 358 is to some extent unworkable does not, it seems to me, detract from the authority of the State Bureau of Health to act in the protection of the public from all diseases declared by the legislature to be infectious and com-

municable. The machinery in Chapter 358, I believe, is simply an addition to procedure already covered by our statutes.

I have given Dr. Mitchell an opinion on that subject, a copy of which I enclose herewith.

Sincerely yours,

FRANK I. COWAN
Attorney-General

December 9, 1943

Harold E. Crawford, Municipal Auditor

I have your memo of December 8th in regard to the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. I have been studying the Act off and on for the last two years and have discussed the tax phase of it somewhat with Bank Commissioner Robinson. Yesterday I discussed it with Mr. Stevens, the State Assessor.

In the first place, I want to call your attention to the fact that in our earnest desire to assist the municipalities we are in danger of going the way of all bureaucrats. The totalitarianisms of Italy and Germany are the direct result, not of a deliberate plan by the dictators to impose themselves absolutely on their fellow citizens, but because they sensed a real or fancied weakness in local affairs and insisted on helping out localities, whether the latter really wanted it or not. As a result of this interference by the central government in local matters, the localities quickly lost their identities, and the central government became supreme. The individual who was directing matters from the central government then found himself with absolute responsibility and began enforcing government by direct decree. The words of the poet that the road to hell is paved with good intentions are still sound philosophy.

It is not the duty of the Attorney-General to act as adviser to the towns, nor for the local collectors. Not only that, but he has no right to do so, and that duty and that right cannot be given to him by any department of the State attempting to advise the officials of the towns. It is not the duty of the Department of Audit to be public adviser for municipal officers. You have no responsibility there, and you have troubles enough of your own without volunteering to take on the troubles of others. Local officials have no less intelligence than State officials; but it is a human trait to pass on problems that seem difficult to somebody else, who, we think, has had more experience. It is also a human trait to dodge responsibility. Some town officials, I am sure, occasionally attempt to dodge responsibility by tossing their problems into the laps of the members of the State Department of Audit. You must not let them do it. You are stepping outside your proper function. Your job is to suggest a uniform method of bookkeeping and to conduct your audits. Your job is not to act as adviser for tax collectors or anybody else.

The above is not written in a spirit of adverse criticism. The State Department of Audit is doing a wonderful job; but for that very reason some of the town officials are likely to try and shrug off on to your shoulders burdens which they should carry themselves.

In connection with this matter of the Soldiers' and Sailors' Civil Relief Act, the towns have their organization and they employ counsel. Their counsel advises them as to the law, and they pay him for that advice.

The State tax is not involved in the town questions. The town pays a State tax, whether it collects from the individual taxpayers or not.

Privately and unofficially, I will say that if our legislature were going into special session this winter, as we had anticipated, I would suggest that we have a local Soldiers' and Sailors' Civil Relief Act to complement the Federal Act and adjust matters so that the relief would fit in with the statutes of this State. It would be a very simple matter. Inasmuch as there will be no special session, apparently, until a year from now, it is probable that any such legislative action must be postponed till the next regular session. I shan't be Attorney-General at that time, but you gentlemen will be on the job, and my recommendation is that you suggest to the legislature a bill that will extend the statute of limitations in cases of persons in the armed services, both for their protection and for the protection of their creditors.

FRANK I. COWAN
Attorney-General

December 9, 1943

J. J. Allen, Controller

I have your memo of December 8th enclosing a memo from Mr. Stevens to Mr. Gilson, bearing date November 30th. We are apparently facing an emergency situation where serious difficulties may be encountered unless we take action. It is of very great importance that there should be no delay in payment of school teachers, especially at this time of year. Apart wholly from the sentimental value of prompt payment just before Christmas, we have the practical problem that there is an enormous demand for teachers in other lines of activity and our school system is having great difficulty in keeping the teachers we have. Failure to get to them a regular pay falling just before Christmas might very well mean that some of them would throw up their jobs and accept employment elsewhere. Under the existing circumstances, I believe we are fully justified in advancing the date of paying the school money which ordinarily would not be due till after the first day of January next, inasmush as all the facts on which computations are based are in the hands of the proper State authorities and the conditions that exist today will be exactly the same as the conditions that will exist on December 31st, to which date the computation is made.

If it seems wise to Mr. Stevens, Mr. Gilson and yourself to advance a payment to Reed Plantation, as Mr. Stevens has suggested, it is proper that it be done.

FRANK I. COWAN
Attorney-General

December 15, 1943

Bureau Taxation
Attention Mrs. L. E. Griffin

I have your latest enclosure, being a letter dated December 10, 1943, from the Colonial Beacon Oil Company, and a copy of your reply dated December 13th, the subject being "Maine State tax on Sales of Gasoline to the Canadian Government."

I have carefully refrained from acknowledging these communications heretofore save only the letter of December 16, 1942. It is very possible that a ruling from this office might have to be adverse to the claim of the Canadian Government. In view of the fact that we are engaged in a War and that Canada is one of our allies with whom we are in extremely close coöperation, I feel that we are justified in refraining from issuing such an opinion at the present time. In this thought the Governor concurs.

You may if you wish, inform the Canadian Government that the Attorney-General of Maine is not yet prepared to render an opinion but say nothing further.

FRANK I. COWAN
Attorney-General

December 15, 1943

Harrison C. Greenleaf, Commissioner Institutional Service

A review of the Soldiers' and Sailors' Dependency Act simply reveals the classes or relationships to be considered and the amounts that each shall receive. After this money is received, there is no string attached to it, as to how it shall be disbursed or used. Of course, creditors cannot attach it or trustee it, before it is received by the eligible person.

I do not know what the practice has been in the State in handling the affairs of the inmates of our institutions for the persons who are mentally ill; but it would seem to me that a guardian or conservator should be appointed, preferably someone in the institution, so that no fees, etc., would be charged against the estate of the ward and in that way you would have a legal disbursement of these funds and a proper accounting of the same. The guardian or conservator could apportion the income of the ward in such way at such times as would indicate a proper expenditure and apportionment of the same.

JOHN G. MARSHALL
Deputy Attorney-General

December 15, 1943

Hon. Sumner Sewall, Governor

Subject: Buying of Deerskins

I have examined the latest revision of the Inland Fish and Game Laws and under the provisions of Sections 92, 93, 94 and 95 it is apparently unlawful to "sell or offer for sale or barter" any deer or any part of a deer save that the heads and hides may be sold to properly licensed taxidermists or dealers in deerskins and heads, as provided in Sections 92 and 93.

Mr. Stobie's question, addressed to me, was whether the owner of a deerskin may have it processed for use. I find nothing in our statutes to prohibit the owner from having this done. However, he is confronted with Section 66 if he wishes to transport the deer or any part thereof beyond the limits of the State, unless he purchases a special license, the fee for which is $10.15. Moreover, the provisions of Section 67 make it exceedingly embarrassing to transport the deerskin and head within the State.

It is the opinion of this department that the owner of a deerskin and head may have it processed; that he can send it outside the State if he pays a fee of $10.15 for that purpose; but that he is restricted on sale to taxidermists and dealers having a license. Whether or not this last is an unconstitutional restriction of the rights of an owner to deal with his own property as he sees fit (where the police and health laws are not involved) is not a matter for this office to consider. The legislature has spoken and it is the duty of the attorney-general to presume that the legislative enactments are constitutional till held otherwise by the courts.

FRANK I. COWAN
Attorney-General

December 16, 1943

Roscoe L. Mitchell, M.D., Director Bureau of Health

Subject: Interpretation and Procedure under P. L. 1943, Chapters 358 and 330; tie-in of said statutes with 1933 statutes.

1. The procedure under Chapter 358, P. L. 1943, in regard to a person who, the Bureau of Health has cause to believe, is infected with venereal disease is not exclusive. The powers of quarantine of infectious and contagious diseases, as provided by the laws of 1933, Chapter 1, as amended, still exist.

2. You have asked the question whether the Department of Health of the State can define as infectious and contagious diseases which are already so declared by legislative enactment. The answer is clearly, "Yes." P. L. 1943, Chapter 358, declares that certain diseases are infectious and communicable and dangerous to the public health. Chapter 330 of the Laws of 1943 provides that persons suffering from certain named diseases and others which are defined as infectious and communicable under the rules and regulations of the State Bureau of Health, shall not mingle with the general public until such time as such persons have become "non-infectious" or have complied with certain regulations. Obviously, the legislature did not deliberately contradict itself in describing certain diseases as infectious and communicable and so dangerous, at the same time saying that a person should be excluded from mingling with his fellows until the disease becomes non-infectious or he has complied with certain regulations. The two chapters are complementary to one another. Chapter 358 is a broad enabling act. Chapter 330 gives the Bureau of Health a yardstick which it can use in determining how far it shall go in applying the broad powers which it necessarily has by reason of the wording of the first paragraph of Chapter 358.

3. The duty of public health officials is very definite under the language of the statutes. Chapter 358 has declared that four named diseases are infectious and communicable. Chapter 330 requires quarantine of persons suffering from any infectious or communicable diseases so defined under the rules and regulations of the State Bureau of Health. The State Bureau of Health has in its regulations declared syphilis, gonorrhea, chancroid and lymphogranuloma venereum under certain named circumstances to be infectious and communicable. It is therefore the duty of health officials under the provisions of Chapter 330 and also the provisions still existing unrepealed and unmodified under P. L. 1933, Chapter 1, to quarantine a person suffering from smallpox, scarlet fever, diphtheria, pulmonary tuberculosis, syphilis as defined by the Bureau of Health, gonorrhea as so defined, chancroid as so defined, and lymphogranuloma venereum as so defined, or any other infectious or communicable diseases so defined under the rules and regulations of the Bureau of Health.

FRANK I. COWAN
Attorney-General

December 16, 1943

Hon. Sumner Sewall, Governor

Mrs. Stevens of Civilian Defense tells me that you have suggested that she inquire of this office whether the Town of Brunswick can be authorized under the Civilian Defense Act (either Section 1 or Section 3) to appropriate money for purchasing land and erecting foundations for a recreation building, the funds for completion of which are to be advanced by the Federal Government.

The Civilian Defense Act was passed by the legislature to give certain emergency powers to the Executive. The giving of those powers was to provide for the security, health and welfare of the people at such time as the legislature might not be in session. The whole purpose of the Act was to make sure that no sudden emergency could arise and no method of meeting it exist. There is nothing in the Act at all to authorize the construction of permanent buildings, nor the appropriation of moneys for the acquisition of land, for other than temporary purposes. My answer must therefore be that there is no authority in P. L. 1941, Chapter 205, under which the Town of Brunswick can be authorized to do what is contemplated.

The further question has been asked whether the Town of Brunswick has authority to raise money for an appropriation for such a purpose without specific legislative authority. There are certain questions in regard to the rights of municipalities and the rights of individuals that cannot be raised by the Attorney-General. There are cases where an individual or a municipality may do things that are in violation of the law, but the Attorney-General cannot of his own motion take any action. This would seem to be such a question. The Town of Brunswick has authority to employ counsel and to get advice on the point raised by Mrs. Stevens. It is not the function of this office to advise in such matters, nor has this office any right to interfere.

FRANK I. COWAN
Attorney-General

December 16, 1943

Honorable Irvine E. Peterson
Judge, Caribou Municipal Court
Caribou, Maine

Dear Judge,

I have your letter of December 15th. We see no ambiguity in Chapters 72 and 205 of the Public Laws of 1941. The original statute was amended in two different parts by the same legislature. Under the system used for some years, an amendment is printed in blackface and the original text to be amended is printed in ordinary type. The purpose in printing both the amendment and original text is so that the reader can see immediately without turning to another volume just what change has been made in the statute. Inasmuch as neither amendment had become law at the time the other was enacted, the Revisor of Statutes incorporated the original language in each Act.

This happens at practically every session of the legislature and frequently several times. As far as I know, no one until last year ever raised any question in regard to the effect, and, also as far as I know, no judge has ever suggested that the mere printing of the original language, to show what has been changed, created an ambiguity.

Sincerely yours,

FRANK I. COWAN
Attorney-General

December 23, 1943

Roscoe L. Mitchell, M.D., Director Bureau of Health

I have your memo of December 21st, asking whether a certificate from a chiropractor covers the statutory requirement in regard to a child returning to school after absence with indications of being or having been ill.

The statute authorizing chiropractors to practise their profession has not yet been extended to the point indicated by your question.

FRANK I. COWAN
Attorney-General

December 23, 1943

Roscoe L. Mitchell, M.D., Director Bureau of Health

I am returning herewith the letter from Mr. A. Edwin Smith, city clerk of the City of Portland, asking if he is authorized under our statutes to record that a man who was married in Portland in 1939 under the name of Feinstein has now changed his name to Frederick L. Fenton.

P. L. 1933, Chapter 1, Sections 79 and 81, are the only provisions that I know of that have any bearing on this particular subject. Section 79 authorizes a correction of an error and describes exactly the means that should be used for correcting the error. In this particular case there was no error. Mr. Feinstein at the time of his marriage in 1939 was properly described as Feinstein.

Section 81 provides that when the clerk knows of any birth, marriage or death which is not reported in his office, he shall collect the facts and record them. Here again there was apparently no error. The marriage of Mr. Feinstein was correctly recorded according to law and needs no correction.

This question is, of course, not a new one. We have women getting married every day and assuming for purposes of convenience the family names of their husbands. If they have been voters under their maiden names, they usually notify the board of registration of voters that they have changed their names, and the board makes the appropriate change on its voting list. Attention is called to the numerous instances that occur of women obtaining divorces with permission from the court to resume their maiden names. The fact that this permission is unnecessary under our laws is beside the point. The reason I speak of this is because there is no record kept of this change in the town or city clerk's office.

FRANK I. COWAN
Attorney-General

December 28, 1943

Hon. Sumner Sewall, Governor

Subject: Reappointment of State Humane Agents

With regard to your inquiry of December 23rd, I beg leave to advise that I find no provision in the statutes relative to the reappointment of a State Humane Agent. The only provision is Section 70 of Chapter 135, which is the one you are familiar with and refer to in your inquiry as the "original application for a first appointment."

I am of the opinion that when the term of a humane agent expires his reappointment can be made only under Section 70, upon application by the officials of a city or town, the commissioners of any county, or the officers of any Society for the Prevention of Cruelty to Animals.

ABRAHAM BREITBARD
Deputy Attorney-General

January 5, 1944

F. K. Purinton, Secretary Executive

With reference to your memo of December 30, 1943, relative to the status of Mr. ..... who held a commission as Trail Justice issued in 1939 and, while holding said commission, qualified as a member of the 1943 legislature.

He had already been advised by this department that by qualifying as a member of the legislature he simultaneously vacated the office of Trial Justice. His inquiry now is whether his resignation from the legislature would reinstate him to the office of Trial Justice which he had vacated.

Such would not be the effect of his resignation from the legislature. By the act of qualifying in that body he surrendered his office as Trial Justice just as completely as if he had resigned. His commission was

then no longer in force and he could not revive it by resigning from the legislature.

The office is now vacant and the Governor may appoint him or anyone else as a Trial Justice. . . .

ABRAHAM BREITBARD
Deputy Attorney-General

January 5, 1944

Harrison C. Greenleaf, Commissioner Institutional Service

I have your memo of January 4th in regard to the reduction of sentence of convicts in the State Prison at the rate of seven days per month. Curiously enough, the case of Avis Clark came in for a very considerable discussion at the time she was sentenced. It was my belief, and is now my belief, that a sentence in a manslaughter case to the State Reformatory is not a proper sentence. I believe that manslaughter is not within the provisions of the general statute providing that a woman may be sentenced to the Reformatory in any case except murder, where she would otherwise be sentenced to the State Prison. The judge agreed with me and sentenced her to State Prison.

Technically, she was then "confined" in the State Prison. Under the provisions of P. L. 1935, Chapter 92, she was transferred from the State Prison to the Reformatory. The court has not seen fit to take into consideration departmental procedure under such circumstances. The theory of the court is that the person is taken to Thomaston and there "confined" and transferred thence to Skowhegan. I believe, under your departmental procedure, you have the woman taken directly from the court where she is sentenced, or from a local jail, to Skowhegan, without detouring through Thomaston. We still feel that she has been "confined" in the State Prison and is therefore entitled to the credit of seven days per month.

FRANK I. COWAN
Attorney-General

January 7, 1944

Mr. Maurice E. Worcester
Columbia, Maine

Dear Mr. Worcester,

With reference to the question you put to me, whether you may become a member of the legislature while holding the office of probation officer in Washington County, I have come to the conclusion that you cannot hold both.

Under the statute, a probation officer is appointed by the Governor and Council and his duties primarily relate to the enforcement of State laws in aid of the courts administering and enforcing State laws. You are thus a State officer, although your compensation is paid by the county wherein you reside. See *State Treasurer* vs. *Penobscot County*, 107 Maine, 345, at page 348.

Under Article IV, Part Third, Section 11, of the Constitution of Maine, a person holding an office of profit under the State may not,

without relinquishing the former office, hold a seat in either house. The office you hold is an office of profit. See Opinion of the Justices, 95 Maine 585. I have given you the citations as you told me when you were here that you had asked Mr. Dunbar's opinion and he had suggested that you might inquire here. As these are my personal views, you may show this letter to Mr. Dunbar and see if he agrees with me.

Yours truly,

ABRAHAM BREITBARD
Deputy Attorney-General

January 7, 1944

Honorable Sumner Sewall, Governor of Maine

Public Laws of 1943, Chapter 300, providing for the protection of State employees who have entered the military or naval service of the United States while in such employment, is not limited to persons having no definite term of office, but should be so construed as to apply to State officials holding statutory positions. The protection, however, cannot run beyond the date at which their terms of office expire.

The Insurance Commissioner is protected during his present term.

FRANK I. COWAN
Attorney-General

January 11, 1944

Miss Nellie B. Chamberlain
Town Clerk
East Lebanon, Maine

Dear Madam:—

A marriage license is void if not used within one year after date of its issuance. This applies also to a case where the certificate of the physician relative to blood test is submitted.

Very truly yours,

ABRAHAM BREITBARD
Deputy Attorney-General

January 12, 1944

Hon. Robert M. Lawlis
Judge of Probate
Houlton, Maine

Dear Bob,

Mr. Hayes, the State Auditor, has turned over to me your letter of January 7th in regard to the Estate of John Starling and Lyman Willard, the administrator. We have been trying to figure out a proper method of procedure from this point. The statutes are fairly clear, but various sections, as you very well know, are somewhat conflicting in their practical application. However, the burden does seem to rest on the Judge of Probate to cause action to be taken.

It seems to me that the Judge can, sua sponte, issue citations to delinquent administrators and executors. The statutory provisions in

regard to the bonds seem to indicate that it was intended that he should. R. S. Chapter 76, Sections 11, 22, and 25, seem to place that duty on the Judge.

However, if the Judge feels that he does not want to take the position of both prosecutor and judge, I think he can with perfect propriety call on the State's attorney for the county to file a petition in his Court citing the delinquent executor or administrator in the same way that he would turn over to him evidence of criminal conduct.

If my office can be of any assistance in this or any matter concerning such accounts, kindly command me.

Sincerely yours,

FRANK I. COWAN
Attorney-General

January 12, 1944

Roscoe L. Mitchell, M.D., Director Bureau of Health

I am returning herewith the letter from Mr. Harvey in regard to adoption records, a copy of this letter being retained in this office. I explained to Mr. Stinson two years ago, very carefully, that we cannot give a person a new birth through adoption proceedings. If the adoptive parents for any reason see fit to deceive their adopted child in regard to his parentage, that does not furnish a reason for a State department being a party to the falsehood. The fact that we sympathize with the adoptive parents in their desire to have the child feel that he is their own does not in any way alter the case. We keep records of birth and records of adoption. We have no right, either legal or moral, to issue certificates of adoption or records of adoption other than in accordance with the fact. If John Smith and Mary his wife have a child which is later adopted by John Jones and Sarah his wife, the fact remains that the child was born the child of John and Mary Smith and has the right of inheritance both directly and collaterally from them and through them; but has gained a new set of parents through the process of adoption. The adopting parents add to the rights of the child, but cannot subtract from those rights. It is this point of view that is oftentimes overlooked, I believe, by persons whose sentiments are given full sway over their minds.

In recent years many well-meaning persons have tried to erase the stigma of illegitimacy by suggesting that adoption records shall be falsified. However much that might appeal in an individual case, it can be readily seen that any falsification of State records, whether done in spite of the statute or even by authority of the legislature, is such a vicious thing that it should not be countenanced under any circumstances. The fact that the truth sometimes proves embarrassing to an innocent person cannot justify a State in authorizing the promiscuous dissemination of falsehoods.

FRANK I. COWAN
Attorney-General

January 12, 1944

Mr. Sherman P. Hoar
Chairman, Board of Assessors
Rangeley Plantation, Maine

Dear Sir:—

I have your letter of January 6th in regard to your special town meeting held on Christmas Day. Whatever may be our sentimental feeling in regard to the holding of a town meeting on a holiday and especially on Christmas, there appears to be no prohibition in the statute, and in the absence of such prohibition a meeting properly called and held on Christmas Day is legal. The courts of Maine, as far as I know, have not passed on this particular question, but numerous cases have arisen in other states. For the convenience of your attorney I refer you to 29 C. J., page 767, "Officials Acts."

Very truly yours,

FRANK I. COWAN
Attorney-General

January 14, 1944

David D. Stevens, Assessor

Transfer of Functions from the State Treasurer to the Tax Assessor

I am giving you this in writing for your files, although our frequent discussions in the matter have really covered the subject.

An arrangement may be made between the State Treasurer and the Assessor under which certain members of the Treasurer's Department can be located in the office of the Assessor so that the two department heads can conduct their study to determine what procedure for the collection of taxes is best for the State. However, those persons must continue, until there is new legislative action, as subordinates of the State Treasurer and under his sole direction and control. If employees in the Department of the Assessor are used to assist the persons so transferred, such employees must be shifted to the Department of the State Treasurer for the period during which the study is carried on. Thus only can the State be protected on the bonds of the Treasurer and of these employees.

FRANK I. COWAN
Attorney-General

January 20, 1944

Hon. Sumner Sewall, Governor of Maine

Subject—Incompatibility

I have been asked whether there is incompatibility between the office of Judge of Probate and that of Mayor of the City of Belfast. A careful study of the charter of the city is not informative. The office of mayor of that city seems to be almost purely honorary, and there is real question as to whether the office carries with it such authority that it can be classed as executive, so that there would be a conflict, as provided by our Constitution.

However, it is not necessary to answer the question. If the office of Judge of Probate and that of Mayor of Belfast are incompatible, the acceptance of the former office will vacate the latter. If, on the other hand, they are not incompatible, he can continue as Mayor of Belfast. In either case he becomes the duly constituted Judge of Probate.

Inasmuch as the office of mayor of Belfast is not a State office, the question whether he shall continue as incumbent of that position, if question arises, must be left to the determination of the courts.

FRANK I. COWAN
Attorney-General

January 25, 1944

James H. Register, Field Director
American Red Cross
A. P. O. 629
New York, N. Y.

Dear Sir:—

I have your letter of January 7th.

1. It is questionable whether the State of Maine would recognize a common-law marriage, although our courts have recognized the issue of such marriages and declared that such issue are legitimate.

2. Proxy marriages are not recognized under the laws of the State of Maine.

3. A resident of the State of Maine does not lose his residence through serving in the military service and does not need to return to Maine to sign a divorce libel. . . .

Very truly yours,

FRANK I. COWAN
Attorney-General

January 26, 1944

X, Esq.

In re: Change of purposes of Z Insurance Company

Dear X,

I acknowledge receipt of your letter of the 24th instant addressed to the Attorney-General and enclosing for approval by this department a certificate of the change of purposes of the above-named company, in and by which it voted to accept the provisions of Chapter 107 of the Public Laws of 1937 and also Chapter 19 of the Public Laws of 1939. I am herewith returning the same without approval, with the suggestion that the certificate to be forwarded here should recite, or it should appear from some other document, that the proposed action was taken by a vote representing a majority of the voting power and that the same was acted upon at a meeting, the call for which gave notice that such proposed action would be taken. From the certificate which you forwarded it appears that the action was taken at "a meeting as and for the annual meeting," and that it was attended by a quorum, and it

nowhere appears that in the notice for the annual meeting the attention of the receivers of the notice was directed to the fact that such special action would be taken at that meeting.

Furthermore, under Section 48 of Chapter 56, these certificates of the change in purposes, etc., are to be filed within twenty days thereafter. While this provision, I believe, has been held to be directory rather than mandatory, I call it to your attention, as it may be that you will have to call another meeting on notice or waiver of notice and have the action taken on March 21, 1941, ratified and confirmed.

Sincerely yours,

ABRAHAM BREITBARD

Deputy Attorney-General

January 27, 1944

A. M. G. Soule, Deputy Commissioner of Agriculture

I have examined the letter from R. H. Lovejoy, county agent, addressed to Mr. Carl R. Smith, Commissioner of Agriculture, bearing date January 25, 1944, and describing the procedure of Mr. ..... of ....., who is butchering hogs in sufficient numbers, apparently, to make it a business enterprise on his part.

P. L. 1943, Chapter 351, Section 1, in the first sentence, expressly provides that "No person . . . shall operate a slaughterhouse . . . or other place or establishment where animals are slaughtered . . . unless such persons . . . be licensed by the commissioner of agriculture." On the statement of fact contained in Mr. Lovejoy's letter and the further information you have given me, there is no question but what Mr. ..... must have a license to carry on this business.

Section 3 of the Act was carefully drawn to protect the farmers and make sure that they would not be in a position to need a license permitting them to butcher or have butchered their own animals and fowls. The language "or has butchered for him" and the words "or elsewhere" apply solely to the farmer. If he takes his fowls or animals to a "slaughterhouse, abattoir, or other place or establishment where animals are slaughtered" for butchering, the operator of the butcher shop or place must have a license.

FRANK I. COWAN

Attorney-General

January 28, 1944

Guy R. Whitten, Deputy Insurance Commissioner

Under date of January 5, Commissioner Perkins sent me a memorandum, a copy of which I enclose herewith. I have made careful examination of the Statutes in regard to Domestic Mutual Fire Insurance Companies. Whatever may have been the intention of the author of the amendment which appears as Public Laws 1943, Chapter 148, it seems to me that no change has been made in the law concerning Domestic Mutual Fire Insurance Companies.

R. S. Chapter 60, Sec. 85, which provides for annual certificates for "every domestic insurance company" might seem at first glance to cover these domestic mutuals. However, the language of the second sentence of that section shows clearly that the provision was intended for stock companies. This is the more clear when we compare the language of Sec. 85 with Sec. 84. In Sec. 84 (1) domestic stock insurance, and (2) mutual life insurance companies, and (3) domestic mutual fire insurance companies, are particularly set forth; whereas, Sec. 85, as said above, can refer only to stock companies.

Public Laws of 1931, Chapter 101, Sec. 5, which amends R. S. Chap. 60, Sec. 84 cut out the direct reference to (1) stock insurance, (2) mutual life insurance, (3) domestic mutual fire insurance companies, and makes the section apply to "every domestic insurance company." This provides for a biennial examination, but does not go further. We have then, as the law stands, a provision in Sec. 84, as amended, for biennial examinations of every domestic insurance company, and in Sec. 85 a provision for annual certificates in the case of stock companies.

Public Laws of 1943, Chapter 148, ties in directly to the amended Sec. 84 and the original Sec. 85 of R. S. Chap. 60. The language in Chap. 148, above cited, "except that domestic mutual fire insurance companies writing on the assessment plan only are exempt from this requirement" can apply only to the original certificate of qualification. It can, moreover, have no connection with the words "for each annual renewal thereof $20.00" since there is no provision in the Statutes requiring that domestic mutuals shall obtain annual certificates.

FRANK I. COWAN
Attorney-General

January 28, 1944

Guy R. Whitten, Deputy Insurance Commissioner

My attention has been called to an interpretation said to have been placed on the Public Laws of 1939, Chapter 2, by the Attorney-General's Department in the winter of 1942-43. Much as I hesitate to appear to over-rule any opinion given by an Assistant Attorney-General or by a Deputy, it seems to me that in this case I must do so.

I was myself on the Insurance Committee of the Legislature at the time when the amendment of R. S. Chapter 35, Sec. 55, which appears as Chapter 2 of the Public Laws of 1939 was written. I played a very considerable part in the discussions and in the rewriting of the insurance amendments which that Legislature enacted. There was a real reason for using the words "or collects premiums or assessments in the State;" and there was a real reason for using the expression "of the gross direct premiums for fire risks written in the State," and for omitting any reference to assessments in that part of the act.

The Legislature didn't intend that the assessments should be subject to taxation. We debated the matter at very considerable length in the Committee, and we believed that when we had the amendment in its final shape it provided that there should be a tax of one-half of one

percent of the gross direct premiums collected by any fire insurance company of whatever type collecting advance premiums on policies written in the State of Maine, and that there should be no such tax placed on deferred premiums, commonly called assessments.

I believe that the error in the opinion which I am told was issued from the Attorney-General's office was due to the fact that the Deputy in rightly construing an assessment as a deferred premium failed to note that the Statute in question as worded can refer only to advance premiums.

FRANK I. COWAN
Attorney-General

February 2, 1944

J. A. Mossman, Commissioner of Finance

Funds of State Liquor Store in Madawaska

I have your memorandum of January 31st. Although technically the funds of the State Liquor Store in Madawaska become subject to the control of the State Treasurer at the moment they are received in the store, the practical matter of transmission must be considered in applying the provisions of Chapter 192 of the Public Laws of 1943. Under the circumstances existing, the Royal Bank of Canada, Edmundston, New Brunswick, may be regarded as one of the essential steps in transmission of funds so as to place them directly under the control of the State Treasurer. My understanding is that the money will be deposited during banking hours in the Royal Bank of Canada, there to be credited to the Northern National Bank of Presque Isle, which, according to the manager of the Edmundston Branch of the Royal Bank, is carrying an account at said branch in U. S. dollars. Presumably, the ideal method of procedure would be for the manager at Edmundston to wire the Northern National Bank at Presque Isle as soon as the cash is received in the branch bank, so that the entry in favor of the State of Maine could be made on the books of the Northern National Bank on the same day that the money is desposited. The wire, of course, should be sent collect, and the receiving bank should deduct the charge therefor from the deposit. If a wire report is impracticable, you will be justified in approving a report by mail from the branch of the Royal Bank of Canada to the Northern National Bank, which is to have the effect of setting up the account as at the earliest practicable moment as a deposit in the Northern National Bank.

FRANK I. COWAN
Attorney-General

February 2, 1944

F. K. Purinton, Executive Secretary, Executive Department

I have your memo of January 28th inquiring whether the members of such boards as the Maine Military Defense Commission must qualify by taking oath and filing certificates with the Secretary of State. The provision in regard to this is found in R. S. Chapter 2, Section 56:—

"Every other person elected or appointed to any civil office shall take and subscribe the oath before any one member of the council,

or before any magistrate commissioned by the governor for that purpose, except when the constitution otherwise provides."

The meaning of the words "civil office" has in general been defined as a grant and possession of a portion of the sovereign power and the exercise of such power within the limits prescribed by the law. The courts have distinguished generally between a "civil office" and an employment. A salary is regarded as a mere incident to the office and is not a determining factor in deciding whether or not an incumbent holds such an office.

It is impossible to lay down a general rule that will absolutely cover all cases. The law is not mathematics. The statute creating the State Military Defense Commission imposes on it certain duties which seem to be a part of the governmental function. Under the circumstances the members of that Commission should qualify by taking the oath prescribed by the statute above quoted.

I assume that it is customary to issue commissions to all persons appointed to such positions and I have taken as a matter of course that they are customarily recorded in the office of the Secretary of State. If no such record has been kept, it seems to me that it is a wise procedure to keep one.

FRANK I. COWAN
Attorney-General

February 7, 1944

Harry V. Gilson, Commissioner of Education

A ruling has been requested by you as to the propriety of the payments by the Commissioner of Education from the apportionment of the State School Fund of Eagle Lake, which indebtedness accrued as of June 30, 1939, for secondary tuition to the following towns and academies:—

St. Joseph's Academy	$400.00 plus $6. int.
Mt. Merici Academy	200.00 plus $3. int.
Town of Fort Kent	412.83
Town of Caribou	138.10
Town of Houlton	127.83
	$1,287.76

As we understand it, the affairs of the town were taken over by the Emergency Municipal Finance Board on August 3, 1939. In December of that year the Commissioner of Education made the payments above set forth and deducted the same from the apportionment of the School Fund to that town and remitted the balance.

The Emergency Municipal Finance Board then brought the matter to the attention of the Commissioner of Education and suggested that these payments were not properly made, as prior thereto, the town was taken over by the Board; and at the request of the Commissioner the receiving academies and towns returned the money, and the same was paid over to the Emergency Municipal Finance Board.

Your questions to this department are as follows:—

1. Should these bills have been included in the moratorium declared on all bills payable when the Emergency Municipal Finance Board assumed control?

It is the opinion of this department that under Section 206 of Chapter 19 of the Revised Statutes, the Commissioner of Education could properly pay the "receiving" towns the accounts for tuition, the same having remained unpaid on September 1st of that year, and deduct the same from the "next regular annual apportionment" as provided in said section, and this payment was proper, notwithstanding the fact that on August 3rd previous the town was placed under the control of the Emergency Municipal Board. As we view this section, the Commissioner of Education is directed to pay such accounts when the sending town has not paid them, and we consider that the accounts due for tuition become a charge upon the annual apportionment distributed by the Commissioner of Education, who by this section is directed to pay it and deduct it from the apportioned fund. It is to be noted, however, that this section specifically provides for payment by the Commissioner only to the "receiving city, town or plantation." No provision is made for payment to academies. Hence, the only payments that could be justified under this section would be to a city, town or plantation.

2. Has the Department of Education had authority at any time since 1939 to withhold these amounts from the apportionment of funds to Eagle Lake?

We must answer this in the negative. Section 206 expressly provides that the Commissioner of Education shall pay such accounts

"at the next regular annual apportionment, together with interest on such accounts at the rate of 6% annually computed from the first day of September."

Payment by the Commissioner of Education may only be made from the next regular annual apportionment and not after that. And particularly is this true under the circumstances of this case, where the town was thereafter under the control of the Emergency Municipal Finance Board.

ABRAHAM BREITBARD
Deputy Attorney-General

February 9, 1944

Guy R. Whitten, Deputy Insurance Commissioner

With regard to your memo of February 7, 1944, it is quite clear to me that under Section 83 of Chapter 60 of the Revised Statutes, you, as Deputy Commissioner, in the absence or disability of the Insurance Commissioner, or when a vacancy exists in that office, are a member ex officio of the Industrial Accident Commission and the Teachers' Retirement Board.

This section provides: "In the event of a vacancy in the office of the insurance commissioner, or during the absence or disability of that officer, the deputy commissioner, shall perform the duties of the *office*." Membership ex officio of the boards above mentioned is part of the

duties of the office of Insurance Commissioner imposed upon him by the various statutes creating these boards. By the sentence just quoted (Section 83) the duties of the office devolve upon the Deputy Insurance Commissioner in the event of a vacancy or the absence or disability of the Insurance Commissioner; and among the duties of that office is the ex officio membership in these various boards. Hence, you may perform these duties.

I understand from the Auditor that you already are under bond in the sum of $5,000. It is his intention to certify under Chapter 320 of the Public Laws of 1943 that this bond be increased to the amount of the bond that the Insurance Commissioner is now required to give. Hence, this disposes of your inquiry with relation to whether you are to be bonded in lieu of the Insurance Commissioner.

ABRAHAM BREITBARD
Deputy Attorney-General

February 9, 1944

Harrison C. Greenleaf, Commissioner of Institutional Service

In your memorandum of February 8, 1944, you ask to be advised with regard to the following question:

> Will you please define for me the rights of an attorney to examine records of the State Prison, or of any of the state institutions, and specifically, whether or not an attorney has any right to have access to the records?

The statute imposes upon the warden of the State Prison, for example, the duty of keeping a record of the conduct of each convict; and for every month during which it appears that the prisoner has faithfully observed the rules of the prison the warden may, with the approval of the Commissioner, make certain deductions from the sentence. (Chapter 152, Section 20, as amended by the Laws of 1933 and the Laws of 1943.) Then again, by Chapter 147, Section 38, the warden is required to keep in the prison a book containing a full and accurate record of each and every transaction had under the provisions of the chapter relating to paroles. Under Section 37 of the same chapter, prisoners on parole are required to furnish the warden on the last day of each month a written report showing the conduct of the parolee during the current month, his employment, and other information which the warden is required to tabulate and make report thereof to the Parole Board. This information also is used by the Parole Board in an annual report which the Board is required to make to the Governor. Included are violations by paroled prisoners. I have not attempted to refer to all records required to be kept by the warden. I have merely referred to these for the purpose of making clear the views which I shall express.

These are all public records. A public record has been defined as one "required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law * * * made by a public officer authorized to perform that function * * *"

Every public record, however, is not subject to inspection by all citizens, unless expressly made so by statute. In this State we have no statute which confers upon the general public the right to inspect prison or other institutional records, nor have custom and usage, so far as I can learn, established the right. The right, therefore, to inspect the records at these institutions is to be determined by the common law.

"At common law a person may inspect public records in which he has an interest or make copies or memoranda thereof when a necessity for such inspection is shown and the purpose does not seem to be improper, and where the disclosure would not be detrimental to the public interest; but the gratification of mere curiosity or motives merely speculative or the creation of scandal will not entitle a person to inspection or to make copies or memoranda." 53 C. J., page 624. Section 40.

I would thus advise you that the records of the State Prison or any institution of which you are the departmental head are not subject to inspection by the public generally or by an attorney who represents no one having an interest in the particular record that he wants to examine. An attorney representing a prisoner as his agent would be entitled to inspect, for example, the book, card, or however the record may be kept, of the prisoner's monthly behavior and the allowance monthly for "good time," so that he may know how much time has been served and how much more time he will have to go in order to be entitled to parole or to his ultimate discharge. On the other hand, no attorney would be entitled to examine and inspect the envelope in which are kept certain memoranda relating to the prisoner which I saw in the possession of the warden on various occasions when I attended court which dealt with the history of the prisoner.

In other words, no attorney has the right to make a general inspection of the memoranda kept by the warden except those which the Statute specifically requires him to keep as a record such as those relating to the time the particular prisoner is to serve; his conduct and behavior; the time that he would be eligible for parole or discharge; and also any record which dealt with his application for parole and the decision of the Parole Board thereon. In these records he would have an interest as it is defined by the common law. In other records, he would not have.

ABRAHAM BREITBARD
Deputy Attorney-General

N. B. See previous opinions of this department as to the right of the general public to examine the records of:

a. State Treasurer
b. State Auditor
c. Inheritance Tax Commissioner

FRANK I. COWAN
Attorney-General

February 15, 1944

Richard H. Armstrong, Esq.
Office of Price Administration
Augusta, Maine

Dear Richard,

With relation to your inquiry as to whether our municipalities may, by ordinance or by-law, adopt maximum price regulations and enforce the same as an aid to the federal regulations now enforced by OPA, I have given some thought to the problem and I am of the opinion that our municipalities and towns possess no power to enact any ordinances or by-laws excepting with relation to the subjects contained in the Revised Statutes and enumerated under Chapter 5, Section 136. The first sentence of this section clearly demonstrates the limitations that have been put on the rights of a municipality or town to provide by-laws or ordinances. The language is as follows:

> "Towns, cities, and village corporations may make by-laws or ordinances, not inconsistent with law, and enforce them by suitable penalties, *for the purposes and with the limitations following:*" (Emphasis mine.)

In *Alley* v. *Inhabitants of Edgecomb*, 53 Maine 446-448, where a question was raised as to the right of towns to grant or to raise money, the Court there said:

> "Beyond question or controversy the right of towns to grant or to raise money depends upon authority derived from some statutory provision. Like other corporations they have no powers, that are not either expressly granted or necessarily implied from such as are granted, to enable them to discharge the special functions for which they were created and such duties as are by law imposed upon them. *They have no inherent right of legislation* like that of the State, but act only by a delegated power which must be measured by the terms of the grant." (Emphasis mine.)

It would also appear that the seventeen sub-sections which follow the opening sentence of Section 136 which I have quoted, have been enacted at different times as the legislature found it necessary and convenient to broaden and extend the powers of municipalities. This is clear from the following quotation from *State* v. *Borden* in 93 Maine 73-77 (1899) where the Court said:

> "The legislature of this state has by various enactments at different times given to municipalities the power to adopt by-laws in regard to a large number of matters, all of which different enactments have been condensed into c. 3, §59, of the present revised statutes." (R. S. 1883.)

In *State* v. *Bunker*, 98 Maine 387-389, where the Court discharged a respondent who was charged with having violated an ordinance of a town which prohibited non-residents from taking clams upon a shore within the town of Lamoine, the Court said:

> "It is equally clear that without legislative authority the inhabitants of a town have no power to adopt by-laws or regulations controlling the subject of sea-shore fisheries."

I enclose galley proof which is now being prepared of the next revision and which incorporates all the legislative amendments to date with regard to additional powers conferred upon municipalities since the last revision in 1930. You will notice that under none of these provisions can a municipality adopt a by-law or ordinance dealing with the subjects herein referred to.

Since the municipal officers have no inherent powers of legislation and the right to legislate rests solely with our legislature, I believe that the legislature would be the only body that could enact legislation on the subject.

Very truly yours,

ABRAHAM BREITBARD
Deputy Attorney-General

February 17, 1944

Mr. X

Dear Sir:—

I have your letter of February 7th in regard to a pensioner of the State serving in the legislature. This office has never issued a formal opinion on the subject, although in correspondence and in discussions with the Governor and other State officials we have expressed a strong feeling that it is contrary to public policy.

There are certain retired State employees who are receiving an annual stipend as a result of contributions made to Retirement Systems. Such persons are receiving their stipends as a matter of right and not as a matter of grace. In your particular case, as I recall, you were not a contributor to the Teachers' Retirement System, and the pension you are receiving is a pension pure and simple, set up by the favorable vote of the Governor and Council and subject to revocation by the same source. In connection with persons in your situation my very strong advice has been against taking a chance on getting themselves into a political situation where a hostile Governor and Council might stop the pension.

Very truly yours,

FRANK I. COWAN
Attorney-General

February 17, 1944

William D. Hayes, State Auditor

I have your memo of February 14th in regard to salaries of the superintendents of the thirteen State institutions. Chapter 300 of the Public Laws of 1943, apparently makes no fundamental change in sections 3 and 4 of Chapter 223, P. L. 1939, except that it eliminates the fifth-wheel "Director of Institutional Service." Otherwise, it seems to be purely for the purpose of getting rid of redundancy.

A reading of the whole Act shows no apparent intention on the part of the legislature to take the employees of the institutions away from the protection of the Personnel Law. The general statute (P. L. 1937, Chapter 221, Section 6) provides that "The classified service shall con-

sist of all persons holding offices and employments now existing or hereafter created in the state service, except persons who are holding or shall hold offices and employments exempted by section 7 of this act." Section 7 of the statute gives in detail such persons as shall be in the unclassified service, and the enumeration of these persons tells exactly just which ones the legislature intended to eliminate. The intent of the legislature is made more clear by the provisions of P. L. 1943, Chapter 11, which takes wardens of the Department of Inland Fisheries and Game out of the unclassified service. We are therefore justified in saying that the legislature will not take any group out of the classified service and place them in the unclassified service without express language to that effect.

That does not mean, however, that the Commissioner of Institutional Service must accept anybody that the Personnel Bureau sends to him. P. L. 1941, Chapter 300, which says, "Said commissioner shall have the power to appoint . . . such other employees as shall be necessary for the proper performance of the duties of said department," was enacted with full knowledge of the specialized character of many of those duties and the necessity of relying on the judgment of the Commissioner in selecting employees. In other words, the prospective employee must still pass the test of the Personnel Bureau, but he or she must pass the further test of receiving the approval of the Commissioner before he can be employed in that particular activity.

Such being the nature of the situation, the State Personnel Law must apply to the classified employees of the institutions. (See P. L. 1937, Chapter 221, Section 10.)

Whether or not the institutional heads are within the provisions of the State Personnel Law is a matter on which I do not wish to comment without further information. It has been consistently held that persons appointed for definite terms should be classified as Bureau Directors under Section 7 of the Personnel Law, so as to be in the unclassified service. Unless there is some strong reason for interpreting the law otherwise, said reason being found in the facts with regard to each particular case, I shall continue in the opinion that "institution heads" are to be regarded as "Bureau Directors."

FRANK I. COWAN
Attorney-General

February 17, 1944

Honorable Robert Hale
House Office Building
Washington, D. C.

Dear Bob,

I have seen your letter of February 7th in regard to the press release of January 31st about the Maine Absent Voting Law in its application to soldier voting. You are, of course, correct in the general assumption that an Executive Order which would attempt to amend a statute would be in contravention of the State Constitutional provision to the effect that no one of the three branches of the government shall exer-

cise any of the powers of the other two branches. However, as you are well aware, the old theory of absolute separability of governmental functions has, over the past hundred years, been greatly modified because of the practical necessities that at times arise.

P. L. 1941, Chapter 305, is purely a war measure. If modifying the registration laws to permit of a soldier's voting is something indissolubly linked to the "welfare" of the people of the State of Maine, and if it will assist in "coöperation with the federal government," then it is within the provisions of that statute. My first reaction was that there was such a relation and under the circumstances I felt no hesitation in approving the suggestion in regard to the modification of registration machinery as a purely temporary war measure.

Mature consideration of the matter has, however, shaken that opinion. This is an election matter. Our regard for the independence of election machinery from all executive interference is so tender that I now find I can't bring myself to advise the Executive that it is proper for him to do the act which the legislature certainly intended that he should. Even if I did so advise, it is probable that some defeated candidate would take the matter to court, and I feel that the court might very well say that even though the Civilian Defense Act by its plain words and meaning authorized the Governor to do this thing, nevertheless, even as a war measure, his action under that attempted authorization would be in contravention of public policy. . . .

FRANK I. COWAN
Attorney-General

February 17, 1944

Harold I. Goss, Secretary of State

Subject: Registration Fees for Trucks

I have your memo of February 8th asking for an interpretation of certain provisions of R. S., c. 29, sec. 57, as amended, which reads as follows: "Over 11 tons and not over 12 tons, $275.00" and "12 tons and over, $300.00."

In view of the wording of the whole schedule, it is apparent that the language "12 tons and over" was an oversight and was intended to read "over 12 tons." Therefore a carrying capacity of anything over 11 tons and up to and including 12 tons calls for a fee of $275.00. 12 tons plus 1 oz. requires $300.00.

FRANK I. COWAN
Attorney-General

February 18, 1944

E. E. Roderick, Deputy Commissioner of Education

Subject: Membership in Maine Teachers' Retirement Association

With reference to your inquiry of February 1, 1944, it is the opinion of this department that Chapter 198, Section 3, of the Public Laws of 1943 is very plain and unambiguous, leaving no room for interpretation. This provides that "Any member of the Retirement Association who has been a member for more than one year and who is actively

engaged in teaching," upon entering the military or naval service shall have the benefits of the Act and during such service, in addition to its own share, the State shall contribute such amounts as the member would have been required to contribute, if he had been teaching within the State, etc. Thus, in order to have the benefits of this section, one of the requirements is that he shall have been a member for more than a year, and members who have been such for less than that period cannot have the benefits of this law.

The subject of the inquiry had been a member for approximately five months before entering the service, and you ask whether his membership can be made retroactive to commence as of the date when he began teaching, some two and a half years before he became a member. We find nothing in the statute which permits this and hence the question must be answered in the negative.

ABRAHAM BREITBARD
Deputy Attorney-General

February 18, 1944

Mrs. Mildred Akin
36 Davis Street
Old Town, Maine

Dear Madam:—

This office has previously ruled, and adheres to the same ruling, that under the Revised Statutes, Chapter 13, Section 6, Paragraph VIII, the polls and estates of Indians are not taxable.

However, in case an Indian votes, his estates are taxable.

Very truly yours,

ABRAHAM BREITBARD
Deputy Attorney-General

February 18, 1944

Harrison C. Greenleaf, Commissioner of Institional Service

In answer to your memo of February 16, 1944, relative to Section 11 of Chapter 131 of the Revised Statutes: You inquire if this statute applies to members of the State legislature and whether they are State officers within this section.

I have looked through the files of this department and find that apparently this has been an ever-recurring question. On March 23, 1931, the late Chief Justice Pattangall wrote to the Attorney-General, Clement F. Robinson, as follows:

> "Section 11, Chapter 131, Revised Statutes 1930, reads, 'No trustee, superintendent, treasurer, or other person holding a place of trust in any state office or public institution of the state,' etc.
>
> "I hardly see how a member of the legislature could be said to be either a trustee, superintendent, treasurer, or other person holding a place of trust in any state office or public institution of the state. I am not even sure that this section applies to members of the Governor's Council. The wording is quite different than I supposed."

I noticed also in the file that numerous copies were made of this, and I should judge perhaps for distribution, as it does not seem that the Chief Justice would have written an answer to this inquiry unofficially, that is to say, not acting as the court, unless the problem was then of some concern.

I do not find where any change has been made, nor has any action ever been taken to include a member of the legislature in this provision. Nor do I find any legislation on the subject which would invalidate any contract made with the State. While dealings between a member of the legislature and the State would arouse suspicion with some people and while many of us would not look upon such dealings with favor, nevertheless I find nothing in the law which would prevent them or void them.

ABRAHAM BREITBARD
Deputy Attorney-General

February 24, 1944

Arthur R. Dickson, Chairman
Board of Selectmen
Old Orchard Beach, Maine

Dear Sir:

I have your letter of February 21st, asking the following question: "Is there any necessity of a man paying a poll tax in the community in which he votes or can he pay it in his former home."

The poll tax law and the law in regard to registration of voters are entirely separate. The poll tax law (P. L. 1939, c. 191, §1) reads in part, as follows: "The poll tax shall be assessed on each taxable person in the place where he is an inhabitant on the first day of each April."

The registration law provides as follows: (P. L. 1935, c. 80) "Every person ..... who ..... shall have his residence established in this state for a term of six months next preceding ..... election shall have the right to vote at every such election in the city, town or plantation where his residence is so established; and such right to vote at national and state elections in such city, town or plantation shall continue for a period of three months after his removal therefrom if he continues to reside in this state during said period; ....."

From the above it is very clear that a person might have lived in a certain city, town or plantation for six consecutive months prior to (1) the November National election (2) the November or December city or town election (3) a March town meeting (4) a special election held at any time between October 2nd or April 1st, and be eligible to be registered as a voter although he has not been taxable in the municipality prior to the time of such registration.

Very truly yours,

FRANK I. COWAN
Attorney-General

February 25, 1944

J. J. Allen, Controller

Subject: Chapter 67, Resolves of 1943

I have your memo of February 23rd calling attention to apparent errors. A personal examination of the original documents in the office of the Secretary of State shows that the copy appearing in the bound volume corresponds to the original. Therefore it becomes necessary to determine what was the intent of the legislature.

1. Obviously the 1943 legislature was not re-enacting a Road Resolve for the fiscal year ending June 30, 1943, inasmuch as the act would not take effect until July 9, 1943. Moreover, the date-lines on the heads of the columns carefully designate the appropriations for the first year as for "1943-1944" and for the second year as "1944-1945." We are therefore justified in saying that the meaning of the legislature is to be found in the column headings and not in the first paragraph and that said paragraph was intended to read "1944" and "1945."

2. In regard to the town of North Kennebunkport, I find that the original Resolve presented to the legislature provided for $1,000. to repair the mountain road, payable in two parts, $500. for the year 1943-1944, and $500. for the year 1944-1945. The legislature granted $900., a reduction of $100. and set it up solely for the year 1943-1944. The obvious conclusion from this is that the committee decided that $900. expended in one year would accomplish as much for the town as $1,000. spread over two years, and made the appropriation solely for the year 1943-1944.

3. In regard to the carrying forward of the North Kennebunkport appropriation, please note R. S. Chapter 2, Section 118, which provides: "All appropriations . . . for the construction of buildings, highways, and bridges shall constitute continuous carrying accounts . . . and the state auditor is hereby authorized to carry forward all such appropriations to the succeeding fiscal year; provided, however, that the construction shall have been begun . . . etc." It is therefore perfectly proper to carry forward the North Kennebunkport Resolve, providing something has been done.

4. An examination of the records in regard to the town of Perham shows that the original request was for $600. $200. was granted for the year 1943-1944. The original documents in the Secretary of State's office show $10. set up for the year 1944-1945 and that somebody added two ciphers to the $10. with a red pencil. It is as logical to assume that the figure under consideration was $1,000. for the year 1944-1945 as to conclude that it was $100. and certainly the only figures we have are $10. and $1,000. It is only by applying our imagination that we can conclude, after examination of the written documents, that the sum of $100. was intended. The final printed copy of the bill which was signed by the Speaker of the House, the President of the Senate, and by the Governor, contain the figures 10. The necessary conclusion must be that $10. was appropriated for the town of Perham for the year 1944-1945.

FRANK I. COWAN
Attorney-General

February 29, 1944

Harrison C. Greenleaf, Commissioner of Institutional Service

In answer to your memorandum of January 21, 1944, asking for an opinion of this department relative to Chapter 201, P. L. 1943, entitled "An Act to Clarify the Laws Relating to Paroles and Good Time Allowance to Convicts in State Prison." The question propounded is:

> "The Parole Board would like the opinion of the Attorney-General's Department as to whether this law should be considered to affect inmates of the State Prison who were paroled prior to July 9, 1943, the effective date of the law, or only those prisoners who were paroled after that date."

This Act by Section 1 thereof changed the method of computing the "unexpired portion of the (his) maximum sentence" which a prisoner was required to serve who had been returned to prison because of the violation of his parole. It provides that in computing the time,

> "Such prisoner shall forfeit any deduction made from his sentence by reason of faithful observance of the rules and requirements of the prison prior to parole or while on parole."

Whether this amendment to the then existing Act would be applicable to prisoners paroled prior to July 9, 1943, when the Act took effect, would depend on whether the amendment increased the term of punishment of the prisoner, for, if it did, it would be as to him an *ex post facto* law and violative of Section 11 of Article I of the Constitution of the State.

> "As the term *ex post facto* has been construed, it applies only to penal or criminal matters. The objection to *ex post facto* legislation consist in the uncertainty which would be introduced thereby into legislation of a penal or criminal character, and the injustice of punishing an act which was not punishable when done, or of punishing it in a different manner from that in which it was punishable when done. But not all retrospective legislation is unconstitutional as being *ex post facto*. The question in each case is whether it will increase the penalty or operate to deprive a party of substantial rights or privileges to which he was entitled as the law stood when the offence was committed, or 'in short, which, in relation to the offence or its consequences, alters the situation of a party to his disadvantage.' "
>
> *Murphy* v. *Commonwealth*, 172 Mass., at 268.

See also Cooley's *Constitutional Limitations*, Eighth Edition, Vol. I, page 542.

An examination of the statutes, at the time this Act took effect, in my judgment shows that this amendment would increase the punishment by adding to the term of imprisonment the violator was to serve, deductions which accrued to him both prior and subsequent to his parole and which this amendment declares that he forfeits. In that respect it differs from the statutes in effect at the time the amendment became law, by increasing the punishment.

Chapter 182, P. L. 1933, amending R. S. Chapter 152, Section 20 (also Section 329 of Chapter 1, P. L. 1933) provides, so far as here pertinent, that the warden

> "shall keep a record of the conduct of each convict, and for every month, during which it thereby appears that such convict has faithfully observed all the rules and requirements of the prison, the warden may make, with the approval of the commissioner, a deduction of seven days from the maximum term of said convict's sentence."

Chapter 153, Section 3, P. L. 1933, amending Section 30 of Chapter 147, R. S., with relation to paroled prisoners, provides, so far as here pertinent,

> "The prisoner so paroled, while at large by virtue of such parole, shall be deemed to be still serving the sentence imposed upon him, and shall be entitled to good time the same as if confined in prison."

Section 34 of Chapter 147, R. S., prior to the amendment in 1948, read as follows:

> "A prisoner violating the provisions of his parole and for whose return a warrant has been issued by the warden or superintendent, shall, after the issuance of such warrant, be treated as an escaped prisoner owing service to the state, and shall be liable, when arrested, to serve out the unexpired portion of his maximum imprisonment, and *the time from the date of his declared delinquency to the date of his arrest shall not be counted as any part or portion of the time to be served.*" (Emphasis mine.)

Under this provision it seems clear to me that in computing the unexpired portion of the maximum imprisonment, the only time that was to be omitted or not "counted" was the time from the date of the declared delinquency to the date of his arrest. This, then, would omit the time from the date of the violation of the parole, which would be the date of the "declared delinquency," to the date of his arrest and return to prison. All other time is to be counted. This would include the credit for deductions during the time that he was actually confined and the credit while he was on parole.

It is quite plain from these observations that the forfeiture of the good time earned and credited prior to parole and the good time allowed while on parole would increase the "unexpired portion" of the maximum imprisonment.

In speaking of the right to credits, it is said in 41 Am. Jur. at page 916, Sec. 44:

> "The tendency of the courts seems to be, if possible, to construe such statutes as entitling the prisoner to the benefits of the statute as a matter of right and not as a favor."

See also annotation in 127 A. L. R. 1200. Then again it is there stated,

> "Other courts hold that while good conduct statutes to not confer any legal right on the prisoner, they confer on him a privilege of which he may avail himself, and of which he cannot be deprived except as provided by the statute."

See also *State ex rel. Davis* v. *Hunter*, 124 Iowa, 569. In the same volume of *American Jurisprudence*, at page 919, Sec. 45, it is said,

"Where the right to, or privilege of obtaining, good conduct allowances has fully accrued, it is not subject to withdrawal, modification or denial except as clearly authorized by statute."

It therefore appears from the statutes in existence at the time, that they did not authorize the forfeiture of good conduct allowances that had fully accrued to the prisoner. Consequently, any law which would retrospectively withdraw, modify or deny credits already accrued for good conduct would be violative of the constitutional provision prohibiting *ex post facto* legislation. *Murphy* v. *Commonwealth*, *supra*. See also *Re McKenna*, 79 Vt. 34.

After due consideration of the problem here involved, I advise you: —1. That as to prisoners paroled prior to July 9, 1943, Chapter 201, P. L. 1943, is inapplicable and that they do not forfeit the credit allowed for good behavior during the period prior to the parole and while on parole.

2. That as to prisoners paroled after July 9, 1943, such time as accrued and was credited up to that date would not be subject to forfeiture.

ABRAHAM BREITBARD
Deputy Attorney-General

March 1, 1944

Philip D. Stubbs, Esq., Commissioner, Inheritance Tax Division

Re: Government Bonds payable to two or more beneficiaries

P. L., Maine, 1933, Chapter 148, Section 2, as amended, reads as follows:

"The following property shall be subject to an inheritance tax for the use of the state: (a) All property within the jurisdiction of this state and interest therein belonging to inhabitants of this state . . . which shall pass . . . 3. By survivorship in any form of joint ownership including joint bank deposits in which the decedent joint owner contributed during his lifetime any part of the property held in such joint ownership or of the purchase price thereof."

Government bonds payable to two or more persons constitute a joint ownership and the amount which a decedent has contributed in the purchase of said bonds is a part of his estate and is subject to the State Inheritance and Estate Laws.

FRANK I. COWAN
Attorney-General

March 2, 1944

J. Elliott Hale, Acting Director, Division of Sanitary Engineering

I have your memo of March 1st asking whether hot-water storage tanks come within the definition of fixtures which appears in Section 175 of Chapter 1, Laws of 1933, so that a city or town can require inspection and the issuing of a permit before such a tank can be installed. The purpose is to prevent the installation of tanks not equipped with the proper safety valves.

The wording of the statute is:—

"Fixtures for the purposes of this chapter shall be defined as: Receptacles intended to receive and discharge water, liquid, or water-carried waste into a drainage system with which they are connected."

A review of the history of the legislation shows that this definition was placed in the section in order to protect the rural householder who might need to put a new washer in a valve or do some simple piece of repair work which would not justify the expense and trouble of calling a plumber. Apparently the language used was a little more restrictive in appearance than was intended.

In every section of the long chapter containing the codification of the health and welfare laws there is apparent intent to protect the public. The plumbing code which appears as Sections 171-179 has definitely in view the protection of the health and safety of the people of cities and towns where there is a system of water supply or sewerage. Certainly, in view of the history of destruction caused by improperly installed hot-water tanks, there can be no doubt that when the legislature used the expression, "receptacles intended to receive and discharge water," the apparent modification contained in the words "into a drainage system with which they are connected," was an oversight, pure and simple. No such restriction could have been intended.

It therefore becomes necessary for me to state that in my opinion a hot-water storage tank comes within the intent of the definition of fixtures as contained in said Section 175.

FRANK I. COWAN
Attorney-General

March 6, 1944

Oscar L. Whalen, Esq.
Eastport, Maine

By Chapter 269, P. L. 1943, Section 3, the law was amended as to State police officers and provides:

"As arresting officers, or aids, or witnesses in any criminal case, they shall be entitled to the same fee as any sheriff or deputy. Such fee shall be taxed on a bill of costs and shall accrue to the treasurer of the state."

By the same chapter, Section 6, the law was amended relating to fish and game wardens in the enforcement of the fish and game laws, and this also provides that

"All fees, penalties, officers' costs and all other moneys recovered by the court under any provision of this chapter shall accrue to the treasurer of the state and shall be paid into the treasury of the county where the offence is prosecuted."

With regard to the other inquiries I have got in touch with the various departments, that is, Inland Fisheries and Game and State Liquor Commission, and in each instance I was informed that where a warden or an inspector for the Liquor Commission is a witness in a case outside the scope of the act which he is enforcing, he is required by rule and regulation of that department to receive the witness fee

and turn it over to the department with which he is connected.

I think that by the amendment to which I have referred, the law has been sufficiently clarified so that there should be no misunderstanding as to the disposition of witness fees. In the cases where by rule or regulation the officer is required to turn the money over to his department, he understands the disposition to be made of these fees.

ABRAHAM BREITBARD
Deputy Attorney-General

March 15, 1944

Roscoe L. Mitchell, M. D., Director, Bureau of Health

I have your memorandum of March 8th asking for an interpretation of Section 187-B of the Public Laws of 1935, Chapter 83. The word "dormitory" which appears in said section can apply only to a building used primarily for sleeping quarters. The courts have permitted the word "dormitory," when used in a statute, to cover such a building, even though food may be prepared and eaten in one part of the building. The Missouri courts have extended the use of the word so that they have said that the fact that there are rooms used for athletic exercises does not bar the building in which these rooms appear as incidentals from being classed as dormitories.

Your question, "Would summer recreational camps operated by the Girl Scouts, Boy Scouts and similar organizations be included in the above exception and exempt from the license requirements, etc.?" said exemption being "dormitories of charitable, educational or philanthropic institutions," must, in the form in which the question is asked, be answered in the negative. A summer recreational camp may have dormitories and as a matter of fact the cabins or tents occupied by the patrons are such. When, however, as usually happens, there is a separate building for the preparation and serving of meals, that separate building comes within the provisions of the statute and must be licensed.

FRANK I. COWAN
Attorney-General

March 15, 1944

Hon. Sumner Sewall, Governor of Maine

I have the memo of March 9th asking in regard to the Judicial Council. This was set up by act of the Governor on May 20, 1932. Such a council had been recommended by the Association of Municipal Judges. Governor Gardiner reports that he consulted with the Chief Justice and others and as a result of the conference appointed eleven outstanding men of the State, headed by the Chief Justice. Under date of December 19, 1932, the Council made a report to the Governor suggesting that uniform jurisdiction among the municipal courts of the State be established and going further and recommending the establishment of a District Court system in the various counties. The recommendation further provided that the Chief Justice of the State should have general supervision of the work of the District Courts. Several other recommendations were made and several bills were submitted to

the 1933 legislature. One of those bills appears as Chapter 237, P. L. 1933, and made changes in the trial terms of the Superior Court in some of the counties. Another appears as Chapter 20, P. L. 1933, and authorized special sessions of the Superior Court for the transaction of civil or criminal business, or both, to be held in any county whenever the Chief Justice determines that the public necessity or convenience so requires.

The legislature of 1933 failed to pass a proposed act for setting up a permanent Judicial Council, but this was done by the legislature of 1935, as appears in Chapter 52 of the Public Laws of that year.

By Chapter 151, P. L. 1937, the act was amended by striking out the words "Chief Justice of the Supreme Judicial Court and one other justice thereof to be appointed from time to time by the governor," and inserting in place thereof, "attorney-general" and "one clerk of the judicial courts of this state." Otherwise the council is to be continued as originally set up with the Chief Justice as ex officio chairman.

I find in my file a memo from Attorney-General Burkett to Governor Barrows, dated November 15, 1939, in which he reviews the history of the Council and states that it has not functioned since the 1937 amendment.

Apparently there is a National Conference of Judicial Councils which holds annual meetings. I note in the file that in 1940 the National Conference was holding its annual meeting at the Mayflower in Washington on Wednesday, May 15.

The judicial reforms in this State which were put through fifteen years ago corrected many of the errors that were at that time in our system. The bills that were passed by the legislature of 1933 helped out a great deal more. Since that time there have been before the legislature at each session various bills for reforming or improving the court procedure. Several of these have been adopted.

While I believe that our court system is far from perfect, I seriously question the necessity of such a Council, to be added to the State's expense. The Association of Municipal Judges meets annually and discusses the problems with which they are confronted. The Supreme Court has several sessions a year, at which there is an opportunity to discuss questions that have become important. I have been informed that the Superior Court judges get together for a discussion of mutual problems. There exist, then, in these three groups of our judiciary, opportunities for consideration of problems in connection with the judicial system. If any matter becomes acute, the judges are in the best possible position for bringing that to the attention of the legislature.

You will note that everything that the Judicial Council accomplished was because of the activity of the judges themselves and that, those things being accomplished, the permanent Council lapsed into innocuous desuetude.

FRANK I. COWAN
Attorney-General

March 15, 1944

Governor Sewall Executive

Soldiers' Voting

As you are aware, Mr. Goss and I had considerable discussion as to whether or not the Civilian Defense Act (P. L. 1941, c. 305) is sufficiently broad to authorize the Governor to issue an Executive Order modifying the existing statutes to permit of registration of voters in cities having more than 3,000 population in the same way that they are registered in towns. The Act is extremely broad, and if modifying the registration laws is something indissolubly linked to the "welfare" of the people of the State of Maine, and if it will assist in "coöperation with the Federal government," then it is within the provisions of that statute.

The fact that the Legislature intended to give to the Governor authority to take care of emergencies that may arise so that a special session would not be necessary, does not necessarily mean that the Executive should so act in all cases. I have given this matter a great deal of thought and have reached the conclusion that the Legislature cannot delegate to the Executive authority to make any changes in the election machinery. The fact that Chapter 305 is purely a War measure cannot alter that opinion. The constitution has placed on the Legislature the exclusive duty of setting up a system of elections. The constitution provides further that no one of the three branches of government shall exercise any of the functions exclusively delegated to the other branches. Election statutes, in my opinion, fall into that exclusive class and only by act of the Legislature can they be changed.

FRANK I. COWAN
Attorney-General

March 27, 1944

Governor Sumner Sewall

Subject: Federal Ballot for Soldier Voting

I. The Federal Constitution, Article II, §1, Paragraph 2, provides for the election of the President and Vice President in the following language: "Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors." This language is clear and hardly reqnires interpretation. The legislature of the State of Maine can by a majority vote, provide the qualifications for persons who shall vote in the November election for the electors for President and Vice President of the United States. Moreover, since Congress has set the form of a ballot and has authorized the states to use this ballot for presidential electors, if they see fit, the legislature can by simple majority vote accept that ballot and authorize the election officials of the several precincts of the State to count them along with any other ballots that may be lawfully cast at said election.

II. The Constitution of the United States, Article I, §2, Paragraph 1, provides that in the election of representatives to Congress "the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature." The same

language appears in Article XVII of the Constitution of the United States in regard to the direct election of United States senators.

The Constitution of the State of Maine requires that the electors for the most numerous branch of the State legislature shall be (a) a citizen, (b) 21 years of age and upwards, (c) shall be able to read the constitution in English language and write his name, (d) shall not be a pauper, (e) shall not be under guardianship, (f) shall not be an Indian not taxed. Therefore, we cannot accept the proposition that the Congress, without an amendment to the Constitution of the United States, may set the requirements of electors for United States senators and members of Congress, and the legislature of the State of Maine cannot set aside the Constitution of the State by fixing any requirements other than those expressly set out in our fundamental law.

III. Any amendment to our election laws passed by the Legislature, must follow our State Constitution except as to the presidential election where by direct provision of the Federal Constitution full authority is placed in the State Legislature.

FRANK I. COWAN
Attorney-General

March 27, 1944

Harry V. Gilson, Commissioner of Education

We have considered the questions proposed in your memorandum of February 25, 1944, with relation to the enumeration in the school census of children having a right to attend the public schools.

1. Shall the Superintendent of Schools continue to enumerate minors in the armed services in the towns where their parents reside?

Answer. We think that he should. Under §32 of Chapter 19, it is provided that every child between the ages of 5 and 21 years shall have the right to attend the public schools of the town in which his parent or guardian has a legal residence. Under §§56 and 57, which concern the returns for the purposes of the census to the superintending school committee and the Commissioner of Education by the superintendent of schools, it is provided that the certified list "is to contain the names and ages of all persons in the town from 5 to 21 years," and the only ones who are to be omitted are ". . . all persons coming from other places to attend any college or academy, or to labor in any factory or in any manufacturing or other business."

2. A girl under 21 years of age marries a soldier whose residence is outside the town where the girl's home has been and where the soldier is now stationed. Is she to be counted in the school census in the town where she has always lived or should she be registered in the town of her husband's residence?

Answer. A female minor acquires the domicile of her husband. Thus she is to be counted in the school census in the town of her husband's domicile. We may add that "legal residence," as used in §32, is synonymous with "domicile." Domicile is that place where a person has his fixed habitation, without any present intention of removing therefrom. Two things must concur to constitute a domicile:—first,

residence; second, the intention of making the place of residence the home of the person. There must be the fact and the intention.

3. Defense workers are temporarily domiciled in the towns where they work, but maintain a permanent voting residence elsewhere. Should the children of these defense workers be enumerated in the town of their temporary residence or in the town where they maintain their voting residence?

Answer. The children of workers temporarily residing in towns are to be enumerated for the purpose of the census in the towns where their parents maintain their legal residence, which is the equivalent of the place where the parent maintains a permanent voting residence, as it is put in the question.

4. Should the children of military personnel be enumerated in the town where their parents are stationed, when these military personnel have permanent residence elsewhere?

Answer. The answer is in the negative for the reasons above assigned.

ABRAHAM BREITBARD
Deputy Attorney-General

March 29, 1944

Joseph H. McGillicuddy, Treasurer of State

Handling of checks

I have your memo of March 22nd in regard to the handling of checks. P. L. 1931. Chapter 216 (the administration of the State) in Section 15 provides for departmental collections. I refer you to the wording of that section. It provides substantially as follows:

1. Departments receiving funds "shall pay the same immediately into the State treasury."

2. The department or agency may, having been so instructed by the State Treasurer, deposit the funds directly in some State depository.

The fact that this section of the statute is apparently fundamentally unsound and is, as we know now, the result of a study made by persons who were not at the time sufficiently acquainted with governmental matters to make them proper advisors for a State, is beside the point. The legislature accepted the language and put it on the books.

A strict interpretation of the provisions of that section by this department would, I believe, be against the best interests of the State. I believe that the proper procedure is for us to regard this as an administrative question, and that a uniform procedure should be adopted by the department heads, such procedure to be submitted to this office for approval.

As I have told you heretofore, my personal feeling is that once a check has reached your office, whether it comes there through some other department or directly from a debtor, it is in your custody and you are responsible for it. In either case, the better procedure, it seems to me, is for you to notify the department head that you have received payment either from him or from the debtor, so that his records will be complete.

I question the propriety of asking a department head to list on his deposit slip as actually transmitted to you any funds except those which he has transmitted. Whether or not he should report back to you at all in regard to funds received directly by you and concerning which you have reported to him is an administrative matter. Here again I see no reason why he should, because it makes for extra and unnecessary clerical expense; but the bookkeeping system is handled by yourself and the gentlemen in the Finance Department and what safeguards you will put on your handling of accounts is for you to decide.

FRANK I. COWAN
Attorney-General

March 29, 1944

Francis K. Purinton, Executive Secretary

In answer to your inquiry received by this office on March 27th, 1944, relative to the status of Judge Alton Lessard, Judge of Probate of Androscoggin County, who has joined the naval forces of the United States and your question as to whether his enlistment or induction into the Navy vacated the office he holds:

Section 7 of Article VI of the Constitution relative to judges of probate who are elected by the people of their respective counties provides:

> "Vacancies occurring in said office (judges and registers of probate) by death, resignation or otherwise, shall be filled by election in manner aforesaid, at the September election next after their occurrence; and in the meantime, the Governor, with the advice and consent of the Council, may fill said vacancies by appointment, and the persons so appointed shall hold their offices until the first day of January thereafter."

The courts have recently had occasion to pass upon this question and wherever the statute or the Constitution of the State used words similar to that provision in our Constitution, it was held that enlistment or induction into the armed forces does not result in a vacation of the office, since the words "or otherwise" following the word "vacancies" import finality or permanency, the usually accepted meaning of "vacate" being to yield up possession and not merely to leave temporarily. The courts have further held that the words "or otherwise" do not include such acts as voluntary or involuntary service by a public officer in the military forces in time of war.

It would thus appear that there is no vacancy in the office of judge of probate merely by the induction of the judge into the naval forces.

If it be thought that his entry into the naval forces would constitute an abandonment of the office, so as to create a vacancy, I find that our own court has said that

> "To establish such abandonment . . . the proof must show a voluntary and intentional relinquishment of the office by the incumbent, for there can be no abandonment of an office or any other right without an intention, actual or imputed, to abandon it. Such intention is a question of fact, and may be inferred from the party's

acts. If his conduct is such as to clearly indicate that he had relinquished the office, an intention to do so may be imputed to him."

State of Maine vs. *Harmon*, 115 Maine 262 at 272.

That Judge Lessard intended such a result is refuted by the fact that it is stated that he has no intention of submitting his resignation, and further, that it is his contention that he is not vacating the office. His intention would be of no moment, if the duties that devolved upon him could not be performed by any one else and thus the public interest would be jeopardized if the court was left without a judge.

Our statutes, however, on that subject are very broad. They provide that

"During the sickness, absence from the state, or inability of any judge of probate to hold the regular terms of his court, such terms, at his request or that of the register of the county, may be held by the judge of any other county; the judges may interchange service or perform each other's duties when they find it necessary or convenient. . . . "

Chapter 75, Section 8

It would thus appear that during his absence the work of the court may be carried on, perhaps with some little inconvenience to those having business before the court, but our courts have recognized that during a war some inconvenience must be submitted to because of the draft that is made upon those holding public office.

In view of these considerations it is my opinion that the judge of this court has not abandoned his office within the meaning of the law; nor is there a vacancy in that office by reason of his joining the naval forces.

ABRAHAM BREITBARD
Deputy Attorney-General

April 3, 1944

Harrison C. Greenleaf, Commissioner of Institutional Service

P. L. 1943, c. 201, §2.

You have requested an interpretation of Section 2 of Chapter 201, P. L. 1943, which reads as follows:

"*Warden shall keep a record of each convict's conduct, and recommend a deduction of sentence.* He shall keep a record of the conduct of each convict, and for every month, during which it thereby appears that such convict has faithfully observed all the rules and requirements of the prison, the warden may make, with the approval of the commissioner, a deduction of 7 days from the minimum term of said convict's sentence, except those sentenced to imprisonment for life. The provisions of this section shall apply to the sentences of all convicts now or hereafter confined within the prison. The provisions of this section shall not be construed to prevent the allowance of good time from maximum sentences or definite sentences other than life sentences."

Particularly do you want to be advised whether the credit for good behavior is to be made monthly, in which case the prisoner, for such

months as he "faithfully observed all the rules and requirements of the prison," would be entitled to a deduction of 7 days, subject only to the approval of the commissioner; and whether a deduction, once made and approved by the commissioner, would be lost if the prisoner thereafter violated any of the rules or regulations of the prison, so as not to entitle him to a deduction for that month.

I think that under this act the first determination for the warden to make is whether the prisoner observed the rules and requirements of the prison; if he finds this fact to be in the affirmative, the deduction follows as a matter of course and is then subject only to the approval of the commissioner to become effective.

I am also of the opinion that the intent of the legislature was, that the warden shall enter upon his records at the end of each month or soon thereafter what the conduct of the prisoner has been during the preceding month, and if the record shows no violation of the "rules and requirements," he should then note a deduction of 7 days for that month, and, when approved by the commissioner, such deduction would become effective and the sentence reduced by that allowance.

As to the time when the commissioner shall approve, I believe that that should be left to him as an administrative function; but in my judgment it should be done at least once every three months, although the commissioner, if he sees fit, may do it monthly, immediately after the warden records the conduct of the prisoner and his right to the deduction. Whichever the commissioner chooses, the limit of time that I have suggested will enable him to review the record at or near the point of time when the entry is made, so as better to enable him to decide whether to approve or not approve.

I am also of the opinion that a deduction for good behavior approved by the commissioner cannot be later altered so as to deprive the convict of it because of a subsequent breach of prison discipline in observing the rules and regulations. For such breach, unless, of course, the act amounted to a separate and distinct crime for which he should be indicted and punished, the prisoner would receive no credit for that particular month or months.

I believe that the conclusions here reached find support in the earlier enactments on the subject, from which the statute now under consideration stems. I shall briefly refer to them.

Prior to 1933, when Chapter 152 of the Revised Statutes of 1930 was incorporated into the Health and Welfare Laws, Section 20 of the chapter provided that the record shall be kept in the same manner as in the present section, except that it was therein stated, "The warden may recommend to the executive, a deduction of 7 days * * * " This was followed by Section 21, which was as follows:

> "The record, with the recommendation of deduction provided in the preceding section, shall be submitted by the warden to the governor and council once in three months."

When the change was made in 1933, that part of the section where the warden was to make the recommendation to the executive was changed and instead thereof it was provided that "The warden may

make with the approval of the commissioner" a deduction of 7 days, etc. Since by that legislation in 1933 this chapter and others were all put under the administration of the Department of Health and Welfare, Section 21 requiring the record to be submitted to the governor and council once in three months was repealed. No other similar provision was made with relation to the approval of the commissioner; but I am of the opinion that none was necessary, because it was expected of the commissioner in the performance of his duties to review the record and approve it at a time seasonable to its proper consideration and when the matters pertaining to it are fresh in the minds of the persons concerned. Hence, I believe that the provisions which I have quoted and which require the warden to submit to the governor and council his recommendation once in three months is a good guide for the commissioner to follow in the performance of his duties required under this provision, unless he believes that more frequent times would better suit his administration of the act.

These provisions also tend to confirm the observations that I have made with regard to the monthly deductions and the recording thereof. It seems quite clear to me that when the warden submitted his recommendation to the governor and council, it required some action on their part, either in adopting the recommendation of the warden and allowing the deduction, or in disapproving it, so that the warden could then readily record the fact and reduce accordingly the time that the prisoner was to serve. Otherwise he would be unable to determine when the prisoner was entitled to his release; for if there was no such action by the governor and council, he could not know whether the deduction was approved and thus these provisions would be entirely frustrated and the prisoner might not receive the promised reward for good behavior. This I do not believe the legislature intended.

The Supreme Judicial Court of Massachusetts in an advisory opinion of their statute of 1857, Chapter 284, from which our first statute on the subject in 1858 was copied in the major part, said regarding the deductions there provided, ". . . They afford an assurance of the highest character that, upon condition of good behavior, the convict shall have the promised benefit of an earlier release." And in speaking of the monthly record with relation to which our statute was identical with that of Massachusetts, they said:

> "The first provision relates to the monthly record, which the warden of the state prison is required to make, of the conduct of each convict. The object is to determine whether the convict has observed all the rules and requirements of the prison, and has not been subjected to punishment. We do not suppose that these are two distinct subjects of inquiry and record—faithful observance of the rules, and exemption from punishment—but only two modes of stating the inquiry; so that, if in looking over the daily journal on which delinquencies and punishments are noted, there is no punishment against a convict during the month, the conclusion will be that he has faithfully observed the rules, so that he will be entitled

> to a favorable record. Such a record the law contemplates to be made at or soon after the end of each month."
>
> 15 Gray's Reports (Mass.) 618.

As I have already indicated, our first enactment on the subject was Laws of 1858, Chapter 16. According to this act, the warden was required to keep the monthly record and make his recommendation to the executive. But instead of the 7-day per month allowance on all sentences, there was a scale of deductions monthly, depending upon the length of the sentence, and the longer the sentence, the more days per month the prisoner was allowed. This first enactment was changed from time to time, first by Chapter 235, Laws of 1864, and then by Chapter 20, Laws of 1866. In each of these the scale of deductions was changed by increasing the number of days monthly, depending on the term of the sentence. No material change was made in the Revisions of 1871 and 1883. In 1889, however, by Chapter 184 the statute was amended. This time the scale was eliminated, and a deduction of 7 days was to be made in all cases except imprisonment for life. The first sentence of this section reads substantially as it did until the change in 1933, before noted. The second sentence of this section contained this proviso,

> "Provided, however, that this act shall not be construed as lessening the deduction, to which any convict under sentence when it takes effect, would otherwise be entitled."

This referred to the scale contained in the previous enactment, wherein 8 days to 10 days per month were allowed on long-term sentences.

This would clearly tend to indicate that the legislature had in mind that the deduction was a matter of right and not one of grace, and something to which the prisoner was entitled, if he earned it by good behavior. It also had in mind, no doubt, that any law which would affect the term of those then serving by increasing the sentence (which would be the effect of it, if they reduced the number of days per month as a deduction) might contravene the Constitution and be invalidated as an *ex post facto* law.

ABRAHAM BREITBARD
Deputy Attorney-General

April 6, 1944

Mrs. Katherine T. Bennett
Norway, Maine

Dear Madam:—

I have your letter of April 5th in regard to Mr. Whitman, chairman of the school board of Norway. You say, "He has moved to California." The statute reads:

> "In case any member of the superintending school committee *shall remove from the town* or be absent for more than 90 days a vacancy shall be declared to exist and the remaining members shall within 30 days thereafter choose another member as hereinbefore provided. Whenever the remaining members fail to appoint

a person to fill a vacancy the same may be filled by election at a town meeting called for the purpose."

See Public Laws of 1933, amending R. S., c. 19, §35.

On your statement of fact, the remaining members of your board should meet, elect a chairman of your meeting, adopt a resolution declaring that there is a vacancy in the board, and either at the same or at some subsequent meeting, to be within 30 days after Mr. Whitman's removing from the town, you should elect another member to fill the vacancy.

Very truly yours,

FRANK I. COWAN
Attorney-General

April 10, 1944

William D. Hayes, State Auditor

Subject: Bonds of Sheriffs and their Chief Deputies

In answer to your memorandum of March 31, 1944, relating to the subject of bonds of sheriffs and chief deputy sheriffs.

I have read the sections of the statutes to which you directed our attention and the form of bond which you submitted therewith and which you say is typical of the various individual bonds filed with the Treasurer of State. I have read these provisions and others which I believe are pertinent to the inquiry, and have reached the conclusion that no changes in the statutes are necessary or advisable. Section 1 of Chapter 94, in so far as the condition of the bond is concerned, provides that the bond shall be "conditioned for the faithful performance of the duties of his office, and to answer for all neglect and misdoings of his deputies." I have found this same provision in the Revision of our Statutes for 1841. Consequently it would appear that this statute has been in effect in its present form for upwards of a hundred years. The language employed is comprehensive and includes every form of malfeasance, misfeasance or nonfeasance by the sheriff or any of his deputies.

This section should be read also with §18 of said chapter, which provides for a remedy on the bond by "any person, injured by the neglect or misdoings of a sheriff," providing that person has brought the preliminary suit to ascertain the damages.

The form of bond submitted by you has been used, I find, for upwards of fifty years. Perhaps, if records were available, we should find that this form was used when the statute on the subject first went into effect. In the many decisions which I have examined, going back a hundred years, no suggestion has been found in any of the cases brought against the sheriff or his deputies of an attack on the form of the bond. In most of these cases the question has arisen whether the deputy was performing some act which he was required to perform in his official capacity, or whether it was for neglect of some undertaking with the party or his attorney and were not official acts which the statutes required him to perform.

Thus in *Harrington* vs. *Fuller*, 18 Maine 279, decided in 1841, our Court has said,

> "The sheriff is responsible for all official neglect or misconduct of his deputy; and also for his acts not required by law, where the deputy assumes to act under color of his office. He is not responsible for the neglect of any act of duty which the law does not require the deputy officially to perform."

This broad statement of the liability of the sheriff is certainly embraced in the language of the statute, §1, before quoted, "to answer for all neglect and misdoings of his deputies." The sheriff likewise is bound to "the faithful performance of the duties of his office," and under §18 to answer for his own neglect or misdoings.

In view of what I have said, I don't see how the liability already expressed in the language employed could be enlarged, and any attempt to enumerate the liability would, in my judgment, tend to limit it. Throughout the statutes are to be found official acts which sheriffs and their deputies are required to perform, the "neglect or misdoings" of which would render them liable to the party aggrieved. Sheriffs and their deputies are not only required to serve processes which are the initial stages of bringing a party into court, but when judgment is recovered and execution issues, the writ directs them to satisfy the execution out of the personal or real property of the debtor, and in some instances where such property cannot be found, or the debtor does not direct them to such property, they may arrest the debtor and commit him to jail. In the seizure of personal and real estate, there are certain preliminary proceedings provided by statute which require the posting of notices, the time in which this must be done, the recording of levies in the case of cumbersome personal property in the town clerk's office and in the case of real estate in the registry of deeds, the conduct of the sale, for example in the sale of real estate that each parcel, where there are more than one, be sold separately for a separate price. Any one of these, if done imperfectly, would invalidate the sale and would render the sheriff liable for his neglect.

I have here mentioned just a small part of the duties of the sheriff to illustrate that it would not be feasible to attempt to enumerate every conceivable situation which would create liability and to provide for it by statute. It would certainly be inadvisable, since we already have ample provision to take care of any wrongful act or neglect of the sheriff and his deputies, where they are to act officially in the performance of a duty required by statute.

I return the bond which you submitted.

ABRAHAM BREITBARD
Deputy Attorney-General

April 11, 1944

State Highway Commission

The question presented to this department is whether the Highway Commission may approve a payment out of the general highway fund for repairs necessitated by sudden injury to a county road and bridge

in the town of Baring, a deorganized town. This injury was caused by a washout in the spring of 1943. Repairs were made at a considerable cost, the major part of which was incurred in the period from August to October of that year. The county commissioners of Washington County have made an assessment in accordance with R. S. 1930, Chapter 13, §56, as amended by Chapter 51, P. L. 1939 and Chapter 305, P. L. 1943. The latter amendment is the pertinent provision to a determination of the question here involved. It is as follows:

> "Provided, however, that in deorganized towns, an assessment may be made of over 2% of the valuation thereof, in which case, the amount over the 2% shall be paid by the state out of the general highway fund on approval of the state highway commission."

Prior to the addition of this provision, as the section then stood, an assessment not exceeding 2% of the valuation on property owners in unincorporated townships and tracts of land in their counties was to be made by the county commissioners, and an assessment on the county for the balance of the amount, if the 2% was not sufficient "for repairs, cutting bushes, maintenance, snow removal and improvements, so as to comply with the provisions of the state highway laws."

By the amendment, however, special provision was made for deorganized towns and here the excess of the cost involved over 2% of the valuation was directed to be paid by the State out of the general highway fund, on approval by the State Highway Commission.

Section 59 of Chapter 13, R. S. 1930, provides for the repairs to be made in case of sudden injury, and the whole expense thereof shall be added to the next assessment to be made by the county commissioners.

We are informed that sometime in March of 1944 an assessment was made by the county commissioners of $1,744.39. The assessed valuation of Baring for 1944 and previous years was $55,165. 2% of this would amount to $1,103.30. The difference is $641.09.

We advise you that under Chapter 305, Laws of 1943, this sum is properly payable by the State out of the general highway fund and may be approved by the Highway Commission.

ABRAHAM BREITBARD
Deputy Attorney-General

April 18, 1944

Mr. A. Edwin Smith, City Clerk
51 Read Street
Portland 3, Maine

Dear Mr. Smith:

I am undertaking to answer your letter of the 17th inst. addressed to the Attorney-General as, with the Special Session of the Legislature here, his time is largely consumed in the matters which this body is considering.

I am likewise involved with this Session, hence I have not had the opportunity to examine the act by which the land comprising Fort

Williams was ceded by the State of Maine to the United States. I shall assume, however, and properly so, that that grant follows the pattern of others which are referred to in a reported decision of this State but involving another question. There would be grave doubt about the validity of the marriage. The authority granted to the chaplain to perform marriage ceremonies under the license issued to him is limited to marriages performed within the boundaries of the State. He thus cannot perform a marriage outside the State of Maine under that authority. Lands ceded by the State of Maine to the government for the erection of Forts, it has been held, are within the exclusive jurisdiction of the government of the United States. I have some doubt whether the act of solemnizing a marriage on a government reservation is within the State of Maine.

I would therefore advise that the marriage should be performed by the chaplain outside of the reservation.

Very truly yours,

ABRAHAM BREITBARD
Deputy Attorney-General

April 20, 1944

Harry V. Gilson, Commissioner — Education

School Board Members who contract to convey pupils in the same town or union

I have your memo of April 18th, in regard to school board members who contract to convey pupils in the same town or union.

I have examined the opinion issued by Attorney-General Burkett dated April 26, 1939, and he, I believe, has apparently given a correct statement of the law applicable to the case. However, it is not the responsibility of the Commissioner of Education to police the situation. We have certain acts which we call malum prohibitum. Proper conduct in times of emergency sometimes makes it necessary to apply the law in such cases in varying degrees. A thing we could not approve in general practice might be a necessity in time of emergency, and the statutes which the legislature has provided for our guidance and assistance must oftentimes be used in different fashions. They are, after all, the tools provided for the use of administrative officers and these officers must exercise their best judgment in using the tools. If their judgment proves poor we try to find administrative officers who have better judgment.

So it is with school board members. The exigency in which they find themselves may make it necessary that in order to perform the functions of their office they at times do, or permit, certain things which ordinarily could not be considered proper.

FRANK I. COWAN
Attorney-General

April 22, 1944

Harry V. Gilson, Commissioner — Education

Extent of authority of Commissioner of Education over private and parochial school

I have been giving thought to your memo of April 18th in regard to

extent of authority of the Commissioner of Education over private and parochial schools. This is a matter that may or may not present a problem that cannot be handled without conflict of minds. We have a large and highly respectable fraction of our population who believe that the public schools are not proper places in which to bring up their children. A very eminent member of our Supreme Court some years ago told me that one or two of his children had been sent to the parochial schools because he was convinced that it was better for their morals.

We live under a semi-democratic form of government where the will of the people is presumed to be the ruling force. However, that does not mean that the will of the majority shall be absolute on the minority, but that due consideration shall be given to the rights and also to the scruples of the minorities.

The parochial schools are essentially adjuncts of religious bodies. To the extent that those religious bodies feel that they can safely coöperate with the secular bodies there should be no difficulty in making adjustments. I believe that a large part of the reluctance of those operating parochial schools to permit more close supervision by public officials is because of their fear that these parochial schools may be subordinated in course of time to the law of the majority as expressed through the public officials.

History has shown that as people we are still so lacking in real intelligence that we are intolerant of the ideas of other people, and the religious antagonisms that flare into open conflict from time to time are ample demonstrations of that fact.

My thought is that a conference between the Commissioner of Education and the Roman Catholic Bishop of Portland with a frank interchange of views might very well result in a decision by the Bishop to avail himself of the assistance of your department to a larger extent. We may have the statutory authority to make investigations of these schools and to demand that the courses of study shall conform to the statutory requirements and that the teachers shall at all times be qualified as provided in our laws, but we are dealing with a very large group of our population and with numerous schools, and any compliance along those lines must be a willing compliance in order to be effective. As a matter of fact, I believe that without the active and zealous assistance of the Bishop no real accomplishment along that line is possible.

If you can convince him that his schools are failing in some respects, and if you can further reassure him so that he will be willing to accept your help in bringing them up to standard, and if you can further overcome the argument which he may raise that if his schools are slightly sub-standard in some respects, our public schools are sub-standard in other respects which he considers of more importance, you will have gone a long way toward accomplishing your objective. I think you will never be able to convince him that our public schools are as good as his in the matter of moral instruction, and that moral instruction, I am informed, is a very important consideration in his mind and in the minds of his associates. He will not surrender that

point under any circumstances and no amount of pressure will ever succeed in making him lower that standard and certainly we have no wish to quarrel with him about that. You have a problem and it is a ticklish one, but as I said before, I see no reason for considering it insurmountable.

FRANK I. COWAN
Attorney-General

April 27, 1944

Earle R. Hayes, Secretary, Employees' Retirement System

I have your memo of April 18th in regard to employees of the legislature. The Secretary of the Senate and Clerk of the House of Representatives are, it is true, provided for in the Constitution; but there is no constitutional limitation on their terms of office. Being elected, they continue in office during the life of the legislature which has elected them, unless in the meantime the legislature sees fit to elect somebody else, or unless there is a vacancy created by removal or resignation. These offices differ from the positions of certain town officials who, the courts have stated, cannot resign without permission from the town that has elected them, due to the fact that people are just as much subject for draft to perform civilian service as to perform military service.

The most recent statutory enactments in regard to the Secretary of the Senate appear in P. L. 1931, Chapter 256. This amends the Revised Statutes and changes the period for which the Secretary shall receive a salary. As you will note, the language of the amended R. S. Chapter 125, Section 11 (the last sentence of the first paragraph thereof) is as follows:

> "He shall receive a salary of $2,000 in full for all official services by him performed during the regular session of the legislature."

Said section, as amended, contains the following sentence at its end:

> "The above salaries shall be in full for all official services performed during the regular session of the legislature and no other compensation shall be allowed them, except in case of adjourned or special session of the legislature."

This seems to change the status of the Secretary of the Senate, because before the amendment said Section 11 contemplated the possibility of his having to perform services for an indefinite period throughout the term of his service. It is my opinion that in view of the language of the revision, the time credited for the Secretary of the Senate should be based on four things: (1) the entire month of December prior to the convening of the legislature in regular session; (2) the length of time that the legislature is in regular session; (3) the length of time that the legislature is in special session, and (4) any additional time that the Secretary has actually put in, in preparing for special sessions or in clearing up the work of the office after the adjournment of any session.

In regard to the Clerk of the House, we find statutory provisions in R. S. Chapter 125, Section 12, as amended by P. L. 1931, Chapter 254. Here, again, we find a change in the language which seems to be a

change of the attitude of the legislature toward the office of clerk, and instead of salary provisions that contemplate the possibility of extensive service beyond the regular session we find that the legislature is apparently treating him on a more temporary basis, while at the same time substantially increasing his rate of pay. I believe that in this case also the proper procedure for crediting time is to give him credit for: (1) full time for the period during which the legislature is in regular session; (2) full time for the period during which the legislature is in special or adjourned session; and, (3) such further time as he may show he is entitled to by reason of his services being required to prepare for a general or special session, or to clean up the work after a general or special session.

Inasmuch as all other employees of the legislature are, strictly speaking, on a purely temporary basis, it seems to me that they should be given credit for the time that they actually function, rather than for the full period over which they might be called upon to function.

The clerks and employees of the legislative committees are certainly on a temporary basis and in my opinion should be given credit only for time actually served; that is, (1) full time for any general or special or adjourned session of the legislature at which they are present; (2) full-time credit for any time that they can establish as having been spent by them in service for a committee when the legislature was not in session. For instance, there may be employees of a recess committee of the legislature who function as full-time or part-time employees of the State. They should be given credit for time put in in connection with the job, whether they are technically carried as full-time or part-time employees.

FRANK I. COWAN
Attorney-General

May 1, 1944

William D. Hayes, State Auditor

A sheriff in the enforcement of the laws of the State has, from early times, been considered as a part of the executive branch of the government and probably for that reason it was provided by statute that the bond which qualifies him for the office should run to the Treasurer of the State (R. S., c. 94, §1.) The security afforded by this bond was not wholly for the benefit of the State, however; you will observe by the provisions of §§18-22 inclusive of that chapter that any person who is injured by the neglect or misdoings of a sheriff and who has first ascertained the amount of his damages by judgment in a suit is allowed at his own expense, in the name of the Treasurer, to institute a suit on this official bond and to prosecute it to final judgment and execution. The person who brings such suit is to endorse on the writ his name and place of residence, or that of his attorney, and a judgment is rendered in favor of the Treasurer, the execution being for the benefit of the party who brought the action. By §19, any other person having a right of action on the bond may join in that suit and file an additional declaration, setting forth his cause of action. From this brief resume you will notice that this bond is for the benefit of all persons who may

be injured or suffer damage by reason of the neglect of the sheriff or for the neglect or misdoings of his deputies.

From your memorandum it would appear that the impression you had was that the bond, being written to the Treasurer, protected only the State, and a sheriff handles very little State money, his services being largely employed by private citizens in the county for which he was elected. But the liability under the bond is much broader than that and includes every one who suffers damage through the neglect of the officer.

ABRAHAM BREITBARD
Deputy Attorney-General

May 2, 1944

Harold E. Crawford, Municipal Auditor

In your memorandum of April 29th you inquire, if a judge of a lower court having sentenced a respondent after conviction for drunken driving to pay a fine and costs, which the respondent paid and was then discharged and permitted to go free, but later, and within five days, claimed an appeal, which apparently the judge allowed, is the judge authorized to refund the fine to the respondent or should he turn it over to the county treasurer, as provided by Chapter 269, Laws of 1943?

It is our opinion that the magistrate should pay this money over to the county treasurer and that he has no right to refund it to the respondent. Where a magistrate convicts a person of crime and the respondent pays the fine and costs and is discharged by the magistrate, the function of the magistrate is ended, and his jurisdiction or control over the case and person is surrendered. The magistrate would thus have no jurisdiction to entertain an appeal, even though it is claimed within the statutory period of five days after sentence, because the respondent has abided by the sentence of the court and has been discharged on performance of the sentence. (See *Tuttle* v. *Lang*, 101 Maine 127.)

Your next inquiry relates to convicts who have been unable to pay a fine imposed in addition to a prison sentence and who have served the prison sentence imposed and then an additional thirty days and have applied to the sheriff to be liberated because of their inability to pay the fine and costs, and who have given a note for such fine in accordance with Chapter 147, Sections 48-50, of the Revised Statutes. Your question is, "Would you consider these notes to be legally collectible and due the county?" There can be no doubt that the note is a valid obligation and should be collected. You will notice that Section 49 provides that,

> "Such note continues a lien on all of the maker's real estate until it is fully paid; and if judgment is rendered on it in favor of the treasurer, the same proceedings may be had on the execution as in other cases of contract."

This strongly tends to imply that it is the duty of the treasurer to proceed with the enforcement of the liability on the note, and, if the maker owns real estate, to enforce the lien created on the real estate.

ABRAHAM BREITBARD
Deputy Attorney-General

May 4, 1944

George H. Hunt, City Solicitor
Augusta, Maine

Dear Mr. Hunt,

I have considered your letter of April 24th, addressed to the Attorney-General, regarding the question of the enforcement by towns of taxes, both real and personal, assessed against a person in the armed services, particularly with relation to the provisions of the Federal Act.

In accordance with the suggestion in your letter I have talked with Francis W. Sullivan and he directed me to the January, 1944, issue of the *New England Townsman*, which I understand is distributed among the member towns of the Association. This contains an outline of the procedure which may be used by collectors in the collection and enforcement of taxes levied against persons in the service. I have obtained a copy of this issue and I believe that Mr. Sullivan has properly and clearly interpreted the provisions of the act and the procedure to be followed.

I would want to add that sub-division 3 of §560 provides for a right of redemption or the right to commence an action to redeem by the service man "at any time not later than six months after the termination of such service, but in no case later than six months after the date when (the) act ceases to be in force." I interpret this provision to mean that, even though the court grants leave to pursue the remedies under our statute, the service man would nevertheless have the period prescribed by this act in which to redeem the property, so that the application by the collector to the court for leave to pursue the remedies provided by statute can in no wise prejudice the rights of the service man, as he is protected, so far as redemption is concerned, by the provisions of the act. Not only is the time extended, but by the fourth sub-section, he incurs no penalties, as the ultimate amount to be paid is the assessment plus interest at the rate of 6% per annum. On the other hand, the town would be protected in its lien when the necessity of the case demanded that the collector take such action.

Very truly yours,

ABRAHAM BREITBARD
Deputy Attorney-General

May 5, 1944

Earle R. Hayes, Secretary, Employees' Retirement System

In the case of an employee who for any reason terminates his employment with the State and who is subsequently re-employed under such circumstances that the re-employment is a *new* employment, the provision of the Jointly Contributory Retirement Act is mandatory and such person must become a member.

FRANK I. COWAN
Attorney-General

May 5, 1944

Earle R. Hayes, Secretary, Employees' Retirement System

I interpret the language of the amendment which appears in P. L. 1943, Chapter 50, §1, and which reads as follows:

"Provided further, that any person formerly employed by the state at any time during the period of 3 years prior to July 1, 1942, and who is re-employed by the state at any time prior to July 1, 1945, shall, upon becoming a member, be allowed prior service credit,"

to mean that if a person was in the employ of the State at any time during the period of three years prior to July 1, 1942, and if he, during that period or during the period up to June 30, 1945, shall have severed his connection with the State, and if, prior to July 1, 1945, he shall have been re-employed by the State, and if he shall then, upon such re-employment, become a member of the Retirement System, he shall be allowed prior service credit.

FRANK I. COWAN
Attorney-General

May 5, 1944

Earle R. Hayes, Secretary, Employees' Retirement System

I am taking this opportunity to reply to a query by W. Mayo Payson, corporation counsel for the City of Portland, which query bears date April 17, 1944, and asks whether or not a 15% temporary emergency increase in salaries needs to be considered in reckoning the amount of contributions and the amount of payment to a retired employee under the Jointly Contributory Retirement System. I find nothing in the law to prevent the Board's accepting a base wage or salary schedule submitted by a local district and ignoring a temporary increase, providing the local district carries a double column of figures, so that the burden shall not be on the Board to determine the amount of the base pay. However, if a local district adopts such a double column system, it must keep the Board fully informed at all times in regard to the actual amount being paid to the employees, both on the base system and the additional compensation, so that the Board can from its own figures determine, when the time for retirement arrives, that the correct basis for retirement compensation is used.

FRANK I. COWAN
Attorney-General

May 10, 1944

Thomas P. Brown, Chairman
Board of Selectmen
Perry, Maine

Dear Sir:—

Your letter of May 4th in regard to the number of voters necessary to be present at a town meeting and to take part in voting in order to vote appropriations legally and to authorize the selectmen to borrow funds, has just come to my attention.

If your meeting is properly called and the voters are warned, it is their right and duty to be present. Any who do not see fit to attend

thereby tacitly authorize those who do attend to do the voting for the town. I doubt if one voter would have the right to hold a meeting all by himself; but if a sufficient number congregate to elect the necessary officers for holding a meeting (provided the regular town officers are not present) I see no reason why the meeting should not be a legal one.

The only mention of a minimum number of voters in connection with a town meeting that I have noticed is R. S. Chapter 5, Section 4, as amended by the Public Laws of 1933, Chapter 198. This provides that not less than 10% of the voters registered in the biennial State election then last past, or in any case, *not less than ten registered voters*, may apply to a justice of the peace and have a special meeting called. It is possible that our courts might interpret that as setting a minimum number of voters for a town meeting. That, however, is a question for the courts, and any expression of opinion on my part would be without legal value.

You understand, of course, that the Attorney-General is not, under the law, attorney for the town of Perry and that the above reply is simply as a matter of courtesy. Under the law the Attorney-General can act as adviser to the Governor and Council, the two branches of the legislature, and heads of State departments.

Very truly yours,

FRANK I. COWAN
Attorney-General

May 11, 1944

Harry V. Gilson, Commissioner of Education

I have your memo of April 18th in regard to school board members who contract to teach in the same town or union.

It seems to me that a proper procedure is as follows:

1) Assume that the office of member of the school board and the office of teacher under that board are so incompatible that the acceptance of the position as teacher automatically vacates the position of member of the school board.
2) Advise the remaining members of a school board to fill the vacancy.
3) In case the teacher-member insists that he is still a member of the school board and the other members hesitate to elect someone to fill the vacancy, due to their fear of creating confusion and uncertainty, you have authority to instruct the local superintendent that State funds will be withheld while that teacher is occupying the dual position.

The statutes seem to be explicit on the subject of committee members being employed as teachers. There seems to be no discretion left in the Department of Education on this particular subject.

FRANK I. COWAN
Attorney-General

June 6, 1944

Guy R. Whitten, Deputy Commissioner of Insurance

Subject: Admission of Ohio Casualty Insurance Company

With reference to your memo relating to the application of the Ohio

Casualty Insurance Company of Hamilton, Ohio, to be admitted to write casualty insurance in this State, including workmen's compensation.

The statement of facts in your memo and the pamphlet you submitted of Ohio Insurance Laws (annotated) shows that no insurance company, domestic or foreign, is permitted in that State to write workmen's compensation insurance. All employers there contribute to a state fund which is administered by the State and from which benefits are paid to injured employees.

Under provisions of the Ohio Code, its domestic companies may provide in their charters for writing this form of insurance in other States where the same is permitted.

Your inquiry is as follows:

> "If the Ohio Casualty Company otherwise qualifies for admission to do business in the State of Maine and in view of the monopolistic laws of Ohio as recited in this memorandum, would this Department under its retaliatory law be within its rights in limiting the business which this Company might write in its other lines of insurance, thus excluding their privilege of writing workmen's compensation in the State of Maine."

My answer is, "Yes."

Sec. 109 of Chapter 60, R. S. 1930 amended by Chapter 103, Laws of 1941, so far as here pertinent, provides:

> "When by the laws of any other state of the United States . . . any fines, penalties, licenses, fees, deposits or other obligations or prohibitions *in excess of those imposed by the laws of the state upon foreign insurance companies and their agents*, are imposed on insurance companies of this state and their agents, the same fines, licenses, fees, deposits, obligations or prohibitions shall be imposed upon all insurance companies of such state of the United States . . . and their agents doing business in or applying for admission to this state. . . "

Under our statutes foreign insurance companies may be admitted to write workmen's compensation insurance in this State.

The absolute prohibition contained in the Ohio laws would thus be "in excess of those imposed by the laws of the (this) state upon foreign insurance companies" and would be a bar to companies of that State from writing such insurance in this State.

ABRAHAM BREITBARD
Deputy Attorney-General

June 7, 1944

F. K. Purinton, Executive Secretary, Executive Department

The council order providing for payment to ********** of the full amount of his salary while he is recovering from the effects of an accident sustained in 1943, until he is able to resume his work, has come before me for attention.

Mr. ********* received his injury, according to the statement of facts, while in the performance of his duties and is entitled to the

fullest benefit of our compensation laws. This will take care of his hospitalization and his doctors' bills and provides for payment to him of a certain minimum amount per week, and is the only provision in our statutes for payment to an employee in the Fish and Game Department outside of "sick leave" and "vacation pay," when said employee is unable to perform the duties of his employment.

It is therefor my opinion that the Department of Inland Fisheries and Game has no legal authority for making regular salary payments to Mr. ******* during the period of his disability.

FRANK I. COWAN
Attorney-General

July 6, 1944

George O. Gray, Division of Sanitary Engineering

I am now confirming what I said to you orally with regard to licenses to be issued to eating and lodging places. I advised you that licenses are to be issued to the person, corporation, firm or copartnership engaged in the business of conducting the eating or lodging place and that consequently the application must be made by the person engaged in the business. Of course, if it be a corporation, the application is made in the name of the corporation by its duly authorized agent, or if it be a partnership, in the name of the partnership by one of the partners. No license can be issued to a person who is the manager of a business, and hence his application cannot be accepted as such. Section 187A of the law specifically provides that the person, corporation, firm or copartnership engaged in the business shall be licensed.

Section 186 does not authorize the issuance of a license in the name of the manager or person in control. This section prohibits the management of an eating place which is not licensed, thus subjecting all persons to the penalty, who participate in the control, management or operation of an unlicensed place; but licenses are not issued to managers, who may be there one day and not there the next. They are issued only to those "engaged in the business of conducting an eating or lodging place. . . "

In view of what I have said, you are justified in refusing to issue a license to the person who applied as manager of the hotel or lodging place formerly conducted by Mr. .....

ABRAHAM BREITBARD
Deputy Attorney-General

July 7, 1944

L. E. Griffin, Gasoline Tax Division

Exemption from Maine State Tax of Sales of Gasoline to the Canadian Government

I prefer to give no opinion in this matter that will serve as a precedent for my successors in office. We are handicapped by the fact that this subject is not covered by any treaty between the United States and Canada. Until this office has arrived at a different conclusion, I will say that during the present war emergency, by reason of the

necessary interchange of activities between instrumentalities of the Canadian Government on the one hand and the United States of America and the various States on the other, you may rebate the gas tax on all past and future sales in the case of emergency purchases made by the Royal Canadian Air Force.

FRANK I. COWAN
Attorney-General

July 7, 1944

Honorable Owen Brewster
United States Senate
Washington, D. C.

Dear Senator:

We are somewhat troubled about the possible invalidity of marriages performed within the confines of Federal reservations where exclusive jurisdiction has been acquired by the Federal government, by ministers acting under authority of State laws. Recent decisions of the United States Supreme Court on the matter of the extent to which the State's jurisdiction can continue to operate and the laws of the State continue to function, make it very possible, in the absence of a Federal marriage law, that all these weddings will be declared invalid.

I am not unaware of the implications in the case of *Stewart* vs. *Sadrakula*, decided Jan. 29, 1940, and appearing in 309 U. S. 94, 84 L. Ed., 596 but this is a very old decision as decisions go nowadays. Moreover, we cannot avoid noting the fact that the decision in the Stewart case provided compensation in the case of an injured employee, and we cannot feel certain that the Court as today constituted would arrive at the same conclusion if the persons seeking benefit of the State law were not seeking it in that particular category.

I am wondering if it would not be wise for Congress to provide by legislation, in matters where there will be no interference with Federal functions, that State laws will continue in full effect on Federal reservations within the geographical limits of the State until such time as Congress has passed express legislation covering the particular subject.

Sincerely yours,

FRANK I. COWAN
Attorney-General

July 11, 1944

E. E. Roderick, Deputy Commissioner of Education

Suspension of Pension While One is Teaching under the Provisions of R. S. 1930, c. 19, §223

In answer to your memorandum of June 29th, we are of the opinion that the last sentence of Section 223, which reads as follows:

> The payments of any pension shall be suspended whenever the person to whom said pension has been granted resumes teaching in any private or public school.

has no reference to temporary or intermittent substitute teaching, and in particular where it is done at the request of a superintendent in order to fill in during the absence of a regular teacher. I am of the

opinion that the intent of the legislature was to suspend the payment of the pension when the pensioner "resumes" teaching, using the word "resumes" as it is commonly understood and defined in the dictionary. Webster's New International Dictionary, Second Edition, gives the following definition: "To enter upon or begin again; to recommence, as something interrupted; to recommence, as a discourse, work, or business."

On the other hand, if a person came out of retirement as a pensioner and undertook or contracted to teach for an indefinite period, such a course of conduct on the part of that person would result in a suspension of the payment of the pension. To put it another way:—the choice is one to be made by the pensioner, and if he or she decides to go back to teaching in a private or public school, then it may be said that that person has resumed his or her former occupation and during the period of employment the payment of the pension should be suspended.

In the case under consideration, the person wrote under date of August 16, 1943, that she "began active teaching in the grammar school," August 16th. Then follows a request to suspend her pension until further notice. On June 25, 1944, she wrote, "My school closed June 16th. I will begin teaching October 2, 1944." She then inquired whether she would be entitled to her pension for the months that she is not teaching, that is to say, between June and October.

It seems to me that when on August 16th she began "active teaching," as she states in her letter, this was clearly a resumption within the sentence that I have quoted, and she properly suggested that her pension payments be suspended. Her last letter, wherein she stated that she would again begin teaching on October 2nd, clearly showed an intent on her part to continue her status of having resumed her employment as a teacher. I am of the opinion that this status must continue until she ceases teaching.

I therefore advise you that she would not be entitled to any pension payment for the period that school is closed during the summer vacation.

ABRAHAM BREITBARD
Deputy Attorney-General

July 13, 1944

Harold I. Goss, Secretary of State

P. L. 1943, c. 157, provides as follows:

> "The secretary of state, on application from any person who is serving in the armed forces of the United States, and who has a license to operate a motor vehicle in the state of Maine, shall renew his license without the requirement of the payment of any fee."

In my opinion, it was the intention of the legislature by this language to recognize the status of a person whose availability for annual renewal of his motor vehicle license was interrupted by reason of his serving in the armed forces. Under the circumstances, it is perfectly logical and proper for you to renew a 1943 license during 1944, and if

the evidence submitted to you shows that the applicant was a licensee in 1942, but was in the armed forces during 1943 and is still in the armed forces, you may, in my opinion, renew the 1942 license without the payment of any fee. The same argument applies with equal merit to a 1941 license.

FRANK I. COWAN
Attorney-General

See also Council Order No. 149

July 15, 1944

William D. Hayes, State Auditor — Audit

Bond of Deputy Insurance Commissioner

Your memo of June 12th relates to the bond of the Deputy Insurance Commissioner which came up for renewal April 30th last, and the question for decision is whether this may be included in a schedule bond or whether the bond in force on April 30, 1943, shall be continued and renewed annually.

I understand that the contention has been advanced that qualifying bonds given by State officials in compliance with the statute continue in force for the term of the appointment; and that qualifying bonds are so written that by their terms there is a continuing liability from the day the bond is written until the term of office of the official expires under the statute, or the term of office is otherwise terminated prior to its "normal expiration."

The further contention is advanced that under the statutes existing prior to July 9, 1943, when Chapter 320, Laws of 1943, set up a new method of providing for bonds of State officials and State employees, there was no provision for the cancellation of a qualifying bond; nor was there provision vesting in anyone the power or authority to cancel a qualifying bond prior to the expiration of the term of such official.

None of these contentions, however, apply particularly to the Deputy Insurance Commissioner. His appointment is not for a specific term, nor is he required to qualify for that office by giving bond. R. S. Chapter 60, Section 83.

I must therefore assume that the bond in question was written under the provisions of R. S. 1930, Chapter 125, Section 56, which, so far as here pertinent, is as follows:

> "Bonds of Public Officials. All persons employed in the several state departments and institutions who handle public moneys . . . shall give bond in such sum as may be fixed by the governor and council to properly account for all funds coming into their hands. . . . "

This provision applies to all persons in the State departments and institutions who handle public money and to those only. In this respect it is unlike the provisions of law which require the appointed official to qualify for the office by giving bond. A person may be appointed to office, the duties of which do not involve the handling of State funds. By change in the system of management of the department or of the manner of handling funds in that department, the official may come into the possession of or handle State funds; then

again, by subsequent change while he is holding office, he would no longer handle or come into possession of public funds. I believe that it would be unreasonable to contend that a bond given under these circumstances could not be terminated, but would continue in force so long as the person was in office; that this provision was not flexible enough so as to authorize the Governor and Council, under whose order the bond is fixed, to provide for its termination, cancellation and release.

I do not believe that bonds written pursuant to that section create a continuing liability which cannot be terminated and the surety released from future liability. I am of the opinion that the Governor and Council could do so.

The bond under consideration was written April 30, 1942. Chapter 320, heretofore referred to, which took effect on July 9, 1943, provides as follows:

> "Sec. 4. All acts of the legislature dealing with bonds to be furnished by state officials and employees other than the state treasurer are hereby specifically repealed, and, without limitation upon the foregoing, the following enactments, in so far as they are inconsistent with the provisions of this act, are specifically repealed."

Amongst the enactments repealed (a list of which follows) is Section 56 of Chapter 125.

In Section 1 of Chapter 230 aforesaid it is provided:

> "All bonds written before the effective date of this act, in compliance with existing statutes, shall continue in force until their normal expiration dates as though the statutes hereinafter repealed had remained in full effect; no official or employee who has furnished a bond before the effective date of this act, while the bond is in force, shall be obliged to give a new bond until the normal expiration date of the existing bond."

This bond was written before the effective date of the act. But it has no "normal expiration date (s)" since it was not a qualifying bond for an official whose term was fixed by statute. The "Normal expiration" date, then, on bonds given under Chapter 125, Section 56, would be the cancellation date fixed by the Governor and Council and for that purpose not only was the bond continued in force, but the statute under which it was written remained in force under the saving clause.

To hold otherwise would mean that these bonds would be a continuing obligation until the employee died or was discharged, or, in the case of a public official, until he was removed from office, notwithstanding the fact that his duties were changed.

I am therefore of the opinion that the Governor and Council have the power and authority to cancel this bond, and that hereafter the bond of the deputy commissioner may be included in a schedule bond —or other type of bond—under the provisions of Chapter 320, Laws of 1943.

But if there be any doubt as to this, I am of the opinion that Section 57 of Chapter 2 remains in force, as that section is neither repealed specifically nor by implication by Chapter 320, Laws of 1943. It is not inconsistent with any of the provisions of that chapter.

Section 57 is as follows:

"The governor and council may require any officer who by law gives bond to the state to give a new bond when they consider it necessary; and when it is given, the obligors in the former bond are discharged from liability thereon for acts and defaults after the acceptance of the new one; and if such officer does not give a new and satisfactory bond within the time specified by the governor and council, his office becomes vacant, and shall be filled as provided by law."

The Governor and Council are here empowered to require a new bond when in their judgment they think it is necessary and the statute then operates on the former bond, releasing the surety from future liability. Non-compliance also creates a vacancy in the office and it may be filled anew.

No such provisions are to be found in Chapter 320. No provision is there made for the release of the surety nor the giving of a new bond for that matter, nor the creation of a vacancy if the bond is not furnished. It provides there only that bonds may be increased and decreased; the cancellation may be by the surety company only.

If Section 57 has been repealed, what would happen if a surety company of a bond given prior to July 9, 1943, should become insolvent or receivership be imminent? No new bond then could be required, as there would be no law or authority for it, and by the same token the official or employee could refuse to give a new bond, and yet there would be no vacancy to fill as contemplated by Section 57.

I do not believe that the legislature intended any such absurd result. The purpose of the new law was to strengthen the laws relating to bonds, rather than to weaken them.

Under this provision, then, the Governor and Council may require a new bond, and when it is given, the surety on the former bond is released from defaults thereafter occurring.

Returned herewith is bond of Guy R. Whitten, Deputy Insurance Commissioner.

ABRAHAM BREITBARD
Deputy Attorney-General

July 27, 1944

William D. Hayes, State Auditor — Audit

I have your memo of July 18th, in regard to the salaries of the Chief Engineer and Bureau Chiefs of the Highway Department.

As far as concerns the employment of the Chief Engineer, the statute expressly provides how he shall be selected and employed. There is no question but what he belongs in the unclassified service, although the position does not fit into any of the fifteen types enumerated under §7, in spite of the fact that §6 states that the employees are in the classified service "except persons who are holding office or employment excepted by section 7." The reason for this opinion is that persons in the classified service are employed on the basis of examinations, and no person in the classified service can be appointed except in accordance with the rules of the Personnel Board. Obviously a statute which

provides that the Highway Commission itself shall select, and with the approval of the Governor, shall appoint a Chief Engineer, does not contemplate interposition of authority on the part of Personnel Board.

A different situation arises in connection with the Superintendent of the Highway Garage, Superintendent of Maintenance, Chief Construction Engineer and Chief Bridge Engineer of the Highway Department. P. L. 1941, c. 14, uses the language "bureau directors," and Paragraph (3) of §7 of the Personnel Law says that "bureau directors" are in the classified service. However, in examining the statutes I find no provision for any "bureaus" or "bureau directors" in the Highway Department. I find bureaus in connection with the State Library, and bureaus in connection with the Welfare Department, and we must assume that the words "bureau directors" which operate in the Personnel Law apply to the bureaus which are established by law. The fact that some department head may have called some division of his department a bureau cannot make it such. Therefore, in my opinion, the superintendents above enumerated fall in the classified service under the Personnel Law.

FRANK I. COWAN
Attorney-General

July 27, 1944

Harold I. Goss, Secretary of State

I have your query of July 26th for further interpretation of Chapter 157, P. L. 1943.

I believe that the proper interpretation of the statute is that if the renewal of a license has been interrupted by military service, the time during which the man or woman has been in the service shall not be counted provided the service started not later than 1941. If the applicant is in uniform and shows on the face of the application that not later than 1941 he had an operator's license, you may presume prima facie that renewal has been interrupted by such service.

As the opinion that has been issued applies to cases where an operator's license has been held as recently as 1941, which is one of the "3 preceding years," it is unnecessary to make any further interpretation on the matter of waiver of examination.

FRANK I. COWAN
Attorney-General

July 27, 1944

J. J. Allen, Controller

Maine Development Commission

I have your memo of July 21st. You asked two questions:

1. Can the Commission delegate authority for approval of vouchers to its Executive Secretary?

Answer. I see no legal objection to such delegation. As a practical matter, the Commission may wish to set a limit within which the Executive Secretary can approve vouchers. If such a limit is set, vouchers for larger amounts should be approved by a quorum of the Commission.

2. Must the State Controller write his approval on each voucher?

Answer. No; but he must approve each voucher in some form, and to protect himself as well as the State, he should affirmatively signify his approval. The statute contemplated that this approval by him must be more than a mere formality, but there can be no objection to a mass approval of a large number of vouchers.

FRANK I. COWAN
Attorney-General

August 2, 1944

Raymond E. Rendall, Commissioner Forestry

Your memo asking whether you may grant a right of way over reserved lands has been given due consideration.

I am of the opinion that you do not possess the power or authority to make such a grant, hence legislative action will be required.

ABRAHAM BREITBARD
Deputy Attorney-General

August 7, 1944

Capt. Joseph Young, State Police

I confirm that I have said to you over the telephone with regard to your inquiry as to the meaning of Section 3, Chapter 355, Laws of 1943, entitled "An Act providing for the licensing and regulation of the amusement known as Beano." Your question was whether more than one license may be issued to an applicant as defined therein, which would run concurrently.

This department answers that question in the negative. We are of the opinion that the last sentence of Section 3, which reads as follows:

> "Nothing contained herein is to be construed to prohibit any fair association, or bona fide charitable, educational, fraternal, patriotic, religious, or veterans organization from obtaining more than one 6-day license."

was to make it clear that an applicant might obtain a license for a 6-day period following the expiration of any previous 6-day license held by the applicant.

This last sentence was apparently written because of the opening sentence which reads:

> "The chief of the state police may issue licenses to operate such amusement for a period of 6 days to any fair association, or bona fide charitable, educational, fraternal, patriotic, religious, or veterans organization which was in existence at least 2 years prior to their application for a license, when sponsored, operated and conducted for the exclusive benefit of such organization by fully authorized members thereof."

and which, standing alone, might have been interpreted to mean that a license to operate for 6 days is all that any applicant could have.

ABRAHAM BREITBARD
Deputy Attorney-General

August 7, 1944

E. E. Roderick, Deputy Commissioner of Education

Subject: Power and authority of the trustees of a normal school to sell and dispose of a part of its real estate, and the authority to purchase land and buildings adjacent to the land of the normal school.

The powers confided in the board of trustees of normal schools are to be found in Section 189 of Chapter 19 of the Revised Statutes of 1930 and in Section 185 of said chapter as amended by Chapter 147 of the Public Laws of 1943. No authority is found in these provisions which authorizes the trustees to dispose of any part of the land and buildings of a normal school or to purchase lands and buildings to enlarge the facilities of the school.

As the trustees have only those powers which are expressly granted, they would have no right or authority to dispose of any part of the buildings at the Farmington Normal School, nor to acquire any land adjacent to the school lands, except by express authority from the legislature.

ABRAHAM BREITBARD
Deputy Attorney-General

August 17, 1944

Board of Registration
City of Portland
Portland, Maine

Gentlemen:—

Registration and re-registration of a woman voter who marries and assumes her married surname can be had only where the individual appears in person. That is the command of the statute.

Very truly yours,

ABRAHAM BREITBARD
Deputy Attorney-General

August 23, 1944

Daniel T. Malloy, Supervisor, Inland Fisheries and Game

You inquire whether pickerel legally taken in the County of Washington may be resold by the purchaser in that county.

I am of the opinion that this may be done without violating any of the statutes relating thereto.

Section 25 of the Inland Fish and Game Laws provides that no person shall take, catch or kill more than ten pickerel in any one day, nor shall a person have in his possession more than ten pickerel taken, caught or killed in any one day. By specific provision it is provided that "this section shall not apply in Washington County."

Section 26 prohibits the sale and purchase of landlocked salmon, trout, togue, black bass and white perch.

Section 27 prohibits anyone from engaging " . . . in the business or occupation of fishing on any of the inland waters of the state above tide waters, for salmon, togue, trout, black bass, pickerel, white perch, or white fish, for gain or hire . . . except that pickerel legally taken

in the county of Washington, may be sold by the person taking the same."

In none of these provisions is the sale of pickerel prohibited. The prohibition is against fishing for gain or hire by devoting the whole or any part of the time to that business (Section 27). A person who resells pickerel lawfully purchased by him in Washington County and legally taken in that county, is not engaging in the business or occupation of fishing for gain or hire.

ABRAHAM BREITBARD
Deputy Attorney-General

August 25, 1944

Francis K. Purinton, Executive Secretary, Executive Department

I have your memo of August 22nd in regard to the term of office of the Adjutant General.

This matter was considered very carefully in the winter or early spring of 1941, but I cannot find a copy of the opinion issued at that time.

The Constitution of Maine, Article XXVIII, provides, "The adjutant general. . . shall be appointed by the governor." No term is set. R. S. 1930, Chapter 18, Section 8, provides that "The staff of the commander-in-chief shall consist of the adjutant general, who shall be ex officio chief of staff, etc." R. S., Chapter 18, Section 22, provides for the appointment by the Governor of staff officers, and Sections 23 and 24 provide for the duties and qualifications of staff officers.

The Federal Military Law, a copy of which I do not have before me at the present moment, sets up "staff officers" on a permanent basis, and if I remember correctly, subject to the authority of the Secretary of War.

As I recall my 1941 opinion, I said at that time that the Adjutant General of the State is the personal representative of the Governor in the military arm of the State. As such, it is necessary that he be subject to the control of the Governor. Inasmuch as our statutes do not provide for any term, I said at that time that he holds office at the pleasure of the Governor. I said further that he is "ex officio" chief of staff, but that he is not a staff officer.

If I were writing the opinion again, I should arrive at exactly the same conclusions.

FRANK I. COWAN
Attorney-General

September 1, 1944

H. M. Orr, Purchasing Agent

Subject: Sale of Surplus, Obsolete or Unused Equipment

The statute gives the Department of Finance, through the Bureau of Purchases, the authority to sell those "supplies, materials and equipment which are surplus, obsolete or unused," of the various departments or agencies.

The subject under consideration is a quantity of guns of the Department of Inland Fisheries and Game. I advised you that these must be sold through the Bureau of Purchases. I can see no objection, however, to the agents of the Inland Fisheries and Game Department making the preparations for the sale thereof, which I understand is to be held by public auction, and giving notice thereof to prospective buyers by mail, advertising, or otherwise, provided it is done in the name of the Bureau of Purchases and the sale thereof is held under your supervision. I would also suggest that you be personally present at the auction.

ABRAHAM BREITBARD
Deputy Attorney-General

September 5, 1944

Milk Control Board

Sale and delivery of milk, Kittery Navy Yard

I have examined the question as to the powers of the Milk Control Board to regulate under the act the sale and delivery of milk to the Navy Department on the government reservation at Kittery Navy Yard. I have examined the acts by which Seavey Island in the Town of Kittery and Dennett's Island were ceded to the United States Government by Chapter 198, P&SL 1863 and Chapter 112, SL 1822, respectively. By these acts exclusive jurisdiction was granted to the Federal Government, save and except that concurrent jurisdiction was retained for the purpose of serving and executing both civil and criminal process, and in the earlier act, in addition to these reservations there was a further provision that all persons residing on Dennett's Island, not in the military or marine service of the United States "shall be holden to do military duty in the militia of this State." These reservations, however, were not, and could not be, a limitation on Article I, Section 8, Clause 17, of the Constitution of the United States, declaring that the Congress shall have power to exercise exclusive jurisdiction and authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

In view of the recent ruling of the United States Supreme Court in the case of *Pacific Dairy* vs. *Department of Agriculture*, 318 U. S. 285, decided March 1, 1943, application for re-hearing of which was denied by said Court, April 5, 1943, I am of the opinion that the Milk Control Board would have no jurisdiction to regulate the price of milk sold and delivered on land of the Kittery Navy Yard.

ABRAHAM BREITBARD
Deputy Attorney-General

September 6, 1944

Daniel T. Malloy, Warden Supervisor, Inland Fisheries and Game

You have asked whether hornpouts or any other of the fish enumerated in the second paragraph of Section 28, Chapter 38 of the Inland Fish and Game Laws, may be taken or fished for "with any device or in any other way than by the ordinary mode of angling with

single-baited hook and line, artificial flies, artificial minnows, artificial insects, spoon-hooks, and spinners, . . . "

I am of the opinion that they may not be taken except on a single-baited hook and line and the other lures mentioned. The exception contained in the second paragraph, which is worded as follows, "except suckers, eels, hornpouts, yellow perch, white fish, and cusk, as hereinafter provided," relates to the special provisions concerning the manner in which the enumerated fish may be taken at certain places and under certain regulations and by ways other than by the ordinary mode of angling.

I therefore advise you that any of the enumerated fish above named may not be fished and taken in any other way than the manner provided for, namely, "with single-baited hook and line, artificial flies, artificial minnows, artificial insects, spoon-hooks, and spinners, . . . "

ABRAHAM BREITBARD
Deputy Attorney-General

September 7, 1944

Francis G. Buzzell, Animal Industry

Subject: Testing for Bang's Disease

I have your memo of September 1st in regard to the reception accorded to Dr. M. J. Edwards and Dr. S. G. Fine, employees of the United States Government, at the hands of a Mr. .....

The law in regard to prevention of contagious disease among animals is found in R. S., Chapter 40; Section 4 of that chapter provides as follows:

> "Any person who knowingly and wilfully refuses permission to the commissioner of agriculture, or his duly constituted agent, to make, etc., . . . as to animals supposed by the commissioner of agriculture or his agent to be diseased *as aforesaid*. . . "

The words "as aforesaid" can apply only to Sections 1, 2, and 3 of the statute. Bang's disease is not mentioned in either of those sections.

P. L. 1934, Chapter 297, provides for testing for contagious diseases with the coöperation of the owner of the animals. P. L. 1941, Chapter 254, provides for a bond issue of $450,000. to finance eradication of Bang's disease. Section 6 of said Act uses the following language:

> "For the eradication of Bang's disease and other contagious diseases under powers vested in him by chapter 40 of the revised statutes, as amended, and by chapter 297 of the public laws of 1933."

As you can see, the Bang's disease law is, by the very force of the language, kept separate from the penalty provision of R. S., Chapter 40, Section 4.

It is true that there is an amendment to Chapter 40 in P. L. 1935, Chapter 106 and this refers to Bang's disease, but only in connection with Section 11. There is a further amendment to Chapter 40 which appears as Chapter 77 of the Public Laws of 1939, and this applies to Bang's disease; but the amendment is to Section 17 of Chapter 40, as amended by Section 2 of Chapter 106, P. L. 1935.

It is apparent that the language of the original Bang's Disease Act, requiring that "when any owner of cattle in the state shall signify in writing his willingness to place his herd under the supervision of the department of agriculture for the eradication of Bang's disease," is still in effect and that the legislature must change the law before it will be safe to attempt any criminal prosecutions.

If R. S., Chapter 40, Section 4, did apply to Bang's disease, it did not apply on the facts you have cited, because there is nothing therein to show that either Dr. Edwards or Dr. Fine was an agent of the Commissioner of Agriculture at the time they went to the ..... farm.

For the convenience of yourself and others who have occasion to use the little pamphlet issued in November, 1943, and containing the laws, rules and regulations pertaining to live stock sanitation, I would suggest that before a new edition is issued, you submit your proof to this department for editing, so that we can correctly identify each section of the statutes quoted therein.

FRANK I. COWAN
Attorney-General

September 7, 1944

Hon. Harold I. Goss
Secretary of State
Augusta, Maine

Dear Sir:

I have before me the letter of Frank C. Creteau asking authority to use stickers to place the name of a candidate for county treasurer on the York County ballots. R. S. c. 16, §4, provides that if a vacancy occurs in the office of county treasurer, the governor may appoint a treasurer who shall serve "until the first day of January following the next biennial election, at which said election a treasurer shall be chosen for the remainder of the term, if any; but in any event he shall hold office until another is chosen and qualified."

The governor has made an appointment under the provisions of this section and the present incumbent is to hold office until the first day of January, 1945, or "until another is chosen and qualified." Obviously, the latter language provides for continuing said appointed incumbent in office until another treasurer is chosen and qualified by due process of law. The question before us is whether or not there is any legal machinery for providing at this late date that any candidates' names may appear on the ballot.

R. S. c. 8, §16, as amended by P. L. 1941, c. 127, contains the following language: "Stickers shall not be counted unless used to fill a vacancy or correct an error in the printed ballot." The words "fill a vacancy" must of necessity apply to an actual vacancy in an office. In York County there is no vacancy since the governor has filled the office and there is a provision of the statute, as above quoted, for keeping the office from going vacant pending the next regular election at which candidates can be chosen by the respective parties and the election can be held in accordance with the general laws of the State.

R. S. c. 7, §30 and sections following, provides a method "for the purpose of filling vacancies as provided in section 23 of this chapter, and nominating candidates not included in section 1 of this chapter." Section 23 of chapter 7 has to do with the case of a candidate who has been duly nominated in the primary and who has died before the date of the gubernatorial election, or has withdrawn in writing, or has otherwise forfeited his nomination.

This section cannot apply in the instant case, because we have an instance of an incumbent who has died in the middle of his term and in whose place an interim appointment has been made.

R. S. c. 7, §1, above referred to, speaks of "candidates for any state or county office." I think it is unnecessary to state that the office of county treasurer is a "county office," so R. S. c. 7, §30 does not refer to that office.

I find no other provision in our laws for electing a county treasurer to fill out the term of office of a deceased county treasurer unless the death occurs a sufficient time before the primaries so that names can be placed on the ballot in the regular and formal manner set up by the Legislature.

I have to advise you that you have no authority to comply with Mr. Creteau's request.

Very truly yours,

FRANK I. COWAN

Attorney-General

September 8, 1944

Harry V. Gilson, Commissioner Education

I have your memo of August 30, in regard to the application of §54-A, P. L. 1943, c. 300. The interpretation that has been given uniformly to this statute is that *it protects a public employee of the State, or a subdivision thereof, for a period equal to the duration of his term of employment.* This rule, however, would apply only to executives who are serving a term defined by statute. We have held that we can protect them during the term of office to which they were appointed, or for which they were elected and no longer. Even then we have found that in some cases it has been necessary to hold that the incumbent of the office has, by entering the Federal service, abandoned his employment thus creating an actual vacancy even though the abandonment was involuntary on his part. In brief, we have applied the statute to all persons who were employees without a term and to all employees who were under the Personnel Law protection and, so far as possible, to contract employees and to executive heads, although we have had to recognize that contract employees and executive heads are exceptional cases and oftentimes cannot be classified in such a way that their cases can be treated otherwise than on individual merits.

Considering the matter from the above point of view, we feel that a school teacher hired from year to year on contract should be employed for a period after his return, not less than the unfulfilled portion of his contract period.

The substitute teacher comes secondary to the returning service man.

The municipality should be very careful about making contracts with substitute teachers because if they make a binding term contract and the original man comes back, the returning service man is entitled to his job and his pay by reason of the law, while the substitute may be entitled to the pay by reason of his contract; thus if the contract does not take into consideration the possibility of its being avoided through return of a service man, the municipality may very well find itself paying two salaries for one piece of work.

A town has fulfilled its obligations to a school employee when he is reemployed for a period of time which represents the unexpired part of his original contract.

If a superintendent of schools has served two years on a three-year contract, the town is within its rights if it permits him to serve out his original contract after his return and then discharge him. A town, in the interest of teaching efficiency, cannot delay the replacement of a discharged service man until the end of the next school year or the next school term. Under the law, as we interpret it, he is entitled to reinstatement immediately.

FRANK I. COWAN
Attorney-General

September 14, 1944

Capt. Laurence C. Upton, Acting Chief State Police

Beano

I have your memo of Sept. 13, asking three questions in regard to Beano. I will answer them in the order in which you ask them.

1. Our general Sunday laws are still in effect. There is no suggestion of repeal in the Beano act. The intention of the legislature in limiting licenses to six-day periods was in order to avoid any suggestion of Sunday beano.
2. P. L. 1943, c. 355, §1, in its first sentence, uses the language—". . . . shall hold, conduct or operate the amusement commonly known as 'Beano' for the entertainment of the public within the state unless a license therefor is obtained from the chief of the state police." There is no question but what the operation by an agricultural fair without making a monetary charge to participants is, nevertheless, an operation "for the entertainment of the public." Whenever and wherever the amusement commonly known as Beano is conducted or operated "for the entertainment of the public" a license must be obtained.
3. The answer to Question 3, is "No." The reason is included in the answers to Questions 1 and 2.

FRANK I. COWAN
Attorney-General

September 22, 1944

I. W. Russell, Superintendent of Public Buildings

Superintendent of Public Buildings' Law

In your memo of August 30th you ask to be advised with regard to your duties under circumstances which you set forth as follows:

"The question has arisen as to my authority in connection with the postwar building program for other departments. I would definitely like to know 'Do I have the authority to approve the selection of architects for these buildings, which shall include the fee paid these architects and how they shall prepare these plans; that is, to state to the architects whether or not they shall hire competent heating, structural, and electrical engineers to work with them on plans."

Your duties are specifically defined by Chapter 176 of the Laws of 1943. With respect to your authority so far as buildings and property under the control of department heads are concerned, paragraph two of Section 4 is as follows:

"Upon the request of department heads concerning buildings and property under their control, the superintendent shall supervise the construction, repairs, alterations and improvements to said buildings and property. The superintendent shall regularly inspect all buildings and property in the state and report to the department head concerned whatever construction, repairs, alterations and improvements are necessary, and he shall, if he deems it advisable, make a similar report to the governor and council."

You would thus have no duty or authority to supervise the construction, etc., of these buildings, unless you were requested to do so by the department head. Without such request you have only the duty of inspection and of reporting to the department head, and, if you deem it advisable, to the governor and council.

I think, however, that under Section 5, which provides that

"All contracts for repairs and construction of state buildings shall be examined and approved by the superintendent of public buildings prior to their submission to the governor and council for their final approval and acceptance,"

you have a duty to examine and approve all contracts for repairs and construction of all State buildings, and you might refuse to approve a contract which you felt was not proper, beneficial to, or in the interests of the State, and submit your criticism thereof to the governor and council.

While this would not involve the selection of the architect, the question of the reasonableness of the fee and all the other elements in your question would be involved in the approval of the contract.

ABRAHAM BREITBARD
Deputy Attorney-General

September 28, 1944

Harold B. Emery, Chairman, Liquor Commission

You inquire as a member of the Liquor Commission as to your status after October 1, 1944, which date marks the end of the third year since your appointment. This question now arises because no appointment has been made by the Governor of a successor to assume the duties of the office now held by you.

Your inquiry is a most proper one, and I think you would have been remiss in your duty if you had not availed yourself of the statutory right to seek the advice of the Attorney-General's department as to your status.

The statute creating the liquor commission provides that the board "shall consist of 3 members, to be appointed by the governor, with the advice and consent of the council, to serve for 3 years, or during the pleasure of the governor and council . . . any vacancy shall be filled by appointment for a like term." No provision is made that the incumbent shall hold over until his successor is appointed and qualifies, nor are there any words of limitation such as are contained in the general statute fixing the tenure of certain public officers to four years "and no longer, unless re-appointed." R. S. 2, §54.

In authoritative texts we find the principle enunciated by the courts that even in the absence of provisions for holding over " . . . there seems to be a general rule that an incumbent of an office will hold over after the conclusion of his term until the election and qualification of a successor." 43 Am. Jurisprudence, p. 20, §162.

And in *Heyward* v. *Long*, 178 S. C., 351, the court quotes from an annotation in 50 L. R. A. (N. S.) 365, as follows:

> "It has been held that it is the general rule of law that an incumbent of an office will hold over after the conclusion of his term until the election and qualification of a successor, even although there is no express provision of law to that effect."

Our own court in *Bath* v. *Reed*, 78 Maine 280, refers to this rule as follows:

> "Even in the absence of any charter or statute provision that the officer of a municipal corporation shall hold over until his successor is elected and qualified, the doctrine of the American courts has strongly inclined to guard against lapses, sometimes unavoidable, and to adopt the analogy of other corporate officers who hold over till their successors are elected, unless the legislative intent to the contrary is clearly manifested."

And in *Bunker* v. *Gouldsboro*, 81 Maine 194:

> "The language of the statutes may show an intention to precisely fix and limit the tenure of a municipal officer, so that on a fixed day, his authority will cease, even if an entire vacancy and absence of authority be the result. Unless such an intention appears, however, the better opinion is, that the officer should continue to exercise his functions until another person is qualified to assume them. As the natural law is said to abhor a vacuum in physics, the municipal law may be said to dislike a vacancy in authority."

It is common knowledge that the commission in the performance of its duties carries on a wholesale and retail business of large volume. Besides licensing manufacturers, distillers, dealers and dispensers of liquor, it is also charged with the duty of supervising, regulating and enforcing the law and appointing a large number of employees and enforcement officers. It is not reasonable that these most important functions shall cease and come to an end pending the appointment and qualification of a successor to an incumbent whose term has expired. Nor would it be in the public interest, if that should be the result.

In the present situation, since your own term and that of Edward J. Quinn, another member, expire at the same time, there would not remain a majority of the commission.

The legislature not having clearly manifested that the term was to come to an end, although no new appointment was made to carry on the functions of the office, I am of the opinion that these officers hold over, and I advise you that you are to continue to perform the duties of the office until a successor is named and qualifies.

This ruling also applies to the other member, Edward J. Quinn.

ABRAHAM BREITBARD
Deputy Attorney-General

October 6, 1944

F. K. Purinton, Executive Secretary, Executive Department

Appointment of State Humane Agent

1) The letter written by the mayor of the city of Waterville, addressed to the Governor, which you have submitted to me is insufficient. The statute provides that "Upon application by the mayor and aldermen of any city, the selectmen of any town, the county commissioners of any county, or the president and three directors of any society for the prevention of cruelty to animals, the governor and council shall issue a badge and commission to any person designated. . . . " (Chapter 135, §70, R. S. 1930.) This address to the Governor and Council must be by a document in the form of an application and should be signed by all the persons enumerated in the statute.

What has been submitted here is a letter signed by the mayor alone. If it is to be treated as an application, it is insufficient because all that he says is that the Board of Aldermen at a regular meeting recommended the person named for appointment as humane agent. The concluding sentence is: "I respectfully call your attention to their recommendation." He does not say that he joins, but submits it as their recommendation. This is not in conformity with the statute, which provides that the application in the case of a city is to be made by the mayor and the board of aldermen. The action must be joint.

2) As to the substance of your inquiry as to whether the Governor and Council have any choice, or whether they must accept and issue a commission to the person designated, because of the use of the auxiliary verb "shall," I advise you that, "The word may be construed without intending that it be taken literally, so that it is not always imperative, or mandatory; but may be consistent with an exercise of discretion . . . the word may be construed as being merely permissive or an meaning 'may'." (57 C. J., page 552.)

It has also been stated that "shall" is also construed in the permissive sense to mean "may," where it is necessary to sustain the constitutionality of a statute (Note 25, 57 C. J., page 553.) If "shall" in the statute under consideration were to be interpreted to be mandatory, or used in the sense of a command, the statute would be unconstitutional as an encroachment upon the powers vested in the executive branch of the government under the Constitution. I must therefore advise you that it was used in the sense that the Governor and Council "may"

issue the commission. The executive authority then may, when a proper application is submitted, consider not only the necessity for making the appointment, but also exercise their independent judgment in considering the fitness, integrity and character of the person designated in the application before issuing to him a commission and vesting him with the authority to arrest persons charged with violating the law relating to cruelty to animals "the same as any sheriff, deputy sheriff, or constable can do, and whose jurisdiction shall extend throughout the State. . . "

While, under this section, the executive authority is not free to appoint some other person, it may, however, refuse to appoint the person designated and continue to do so until such person as the Governor and Council feel possesses the essential qualifications to be entrusted with the duties outlined by the statute is designated by the applicants.

I return herewith the letter of the mayor and the other memoranda which you submitted therewith.

ABRAHAM BREITBARD
Deputy Attorney-General

October 12, 1944

David H. Stevens, State Tax Assessor — Taxation

The Maine-New Hampshire Bridge Authority

I have your memo of September 18th. The Portsmouth-Kittery Bridge Authority is an instrumentality of the States of Maine and New Hampshire acting jointly under the provisions of a compact.

The provisions of section 10 of P. & S. 1937 (the Portsmouth-Kittery Bridge Act), together with the language in other parts of the act, indicate clearly that the intent of the legislature to set up, in so far as it could, a public corporation which is within the definition of the phrase "bridge district" as used in R. S. c. 12, §72.

However, inasmuch as any relief from taxation will necessarily redound to the State of New Hampshire, the proposition should be taken up with the State of New Hampshire to determine what, if any, action that State will take. No definite proposition should be made by the State of Maine unless a decision of equal value to the Bridge Authority is made by the State of New Hampshire.

FRANK I. COWAN
Attorney-General

October 12, 1944

William D. Hayes, State Auditor — Audit

Allocation State Highway Funds

I have your memo of September 8, in which you cite transfer of $1,139.86, on December 7, 1943, from Account 20125 (General Highway Fund) to Account 9016 (Secretary of State.) You cite also, transfer on July 14, 1944, of $1,000 from the general highway fund surplus to the Motor Vehicle Division of the State Department.

I am answering the questions in the order in which you ask them.

A. Such transfers have to be made by Order of the Governor and Council.

B. Such a transfer must of necessity increase the amount allocated to the transferee. R. S. c. 2, §117, does not take care of this particular transaction but P. & S. 1943, c. 87, §(v) "for extra administrative costs not anticipated in the budget" does take care of it. . . .

FRANK I. COWAN
Attorney-General

October 24, 1944

Harold I. Goss, Secretary of State

You inquired orally with relation to incorporation fees payable to the State when two or more corporations merge or consolidate under Chapter 56, Section 63.

It seems to me that when one of the constituent corporations is to remain as the consolidated company, into which the others merge, then if the capital stock of this surviving corporation is increased by the agreement of consolidation, the fees payable on such increase are to be computed in accordance with Section 48 of said chapter.

On the other hand, if a new corporation is formed which becomes the consolidated company, the fees are to be computed in accordance with Section 10 of said chapter.

See Fletcher, Cyc. Corporations, Vol. 15, page 70, section 7071; *Chicago & E. I. R. Co.* v. *Doyle*, 256 Ill. 514.

ABRAHAM BREITBARD
Deputy Attorney-General

November 9, 1944

Hon. Sumner Sewall, Governor of Maine

Central Maine Sanatorium—Atwood title

I have had a search made of the title of land owned by Willard K. Atwood in Fairfield, across which the State of Maine maintains a sewer pipe from the State Sanatorium. There seems to be nothing of record in regard to this pipe line. It is possible that a verbal license may have been given to some one at some time to put the line through; but, if so, this office has found no memorandum on the subject, and inquiry in the office of the Commissioner of Institutional Service fails to disclose any such memorandum. The Commissioner reports that he has made diligent inquiry and can learn nothing about such a license.

The sewer was authorized in Resolves of 1917, Chapter 9. Bids were obtained and the sewer installed in 1918. In theory, title of the State is now good by prescription, since we have used the land for purpose of a sewer for more than twenty years. It is difficult to believe that the State would place a long sewer pipe across land in which it had no right. The reasonable presumption is that there was a grant which has been lost. The law presumes the same thing. I see no reason why the State should do anything about the matter.

FRANK I. COWAN
Attorney-General

November 10, 1944

Hon. Sumner Sewall, Governor of Maine

Under date of September 7th, the Secretary of State laid before me a letter from one Frank C. Creteau asking authority to use stickers to place the name of a candidate for county treasurer on the York County ballots, at the election to take place on September 11, 1944. I addressed a communication to the Secretary of State, briefly analyzing the statutes, and advised him that he had no authority to comply with Mr. Creteau's request.

This office is informed that at the election on the following Monday in the City of Biddeford a large number of voters carried with them to the booths certain stickers which had on them the words:

"For County Treasurer

ARMAND DUQUETTE, Biddeford"

Several hundred of these stickers were affixed to the ballots, some under the column headed by the designation of the Democratic Party, some under the column headed by the designation of the Republican Party. The ballots were apparently then marked in the customary fashion and deposited in the ballot boxes. This office has no evidence of any improper or unlawful conduct on the part of the officials at the election. The sole question before us, as I understand it, is whether these ballots are 1) wholly invalidated; 2) if not wholly invalidated, shall they be counted for the office of county treasurer?

I have procured from the City of Biddeford an attested copy of the warrant for the State election and I am enclosing said copy herewith. As the warrant shows, the inhabitants of the seven wards of Biddeford qualified to vote were notified and warned to appear at the several named polling places on the second Monday of September, the eleventh day of said month, 1944, at 9 o'clock in the forenoon, then and there to give their votes for "Governor, Representatives to Congress, State Senators, Register of Probate, Clerk of Courts, Sheriff, County Attorney, County Commissioner, Representatives to Legislature." The warrant was issued on the 28th day of August, 1944. On that same day, according to the constable's return, attested copies were posted in the several designated places throughout the city within each of the said seven wards. It will be noted that the warrant does not call for the casting of any votes for county treasurer.

As my opinion of September 7th to the Secretary of State (a copy of which is attached hereto) discloses, there was, I believed, no vacancy existing in the office of treasurer of York County at the time of the September election. A vacancy had occurred subsequent to the primaries, and the Governor had appointed an incumbent. The statute which provided for the filling of that vacancy, R. S. Chapter 16, Section 4, reads as follows:

> "If a person so chosen declines to accept, or a vacancy occurs, the governor, with the advice and consent of the council, may appoint a suitable resident of the county who having accepted the trust, given bond, and been sworn, shall be treasurer until the first day of January following the next biennial election, at which election

a treasurer shall be chosen for the remainder of the term, if any; but in any event he shall hold office until another is chosen and qualified."

It is evident from the language of this statute that the legislature actually contemplated the possibility of a vacancy occurring under such circumstances that there should be an election to complete a term. The question presented to me was whether our statutes have any machinery by the use of which the name of a candidate could be placed on the ballot between the dates of September 7, when the matter was called to my attention, and September 11, the date of the election.

R. S. Chapter 8, Section 16, as amended by P. L. 1941, Chapter 127, contains the following language:

"Stickers shall not be counted unless used to fill a vacancy or correct an error in the printed ballot."

Was there an error in the printed ballot?

I searched the statutes in vain in an endeavor to find any authority for nominating a county treasurer after the date of the primaries. R. S. Chapter 7, Section 36, cannot apply to the instant case.

I considered the possibility that in the theory of the law an officer irregularly elected becomes the office-holder de facto and his acts are recognized as valid. The purpose of this is to make sure that governmental functions do not fail because of lack of an administrator. This theory did not need application in the instant case because there was no vacancy in that county. A person was occupying the position of county treasurer, who under the express provisions of the statute "shall hold office until another is chosen and qualified."

As a result of the above, I advised the Secretary of State that he could not authorize the affixing of stickers for the office of county treasurer.

We now have before us, not a theory, but an accomplished fact. Stickers have been used in the City of Biddeford on some 1,300 ballots. My conclusions are as follow:

1) The stickers, used in such large numbers, with no evidence whatsoever of any fraudulent intent, cannot be regarded as distinguishing marks. The ballots in themselves were properly counted.

2) The warrant for the election did not provide that any votes should be cast for the office of county treasurer. There was no vacancy in that office that needed to be filled by irregular procedure. Therefore the votes for the office of county treasurer appearing on the ballots in the City of Biddeford must be wholly disregarded. The same thing applies to any other cases in the County of York, where the same procedure was followed.

3) In the Town of Sanford, a few ballots were marked with stickers containing the following language:

"For York County Treasurer
FRANK C. CRETEAU, Sanford."

Any evidence I have indicates that the same procedure was followed there as in the City of Biddeford. There is no evidence of any fraudu-

lent conduct in connection with the affixing of the stickers in the Town of Sanford. I am informed that there were only a few of these stickers affixed in that town and, if there were evidence of fraud, we would be justified in regarding them as distinguishing marks on the ballots sufficiently patent to justify throwing out all ballots so marked. However, since the same procedure was followed in Sanford as in Biddeford and we have nothing to suggest that there was an intent to place a distinguishing mark on the ballots, the Sanford ballots should be treated in the same way as the Biddeford ballots. Disregard the sticker votes for county treasurer; but count the votes on which the stickers appears (unless there is some other reason for throwing out the entire ballot) for those offices mentioned in the warrant for the State election as set forth above.

FRANK I. COWAN
Attorney-General

November 2, 1944

H. C. Crawford, Municipal Auditor — Audit

Imposition of probation for payment of fines and costs

With reference to your memorandum of Nov. 2nd on the above subject, the answers which follow herewith are applicable to the hypothetical cases 1 and 2 since the breach, or violation, of the probation in either case must occur within the period of time fixed for the payment of the fine and costs.

(1) Where the breach occurs within the probation period, the offender may be brought before the Court for the revocation of the probation and the imposition of the original sentence even though the period of probation has expired. The important event is the violation within the probation period.

(2) Where a sentence is imposed of a fine and costs, and the respondent is put on probation and time is fixed for the payment of the fine and costs, the condition is imposed on the respondent and it is he who must fulfill the terms of the probation. The probation officer does not act as a collecting agent for the county or the state. Thus, he has no obligation so far as the collection of the fine and costs is concerned except to receive it if it is paid to him, and to turn it into the treasury of the county in accordance with R. S. c. 147, §13, amended 1943, c. 269. When a person is sentenced to pay a fine and costs and he is committed in default of the payment thereof, §48 of said chapter provides that if he is unable to pay the same, he may be liberated by the sheriff after 30 days by giving his note for the amount due to the treasurer of the same county. Thus, the duty of a probation officer would be, on failure by the offender to pay the fine and costs, to bring him before the Court so that he may be committed and held in accordance with said section. Under this section, payment of the fine and costs at any time by the offender would entitle him to liberation.

(3) In view of what I have stated in the preceding paragraph, I can see no reason why the probation officer would not be justified in accepting the payment of the fine and costs, after the time fixed

by the Court, since the offender would be entitled to his immediate release if he was committed and such payment was made by him at the jail, although I think that it would be good policy for the probation officer to inform the Court that the offender is tendering the payment of the fine after the time fixed by the presiding judge and obtain its approval for the action.

ABRAHAM BREITBARD
Deputy Attorney-General

November 13, 1944

Daniel T. Malloy, Chief Warden Dept. Inland Fisheries and Game

Subject: Bona fide resident of a city or town

I submit herewith answers to the questions you have proposed with relation to the above subject. In order to make the same clear, I am, in this memorandum, quoting your question in each case and then following it with my answer.

1. Mr. A who has been a legal resident of Portland for several years moves to Augusta on September 28, 1944. On October 2, 1944, he applies to the Augusta City Clerk for a resident hunting license.

(a) Is he a bona fide resident of Augusta on October 2nd, upon satisfying the city clerk that the questions following are answered in the affirmative?

(b) To identify himself to the City Clerk as bona fide resident of Augusta, must Mr. A make one or more of the following declarations:

1. That he has permanent employment in Augusta and intends to reside there indefinitely.
2. That he has rented or bought a home in Augusta.
3. That he has moved his family to Augusta.

Answer. The applicant would be entitled to a hunting license at Augusta, if the city clerk was satisfied that he was "bona fide" (in good faith) a resident of Augusta at the time of such application. The fact that he had resided there less than three months is immaterial, providing he was a "bona fide" resident of *the State* for "3 months next prior to his application for a license."

The inquiries under (b) would be pertinent in determining the question of bona fide residence. See §§40 and 41 of Chapter 38, P. L. 1943.

2. Mr. B moved from Boston, Mass., to Bangor, Maine, on January 15, 1944. On April 20, 1944, he applies to the Bangor City Clerk for a resident fishing license; he is refused same because he cannot show a poll tax receipt for the preceding year and holds no State of Maine motor vehicle operator's license for the current year. (Ref. to par. 9 of sec. 19)

(a) As this man was not required by law to pay a poll tax in this State for the preceding year, does this poll tax provision apply in Mr. B's case? Must he show a Massachusetts Poll Tax Receipt for 1943?

Answer. This applicant would be entitled to a license without pro-

ducing a poll tax receipt. Section 19, Clause 9, of this chapter applies only to "persons required by law to pay a poll tax *in this* state." . . . It would not be essential that he produce a poll tax receipt for the preceding year from Massachusetts. Such a receipt, however, would be some evidence that he resided in another State and was therefor not required to pay a poll tax in this State.

3. Paragraph b of section 40 provides that: "For the purposes of this chapter all aliens shall be classified as non-residents except that any alien who has lived in the State continuously for 2 years and in addition thereto pays a tax on real estate in the city or town in which he resides, may purchase any resident license under the provisions of this chapter."

(a) Mr. and Mrs. C, British subjects, have lived in Waterville for four years; in 1942 Mr. C purchased real estate in Waterville; in 1944, Mrs. C applied for a resident hunting license and was informed that she was not eligible to procure a resident license as she did not own and pay taxes on real estate in the town where she resided.

(b) If Mr. and Mrs. C owned this real estate jointly would both be eligible to procure resident hunting and fishing licenses?

(c) If Mr. and Mrs. C have children, also foreign born, what is their status in regard to hunting and fishing licenses?

Answer. (a) Mrs. C would not qualify and would not be entitled to a resident license under §40, par. (b), since she would pay no tax on real estate, the title being in her husband only.

(b) Mr. and Mrs. C would be entitled to a resident license, since the real estate would be taxed jointly.

(c) The children of Mr. and Mrs. C would not be entitled to resident licenses until they became citizens.

4. Are license agents justified in refusing to issue a hunting license to any persons whom for any reason they consider incompetent to handle firearms, particularly children 10 to 12 years of age?

For example, a child 12 years of age, deemed unfit by license agent to handle firearms makes application for a hunting license and presents written permission from his parent to obtain same. (See 41-6.)

Answer. Yes. The licensing agent may exercise his discretion, when he is satisfied that the child is incompetent and would endanger his own life and that of others.

ABRAHAM BREITBARD
Deputy Attorney-General

Hereafter appear opinions by Assistant Attorney-General William H. Niehoff for the guidance of the Liquor Commission. All the matters covered by these opinions were discussed with the Attorney-General and with other members of the Department and the opinions issued are the opinions of the Department. They are considered particularly valuable for the future guidance of the Commission. Opinions having to do with strictly local questions where the decisions of the Commission must depend on the facts in each particular case have been omitted.

June 25, 1942

To: State Liquor Commission

From: William H. Niehoff, Asst. Attorney-General Dept. State Liquor Commission

Subject: Sale of Liquor to Minors

There has been no judicial interpretation to date of Sec. 12-C of Chapter 250 of the Laws of 1941 which is the law relative to the sale of liquor, etc. to minors.

Under the law as it is now enacted it is illegal for any licensee to sell, furnish, give, serve or permit to be served any liquors, malt liquors, wine or spirits to any minor under the age of 18 years. The law makes an exception, however, in the case of a licensee for the sale of malt liquor to be consumed on the premises, by the provision that such licensee shall not furnish and sell malt liquor to persons under the age of 21 years.

It is my opinion that under this law it is necessary to prove both the furnishing and sale to obtain a conviction.

I might add that this is an inquiry from an individual outside of the department. It should not be the custom for this department to render opinions or interpretations of the law on moot questions not officially before the Commission for determination for persons outside of the department.

July 8, 1942

To: Fred M. Berry, Administrative Assistant Dept. State Liquor Commission

From: William H. Niehoff, Asst. Attorney-General Dept. State Liquor Commission

In reply to your memorandum of July 8, with reference to the question of whether or not a law enforcement agency of the State of Maine must necessarily pay the town clerk for the providing of a certificate of birth, I am of the opinion that the answer to your inquiry is "Yes."

Under Chapter 193, Laws of 1941, the town clerk is entitled to a fee of 50c for issuing a certificate of birth. No exception is made in reference to the receiver of such certificate.

July 8, 1942

To: Frank I. Cowan, Attorney-General

From: William H. Niehoff, Asst. Attorney-General Dept. State Liquor Commission

Upon receipt of your memorandum dated July 2, 1942, in reference to the 61% markup on liquors, I conferred with the Commission and with Fred M. Berry, Administrative Assistant to the Commission.

I have been informed that the 61% markup has been carried out fully with one exception. Subsequent to receiving your memorandum of May 28, all vendors transacting business with the Commission were notified of the insistence on the 61% markup and advised that it would not be possible to continue their merchandise at a higher price than the price prevailing during the month of March, 1942, which substanti-

ated the retail selling price per bottle during that month. In every case but one the vendors have coöperated fully by notifying the Commission that they would revert to the prevailing prices of March so that the Commission would be able to obtain their 61%. On June 16, the retail prices in all liquor stores were adjusted so that they did not exceed the price higher than the same merchandise sold for during March. These prices conformed to O. P. A. regulations as well as the State Law.

In this adjustment there was one brand of merchandise on which the selling price was lowered and on which the vendor had not guaranteed the prevailing cost price during March. This matter was corrected July 1, and the prices at the liquor stores adjusted so that the State would receive the 61% markup. This company has advised the Commission that they are now able to sell this brand of merchandise at the lower price due to a change in formula, and upon receiving this merchandise the retail price will be maintained at the higher level until the State has been compensated for the loss on the bottles sold between June 16 and June 30. In the final analysis, the net loss will be nil and the Commission over a period of time will have obtained the 61% in the aggregate on the merchandise handled.

I have impressed upon the Commission and Mr. Berry the importance of complying strictly with the Statute in every detail in the administration of the law.

July 14, 1942

To: Wilbur H. Towle, Chairman Dept. State Liquor Commission

From: William H. Niehoff, Asst. Attorney-General Dept. State Liquor Commission

Subject: Payment of Excise Taxes

This is with reference to your memorandum of July 8, 1942, concerning the letter from Jacob Agger, Esq. addressed to Mr. Berry, Administrative Assistant to the Commission.

It apparently appears that the wholesale beer distributors are seeking some system whereby the difficulties attending the advance payment of excise taxes is to be overcome. It has been suggested that a bond may be given to secure the payment of the excise taxes, and also that they be paid in a lump sum in advance of sending the orders.

Section 20 of Chapter 268, Public Laws of 1933, as amended by Chapter 236, Section 1, Public Laws of 1937, in reference to the method of purchasing malt liquors, among other things, provides: "Three copies of the order are to be mailed to the Commission *with a check* for the amount of the excise taxes required to cover the amount of the order." (underscoring mine.)

The foregoing statute is mandatory. It expressly provides the method of procedure in both ordering the malt liquor and the payment of the excise taxes. This statute must be adhered to strictly. It provides the only method of payment of the excise taxes. Any other system that would not be in strict compliance with this law would be illegal.

I appreciate the necessity for a change caused by present market conditions, but request for such a change in the law should be addressed to the Legislature and not the Liquor Commission. The former has the power to amend or repeal, but not so the latter. The Commission can only administer the law as it has been enacted by the Legislature.

July 14, 1942

To: W. H. Towle, Chairman Dept. State Liquor Commission
From: William H. Niehoff, Asst. Attorney-General Dept. State Liquor Commission

Subject: Credits for the sale of malt liquor to post exchanges

The question has arisen as to whether or not a wholesaler may legally extend credit for the sale of malt liquors to so-called "post exchanges."

Chapter 250, Sec. 12-C, Public Laws of 1941, among other things, provides: "No licensee shall sell, or offer to sell, any malt liquors, wine or spirits, except for cash, excepting credits extended by a hotel or club to bona fide registered guests or members."

The prohibition of the extension of credit for the sale of malt liquors is directed to the licensee. If he extends credit for such sale, he clearly violates the law.

August 25, 1942

To: State Liquor Commission
From: William H. Niehoff, Asst. Attorney-General Dept. State Liquor Commission

Subject: Sale of malt liquor on Naval Reservations by civilians

Request has come to us from A. G. Hillberg, Lieutenant Commander, United States Navy Reservation at Portland, Maine, for information in regard to what steps should be taken to enable commissary contractors to sell beer in the construction camps. Particular request has been directed in reference to the construction camp on Long Island, Casco Bay, Maine.

Our laws provide that no malt liquor intended for sale shall be manufactured in this State or sold at wholesale or at retail within the State without a license therefor issued by the State Liquor Commission.

These laws would not apply to territory ceded by the State of Maine to the United States government in accordance with the acts of Congress and the Laws of Maine. Such property would be federal property over which the State would have no jurisdiction. If the Navy or any part of the Navy, being an instrumentality of the federal government, wants to sell malt liquor on any of its territory they could do so without a license from the State Liquor Commission. However, as I understand the circumstance of this particular request, Lieutenant Commander Hillberg wants to give authority to some civilian to sell beer on the Naval territory to civilian workmen. It is my opinion that he is without such authority. Under Naval Regulation General Order No. 59, the sale of alcoholic beverages is expressly limited to officers' quarters, officers' messes, and officers' clubs. Exceptions to this rule can be

made only on specific authority of the Secretary of the Navy. In C. M. O. No. 9—1936 (page 11), it was held that "as a matter of policy, it was decided by the Secretary of the Navy that sale of beer to employees by the Navy yard restaurant, or elsewhere within the yard limits, will not be permitted."

I have been informed by John Quincy Adams, Major, United States Marine Corps, District Legal Officer for the First Naval District, that the sale of alcoholic beverages by the Navy to civilians is expressly prohibited. The Navy as such can sell and dispense malt beverages to its personnel on Long Island without having to have a license from the Commission. It cannot, however, extend or grant this right to any civilian to sell malt liquor on the Naval territory.

November 3, 1942

To: Capt. W. H. Towle, Chairman Dept. State Liquor Commission

From: William H. Niehoff, Asst. Dept. State Liquor Commission
Attorney-General

Subject: Cash Sales to Army Post Exchanges

This is in reply to your request for an opinion with reference to the interpretation of the word "cash" as set forth in Section 12-C of Chapter 250 of the Public Laws of 1941.

The Army Exchange Service (an instrumentality of the federal government) is purchasing certain malt beverages from wholesalers in this state. Because of the system of financing these Post Exchanges by the Army, it is not practical for them to pay the distributor in cash money at the time of delivery. This, I understand, gave rise to your inquiry for interpretation of the word "cash" as used in the act.

Ordinarily, the word "cash" means money, but it is frequently used as a term meaning the opposite of credit. *Hartung* v. *Rusking* 182 P. 177.

The word "cash" means money or its equivalent—*Kiles* v. *Young* 125 S. E. 204.

"Cash" includes currency, orders, warrants or scrip. Words and Phrases 4th series.

In view of the interpretation placed on the word "cash" by courts as cited above, we may safely assume that unconditional checks or orders for the payment of money constitute "cash" and would be in compliance with the statutory requirement of cash for the sale of malt liquor, wine or spirits.

In coöperation with Col. Waterman of the U. S. Army, we have drafted a form of order for the payment of malt beverages to the distributor by the Army. In my opinion this order properly executed would constitute "cash" in the transaction between the Post Exchange and the distributor for the sale of malt beverages. Copies of this form are hereto attached and made a part of this memorandum.

November 6, 1942

To: Capt. W. H. Towle, Chairman Dept. State Liquor Commission
From: William H. Niehoff, Asst. Dept. State Liquor Commission
Attorney-General

Subject: Wholesale Licenses in Dry Towns

This is in reply to your request for an opinion as to whether or not a wholesaler's license can be issued to a wholesaler whose place of business is in a so-called "dry" town or city.

Section 8 of Chapter 268 of the Public Laws of 1933 as amended provide for licenses for the sale and distribution of malt liquors at wholesale. No reference is made in this Act to the provisions of the so-called Local Option Law.

Section 17 of Chapter 177 of the Public Laws of 1939 as amended provides for local option with respect to (1) State Stores; (2) the sale of wine and spirits to be consumed on the premises; (3) the sale of malt liquors to be consumed on the premises; (4) the sale of malt liquors not to be consumed on the premises. A majority negative vote prohibits the issuance of any of these licenses in that particular city or town for a period of two calendar years.

Rule 15 of the Commission provides: "No wholesale licensee shall sell malt liquors to any person, firm or corporation who is not the holder of a license."

I am of the opinion that our laws permit the issuance of a wholesaler's license even though the place of business of the wholesaler may be located in the so-called "dry" town or city. In other words, the result of local option election in no way affects the right to issue a wholesaler's license.

November 17, 1942

To: Capt. W. H. Towle, Chairman Dept. State Liquor Commission
From: William H. Niehoff, Asst. Dept. State Liquor Commission
Attorney-General

Subject: Transfer of Malt Liquor Licenses

This is with reference to your inquiry regarding the transfer of a Retail Malt Liquor License and a Restaurant Malt Liquor License. Section 13 of Chapter 237 of the Public Laws of 1937 provides for the transfer of certain licenses from one place to another within the same municipality. This section provides as follows: "The Liquor Commission, upon application in writing, may transfer any liquor license of any hotel or club or the Vinous liquor license of any restaurant from one place to another within the same municipality ***." The law, however, does not include retail malt licenses nor restaurant malt licenses.

The Liquor Commission derives its authority from the Legislature. The Legislature has not seen fit to legislate for the transfer of retail malt licenses or restaurant malt licenses. In other words, the Legislature has made provisions only for the transfer of any liquor license of a hotel or club or the Vinous liquor license of a restaurant.

It is my opinion that the Commission is without authority to transfer retail malt licenses or restaurant malt licenses from one place to another.

December 11, 1942

To: Fred M. Berry, Administrator Dept. State Liquor Commission
From: William H. Niehoff, Asst. Dept. State Liquor Commission
Attorney-General

Subject: Contract with the American Bank Note Company

You ask whether or not the Commission has a legal right to contract for the supply of Decalcomania stamps to various distilleries. I understand the practice in the past has been as follows:

The Commission has contracted with the American Bank Note Company for the printing of these stamps. The Commission has required the various distillers to purchase these stamps direct from the American Bank Note Company at an agreed price. The distillers have been instructed to affix these stamps to the liquor purchased by the Commission. It appears that the price the distillers pay for the stamps is in excess of the cost of the stamps and this difference is paid to the Commission by the American Bank Note Company.

Section 22 of Chapter 237 of the Public Laws of 1937 repealed Section I of Chapter 179 of the Public Laws of 1935 and provided: "The State Liquor Commission shall have general supervision of manufacturing, importing, storing, transporting and selling liquor *** . The Commission shall have power to import spirits and wines and shall have exclusive control of the sale of all liquors. ** " Section I of Chapter 223 of the Public Laws of 1937 provides: "No person, association, partnership or body-corporate, other than the State Liquor Commission shall import spirituous and vinous liquors into this State. ** " Section 3 of the same act provides: "No person, association, partnership or body-corporate, shall knowingly transport to, or cause to be delivered to, any person, firm or corporation, other than the State Liquor Commission, unless upon written permission of said Commission, any spirituous and vinous liquors except liquors purchased from a State store or the State Liquor Commission. ** "

Section 5 of Chapter 268 of the Public Laws of 1933 among other things provides that the State Liquor Commission shall have the power and duty "to adopt rules and regulations for the administration of this act and for the supervision and regulation of the manufacture, sale and transportation of malt liquors throughout the State; the manufacture, sale and transportation of which is hereby permitted and authorized." Section 2 of Chapter 301 of the Public Laws of 1934 extends this power and duty to the sale of liquor as well as malt liquor. Section I and Section 2 of Chapter 179 of the Public Laws of 1935 as amended by Chapter 237 of the Public Laws of 1937 provide: "Section I. The State Liquor Commission shall have general supervision of manufacturing, importing, storing, transporting and selling liquor. ** " Section 2. "The Commission shall have the right to establish regulations for clarifying, carrying out, enforcing and preventing violation of all

or any of the laws pertaining to liquor and such regulations shall have the force and effect of law. ** " Section 7 of Chapter 300 of the Public Laws of 1934 provides: "It shall be the duty of the Commission to buy and have in its possession wine and spirits for sale to the public. Such wine and spirits shall be purchased by the Commission directly and not through the State purchasing agent and shall be free from adulteration and misbranding. The Commission shall sell at retail in original packages and for cash, either over the counter or by shipment to points within the State wine and spirits of all kinds for consumption off the premises at State stores to be operated under the direction of the Commission. The Commission shall establish prices for retail sale which shall be uniform throughout the State."

The above citations are to constitute the authority of the Commission to make such rules and regulations and formulate such policies for the purpose of carrying out the intent of the various acts. It is my opinion that under the broad terms of the above cited laws the Commission has legal authority to continue its policy of requiring all liquor coming into this State to bear a stamp. If some arrangement were not made in respect to identification of liquor purchased legally, it would be practically impossible to distinguish between liquor legally purchased and liquor illegally purchased. It is the duty of the Commission to enact such rules and policies as will hinder or prevent the flow of illegal liquors in the State and also to make more practical the enforcement of the laws in respect thereto.

The matter as to whether or not the Commission should make a profit on the sale of these stamps does not present a legal problem. That is a matter wholly within the discretion of the Commission.

February 8, 1943

To: The Commission Dept. State Liquor Commission
From: William H. Niehoff, Asst. Dept. State Liquor Commission
Attorney-General

Subject: The Granting of Retail Malt Liquor Licenses in Unorganized Places

You ask whether or not the Commission may issue a Retail Malt Liquor license in unorganized places, in view of the fact that persons living in an unorganized place do not vote under the so-called Local Option law.

Section 17 of Chapter 300 of the Laws passed at the special session of the Legislature in 1934 constitutes the so-called Local Option law. This law provides: "If a majority of the votes cast in a city or town in answer to question (4) are in the affirmative, the commission may issue licenses for the sale of malt liquor not to be consumed on the premises therein subject to all provisions of law." It also provides: "If a majority of the votes cast on question (4) are in the negative, licenses for the sale of malt liquor not to be consumed on the premises in that city or town shall not be issued, for the 2 calendar years next following."

Chapter 220 of the Public Laws of 1941 among other things pertaining to the issuing of a Restaurant Malt Liquor license provides: " *** and if said hotel, restaurant or club is located in an unorganized place said application shall be approved by the county commissioners of the county, within which the same is located."

The law contemplates the issuance of a Malt Restaurant Liquor license in an unorganized place, yet makes no provision for the Local Option law to be effective in such unorganized place. Consequently I am of the opinion that the Commission is authorized to issue a Retail Malt license to a proper applicant in an unorganized place not withstanding the Local Option law.

March 11, 1943

To: Alonzo Conant, Director Dept. State Liquor Commission
Enforcement Division
From: William H. Niehoff, Asst. Dept. State Liquor Commission
Attorney-General

Subject: Transportation of Liquors into Dry Towns

Section 19 of Chapter 127 of the Revised Statutes of 1930 provides: "No person shall travel from town to town, or from place to place, in any city, town, or plantation, on foot or by public or private conveyance, either by land or water, carrying for sale or offering for sale intoxicating or fermented liquors, and no person shall solicit, obtain, or offer to obtain orders for the sale or delivery of any intoxicating or fermented liquors, in any quantity." Under this Section it would be unlawful for any one to either peddle or sell liquors or to solicit orders for liquor in any dry town.

Section 20 of Chapter 127 of the Revised Statutes of 1930 as amended provides: "No person shall knowingly transport from place to place in this State any intoxicating liquors, with the intent to sell the same in this State in violation of law, or with the intent that the same shall be so solicited by any person, or to aid any person in such sale, and no person shall transport any spirituous or vinous liquors in this State in a greater quantity than three quarts, *unless said liquor was purchased from a state store or the state liquor commission.* ** "

Section 3 of Chapter 223 of the Public Laws of 1937 provides: "No person, association, partnership or body corporate, shall knowingly transport to, or cause to be delivered to, any person, firm or corporation, other than the state liquor commission, unless upon written permission of said commission, any spirituous or vinous liquors, *except liquors purchased from a state store or the state liquor commission.*"

Under these Sections there is no restriction on the transportation of liquors into a dry town so long as the liquors were purchased from a state store or the state liquor commission.

Section 17 of Chapter 300 of the Public Laws of 1933 (passed at the Special Session November, 1934) is the so-called "local option" law. This local option law applies only to the sale of liquors in the town. If a town votes dry, the law merely prohibits the sale therein of liquors.

It does not prohibit the drinking of liquor in a dry town, nor the transportation of liquor into a dry town so long as the liquor had been purchased at a state store or from the state liquor commission.

From the detailed report you have submitted to me with reference to the situation in Houlton, I am unable to find any unlawful practice or the violation of any liquor law. Persons living in a dry town have the right under our law to purchase liquor at a state liquor store located in another town and to transport that liquor to their home in the dry town. This may be done either by the person himself or the transportation may be by an established common carrier.

March 11, 1943

To: State Liquor Commission Dept. State Liquor Commission
From: William H. Niehoff, Asst. Dept. State Liquor Commission
Attorney-General

Subject: Rebate of Taxes on Malt Liquors Sold to Army Exchanges

By opinion under date of April 18, 1941, the Attorney-General's Department ruled that the Commission was authorized to grant rebate of the tax imposed under Section 2 of Chapter 15 of the Private and Special Laws of 1937, as amended by Section 37 of Chapter 236 of the Public Laws of 1937 (being called an emergency deficiency tax) when the malt liquor was sold to Post Exchanges of the United States Army but not to rebate the tax imposed by Section 21-A of Chapter 268 of the Public Laws of 1933 which was enacted by Section 2 of Chapter 236 of the Public Laws of 1937 (being called the importation tax).

The War Department has protested the payment of this so-called importation tax and contends that the Army Exchanges are exempt from payment thereof. The question submitted to me is whether or not the Commission is authorized to rebate this tax to a wholesaler who sells to an Army Exchange.

The sale of intoxicating liquors by Army Exchanges is prohibited by Federal Statute and Army Regulations (Sec. 38, Act February 2, 1901, 31 Stat. 758; 10 U. S. C. 1350; Par. 9 b (7), AR210-65, Tentative, July 1, 1941). Beer with an alcoholic content of not more than 3.2 per centum by weight is non-intoxicating under Federal law. (48 Stat. 25).

The Army Exchange is a Government instrumentality deemed essential for the performance of governmental functions. It is an integral part of the Federal Military Establishment and, insofar as state laws are concerned, occupies the same general legal status, and is entitled to the same immunities as other governmental agencies of the United States. (*Standard Oil Company of California* v. *Johnson*, 62 S. Ct. 1168). In view of the ruling of the United States Supreme Court in *Standard Oil Company of California* v. *Johnson* (supra) I am of the opinion that the Army Exchange is exempt from the payment of the importation tax as well as the emergency deficiency tax and that the law authorizes you to rebate these taxes on sales to an Army Exchange. I am informed by the War Department that the authorized Army Exchanges in Maine are as follows:

Fort Williams, Cape Cottage
Dow Field, Bangor

Army Air Force Base, Houlton
Army Air Force Base, Presque Isle

The Army Exchange has indicated that all malt liquors purchased for Army Exchanges in Maine will be purchased through a Maine wholesaler and orders will be issued from the above exchanges.

Proper affidavits should be submitted by the wholesaler on his request for rebate of these taxes on malt liquors sold to an Army Exchange and he should further submit proper proof of such sale before rebate is allowed. This, of course, applies only to the sale of 3.2 beer as the sale of malt liquor to an Army Exchange in excess of 3.2 would be in violation of Federal law.

March 30, 1943

To: State Liquor Commission Dept. State Liquor Commission
From: William H. Niehoff, Asst. Dept. State Liquor Commission
Attorney-General

Subject: Rebate of Taxes on Malt Liquors Sold to Navy's Ship Service Departments

The opinion forwarded to you March 11, 1943, with respect to Rebate of Taxes on Malt Liquors Sold to Army Exchanges applies equally to Navy's Ship's Service Departments.

The Navy is entitled to the same immunity of the payment of these taxes as the Army.

June 30, 1943

W. Howard Mann
Lieut., (jg) U. S. N. R.
Ship Service Officer
Fleet Club, 40 Elm Street
Portland, Maine

Dear Lieutenant Mann:

This will acknowledge receipt of your letter of June 24 requesting authorization from the State Liquor Commission to deliver beer on Sunday from the National Distributors' Warehouse, 128 Middle Street, Portland, Maine, to the U. S. Navy Fleet Club at 40 Elm Street, Portland, Maine.

Under our statutes a delivery constitutes a sale and is expressly prohibited on Sunday. It would be unlawful for the National Distributors to either make delivery themselves or permit delivery to be made from their licensed premises on Sunday.

I discussed this matter with the Commission and they took the position that even if it were not a violation of the law they would not grant this authority to any licensed distributor. They are of the opinion that the Fleet Club should be able to stock up the necessary beer required on Saturday.

The Commission is ready at all times to coöperate fully with the Navy but feels that in this request it would not be a wise policy to grant any exceptions to any wholesale licensee even if it were not in violation of the law.

I am sorry that this matter cannot be worked out as you request and hope that you will be able to make the necessary arrangements that will enable you to get your supply of beer on Saturday.

July 26, 1943

Hillard H. Buzzell
County Attorney
Belfast, Maine

Dear Hillard:

This will acknowledge receipt of your letter of July 19. I was out of the office for several days and this accounts for the delay in my reply. You propound four questions for consideration and I shall attempt to dispose of them in that order.

Question 1. Whether or not the operator of a cocktail lounge must serve any person who sees fit to enter his portals providing they are not under the influence of liquor and are not creating a disturbance of any kind at the time? A licensee is responsible under the law to the State Liquor Commission and I can find no law which compels the licensee to serve any person. The licensee being responsible for what may occur on the licensed premises, I think has the authority to determine to whom he will serve intoxicating drinks.

Question 2. Has the operator the right to refuse any such person and after requesting them to leave the premises and they refuse, to call a police officer for the purpose of evicting such a person and just what is the legal status of the police officer under those conditions? The first part of this question is answered in the answer to the first question. I know of no authority that a police officer has of evicting anyone from the premises unless he is doing so in making an arrest. Under the law, the owner may use as much force as is reasonably necessary to evict a trespasser from his premises.

Question 3. Has the operator a right to refuse to sell liquor to any person who has formerly created a disturbance or under the influence of liquor? It is my opinion that the operator has a perfect right to refuse to sell to anyone any liquor and needs no reason for refusing to do so. It might be quite apparent that on a previous occasion he had had trouble on account of a particular person drinking, and does not want to have a reoccurrence of that situation.

Question 4. Has the operator a right to discriminate and serve those he desires to serve and refuse those he does not desire to serve with the exception of discrimination relative to the color in the Armed Forces? Chapter 129—Section 21 of the Revised Statutes prohibits discrimination by an inn-keeper against any soldier or sailor enlisted in the service of the United States except for good cause. This, I take it, refers only to the business in connection with the operator of the hotel. It is not necessary to have a cocktail lounge in order to operate a hotel. If the discrimination against the man in service is for cause, the licensee has the right to discriminate against him.

We must differentiate between the duties and liability of an inn-keeper and those of an operator of a cocktail lounge which happens to

be located in the hotel. In *Healey* vs. *Gray* 68 Me. 489, the court held that an inn-keeper had no liability unless the relationship of host and guest existed. *Atwater* vs. *Sawyer* 76 Me. 539 defines and explains the duties of inn-keepers toward guests. This explanation is further given in 115 Me. 190 in *Norcross* vs. *Norcross* 53 Me. 163. The court held that the length of stay of a party in a hotel was no criterion to determine the relationship.

It all sums up to this: that the serving of liquors is not a part of the responsibility the Statute imposes on an inn-keeper. If the holder of a liquor license has cause or is fearful of possible consequences, he may rightfully refuse to serve any particular person intoxicating liquors.

WILLIAM H. NIEHOFF
Asst. Attorney-General

August 24, 1943

To: State Liquor Commission Dept. State Liquor Commission
From: William H. Niehoff, Asst. Dept. State Liquor Commission
Attorney-General

Subject: Proposed Agreements Submitted for Opinion

I have examined the proposed "Sales and Bottling Agreement" with Foster and Co. as well as the proposed "Deposit Agreement" with Foster and Co., the American Distilling Company and the First National Bank of Chicago. The proposed agreements are hereto attached.

Both of these agreements are unilateral and afford no security to the State. The proposed agreement calls for the expenditure of a large sum of money purely on a contingency for delivery of liquors over a period of 14 months. The State would have to pay 14 months in advance of delivery a portion of the purchase price with no secured guarantee of delivery. In addition to the usual risks attending such an agreement, there is added the uncertainty of conditions attending the war. All such contemplated contingencies and conditions are reasonably guarded against in the agreement for the protection of all parties except the State.

Under Section 7 of Chapter 300 of the Public Laws passed at the Special Session of the Legislature in November 1934, the Commission was given authority to "buy and have in its possession wine and spirits for sale to the public." It would be lawful for the Commission to enter into a reasonable contract for the purchase and delivery of liquors directly and not through the State purchasing agent. However, the authority and duty imposed goes only to the purchase of liquors and nothing else. The proposed contracts provide not for the purchase of liquor directly but in part for bottling and for the payment of obligations due a bank by a liquor establishment.

In addition to the proposed contracts being unilateral in scope and objectionable as to conditions, I am of the opinion that the Commission does not have legal authority under the law to enter into either of the proposed contracts. Not being specifically authorized by law, such

contracts would have to be referred to the Department of Finance under the administrative code enacted in Chapter 216 of the Public Laws of 1931.

January 14, 1944

To: Fred M. Berry, Administrator Dept. State Liquor Commission
From: William H. Niehoff, Asst. Dept. State Liquor Commission
Attorney-General

Subject: Acceptance of Assignments

STATEMENT OF FACTS

Brookside Dist. Products Corporation assigned to Fidelity-Philadelphia Trust Company their accounts receivable from the State of Maine. The assignee now requests the State of Maine to accept this assignment and make its payments to them in accordance with said assignment. The question presented is whether or not an official of the State can accept this assignment.

OPINION

Assignment of debt or accounts receivable from one to another, with evidence by which they are ascertained, are valid and create a new contract between the assignee and the debtor. *Harrison* v. *Hill* 14 Me. 129. Likewise future fruits of existing contracts are assignable. *Farnsworth* v. *Jackson* 32 Me. 419; *Knevals* v. *Blauvelt* 82 Me. 458; *Wade* v. *Bessey* 76 Me. 413. When an assignment has been made and proper notice thereof given to the debtor he must treat with the assignor at his own peril. *Palmer* v. *Palmer* 112 Me. 152. The assignment operates as a new contract between the debtor and the assignee, commencing on notice, by which former becomes debtor of latter for amount equitably due. *Joy* v. *Foss* 8 Me. 456.

In the event an assignment is made and proper notice thereof is given to the State of Maine, the department owing the amount should withhold payment until approval for payment to the assignee is secured from the Attorney-General's Department.

No officer of the State can create a contractual liability on behalf of the State by accepting an assignment unless expressly authorized by Statute. I find no Statute authorizing anyone to accept assignment of accounts payable on behalf of the State.

Therefore the Fidelity-Philadelphia Trust Company should be notified that the State cannot accept the assignment of the Brookside Dist. Products Corporation.

June 14, 1944

Ernst, Gale, Bernays, Falk and Eisner
40 Wall Street
New York 5, New York

Re Liquor Dividends

Gentlemen:

Your letter of June 1st addressed to the Maine State Liquor Commission has been referred to me for reply.

Please be advised that under the provisions of the laws of Maine, no person, association, partnership or body corporate, other than the

State Liquor Commission can import spirituous or vinous liquors into this State except an individual may transport into this State spirituous or vinous liquors for his personal use, in a quantity not to exceed three quarts. The Commission has no authority to permit importation in violation of this law.

An individual desiring to have liquor delivered to him in the State of Maine from outside the State can only accomplish this with purchase order through the State Liquor Commission. In your particular set of facts, it would be necessary for the individual to place an order with the State Liquor Commission for this liquor. The liquor would have to be delivered to the warehouse of the State Liquor Commission at Portland, Maine, by the duly licensed vendor or manufacturer. The individual could then receive this shipment of liquors from the State Liquor Commission upon payment of all the charges of transportation plus 61% added onto the cost price of the liquor plus the mark up.

WILLIAM H. NIEHOFF
Asst. Attorney-General

June 30, 1944

To: James H. Christie, Director Dept. State Liquor Commission
Enforcement Division

From: William H. Niehoff, Asst. Dept. State Liquor Commission
Attorney-General

Subject: Witness Fees

Under date of June 26th your memorandum requests opinion as to whether or not inspectors are entitled to receive fees in criminal cases in which they appear either as the arresting officer or witness.

Chapter 247 of the Public Laws, enacted at the Special Session of the Legislature in October 1937 (repealing Section 24 of Chapter 237 of the Public Laws of 1937) among other provisions defines the powers and duties of inspectors as follows: " *** They shall have the same powers and duties throughout the several counties of the state as sheriffs have in their respective counties in connection with the laws pertaining to the sale, possession, manufacture and transportation of intoxicating liquors and the conduct of drinking houses and tippling shops."

Section 4 of Chapter 126 of the Revised Statutes of 1930 provides for the fees due sheriffs and their deputies in criminal cases. It, therefore, follows that where the inspectors have the same duties and powers as sheriffs, they have the same right to fees in criminal cases as sheriffs and deputies. Costs in criminal cases are taxed to the respondent on conviction and may become a part of the sentence. The respondent is not entitled to have credit on these costs because the officer making the arrest, etc. is paid a salary by the state.

Inspectors being on a salary basis are not entitled to keep these fees personally. All fees coming to an inspector in criminal cases in connection with the discharge of their duties should be immediately turned over by him to the Chief of the Enforcement Division who shall transmit them for deposit to the State Treasurer.

August 28, 1944

To: State Liquor Commission Dept. State Liquor Commission
From: William H. Niehoff, Asst. Attorney-General Dept. State Liquor Commission

Subject: Authority to Prohibit Sales of Liquor

Inquiry is made as to the legal authority of the State Liquor Commission to control or prohibit the sale of intoxicating liquors both at the State Stores as well as by licensees in the interest of the public safety and welfare during public celebration or demonstration resulting from the termination of the present war.

Section 5 of Chapter 268 of the Public Laws of 1933 authorizes the State Liquor Commission to "adopt rules and regulations for the administration of this act and for the supervision and regulation of the manufacture, sale and transportation of malt liquors throughout the state." Chapter 301 of the Public Laws enacted at the Special Session in November 1934, Section 2 provides that the State Liquor Commission "shall have all the regulatory powers in connection with licenses for the sale of liquor that are vested in said board, in connection with the sale of malt beverages." Chapter 96 of the Public Laws of 1939 grants to the commission general supervision of manufacturing, importing, storing, transporting and selling liquor. Section 19 of Chapter 237 Public Laws of 1937 grants to the commission "the right to establish regulations for clarifying, carrying out, enforcing and preventing violation of all or any of the laws pertaining to liquor and such regulations shall have the force and effect of law unless and until set aside by some court of competent jurisdiction or revoked by the commission." Section 22 of Chapter 237 Public Laws of 1937 grants to the commission "general supervision of manufacturing, importing, storing, transporting and selling liquor." Chapter 147 Public Laws of 1937 authorizes the commission "to regulate the opening and closing hours of each store (state liquor store) within the provisions of this act."

From the above citations it appears definitely that the commission is authorized to regulate the sale, transportation, etc. of all intoxicating liquor in this state. In order to prohibit the sale, transportation, etc. of liquor during a public demonstration for the purpose of "preventing violation of all or any of the laws pertaining to liquor" the commission should establish some definite rule to cover the situation. This rule should be made applicable to the various types of licensees. The state liquor stores could be closed on a directive order from the commission and no rule is necessary for this purpose.

October 26, 1944

To: Harold B. Emery, Chairman Dept. State Liquor Commission
From: William H. Niehoff, Asst. Attorney-General Dept. State Liquor Commission

Your memorandum of October 13, 1944, propounds the question concerning the statutory authority of the Maine State Liquor Commission to carry on public relations or educational activities such as the distribution of temperance leaflets, etc.

The powers, authority and duties of the State Liquor Commission are found in Sections 1 and 2 of Chapter 179 of the Public Laws of 1935 as amended by Chapter 237 of the Public Laws of 1937 and Chapter 96 of the Public Laws of 1939. This act as amended grants to the State Liquor Commission "general supervision of manufacturing, importing, storing, transporting and selling liquor, and shall have power to issue, renew, suspend and revoke all licenses and to hold hearings." This act further provides that the commission "shall have power to import spirits and wines and shall have exclusive control of all liquors." The act also provides that "the commission is authorized to promulgate rules, requirements and regulations, the observance of which shall be conditions precedent to the granting of any license to sell liquor, including malt liquor. These rules, requirements and regulations may include the character of the applicant, the location of the place of business, the manner in which it has been operated, and the determination by the commission whether or not to grant the license shall be final."

The act grants specific authority for the promulgation of regulations in the following language: "The commission shall have the right to establish regulations for clarifying, carrying out, enforcing and preventing violation of all or any of the laws pertaining to liquor and such regulations shall have the force and effect of law unless and until set aside by some court of competent jurisdiction or revoked by the commission. The commission shall have power by regulation to shorten the permissible hours of sale in state stores and to prevent the sale by licensees of wine and spirits to minors or persons under the influence of liquor, or to an interdicted person. The commission shall at least annually on or before June 30 of each year publish in a convenient pamphlet form all regulations then in force and shall furnish copies of such pamphlets to every licensee authorized by law to sell liquor."

From an examination of the above-cited laws, I am of the opinion that the Maine State Liquor Commission is not authorized by law to carry on any additional activities in respect to temperance. Commendable and apparently necessary as this idea may be, the Legislature has made no provision for such activity by the Liquor Commission. The Legislature has granted ample authority to the commission for the general management and control of the sale of all liquors but has not placed the responsibility for temperance on the commission.

SECTION FOUR

Statistics for the Years 1943-1944

MAINE CRIMINAL STATISTICS FOR THE YEARS BEGINNING NOVEMBER 1, 1942, AND ENDING NOVEMBER 1, 1944

The following pages contain the criminal statistics for the years beginning November 1, 1942 and ending November 1, 1944. An interesting fact is the very sharp reduction in total crimes in the State since the outbreak of the war. As my Report for the years 1941-1942 shows, in the last few years total indictments and appeals have been as follows:

1937 - 2168	1941 - 1731
1938 - 2065	1942 - 1458
1939 - 2116	1943 - 1432
1940 - 1689	1944 - 1327

This reduction in the number of offenses does not show up under any particular heading, although there is a very marked reduction in the number of drunken driver cases. This reduction appears over a number of years as follows:

1937 - 341	1941 - 224
1938 - 249	1942 - 225
1939 - 236	1943 - 140
1940 - 178	1944 - 41

I am following the same system for making up tables of criminal statistics that I used in my Report for the years 1941-1942, which was adapted from the plan set up by the Honorable Clement F. Robinson in his Report for the years 1931-1932.

I quote from the explanation which appears on page 35 of my 1941-1942 Report:

"Cases included

"The table deals with completed cases only, except that the last column, which is not included in the total, shows the number of cases pending at the end of the year. If a case has not been completely disposed of during the year, it is omitted from all columns of the table except that for cases pending at the end of the year, and is left for inclusion in the figures for the year in which it is finally determined. A case is treated as disposed of when a disposition has been made even though that disposition is subject to later modification. For example, if a defendant is placed on

probation, his case is treated as completed, even though probation may be later revoked and sentence imposed or executed. No account is taken of the second disposition.

"Defendants in cases on appeal who have defaulted bail are treated as pleading guilty. . . .

"Explanation of headings

"(a) Total means total number of defendants whose cases are disposed of during the year.

"(b) Dismissed includes all forms of dismissal without trial such as nol-prossed, dismissed, quashed, continued, placed on file, etc.

"(c) Includes convicted on plea of nolo contendere.

"(d) Here are placed cases of all convicted defendants which are continued for sentence, placed on special docket, given suspended sentence without probation, etc.

"(e) Includes cases of defendants who in addition to being placed on probation are sentenced to fine, costs, restitution or support.

"(f) Under sentence to fine only come cases where sentence is to fine, costs, restitution or support provided there is no probation or sentence to imprisonment.

"(g) Includes cases of fine and imprisonment. In the liquor offenses particularly, sentences to imprisonment usually carry fines with them as well.

"(h) Not included in any other column."

1943

1943 ALL COUNTIES—TOTAL INDICTMENTS AND APPEALS

Dispositions	Total (a)	Nol-prossed etc. (b)	Ac-quit-ted	Convicted		Con-tinued for Sen-tence (d)	Proba-tion (e)	Fine (f)	Im-prison-ment (g)	Pend-ing at end of year (h)
				Pleaded not guilty	Pleaded guilty (c)					
Totals	1432	644	37	63	688	12	201	256	282	154
Murder	8	—	2	4	2	—	—	—	6	—
Manslaughter	14	3	3	—	8	—	1	2	5	1
Rape	23	5	2	5	11	—	3	1	12	1
Robbery	29	11	—	—	18	—	1	—	17	2
Felonious Assault	6	—	—	2	4	—	—	1	5	—
Assault and Battery	122	56	4	3	59	2	24	13	23	12
B.E. and Larceny	159	75	3	9	72	3	27	—	51	27
Forgery	59	32	—	—	27	—	16	—	11	2
Larceny	136	82	—	4	50	1	15	3	35	10
Sex	162	74	6	6	76	2	39	9	32	8
Non-Support	17	10	—	—	7	1	4	—	2	3
Liquor	35	20	2	—	13	—	—	11	2	—
Drunken Driving	140	36	5	8	91	—	5	77	17	14
Intoxication	131	34	—	4	93	1	20	46	30	10
Motor Vehicle	105	61	2	5	37	—	4	34	4	9
Juvenile Delinquency	22	6	—	—	16	—	15	—	1	1
Miscellaneous	264	139	8	13	104	2	27	59	29	54

1943 MURDER—INDICTMENTS AND APPEALS

Totals	8	—	2	4	2	—	—	—	6	—
Kennebec	4	—	1	2	1	—	—	—	3	—
Oxford	1	—	—	—	1	—	—	—	1	—
Penobscot	3	—	1	2	—	—	—	—	2	—

1943 MANSLAUGHTER—INDICTMENTS AND APPEALS

Totals	14	3	3	—	8	—	1	2	5	1
Androscoggin	1	—	—	—	1	—	—	—	1	—
Cumberland	4	2	1	—	1	—	—	—	1	—
Kennebec	1	—	—	—	1	—	—	—	1	—
Lincoln	2	1	—	—	1	—	—	1	—	—
Oxford	1	—	—	—	1	—	1	—	—	—
Piscataquis	1	—	1	—	—	—	—	—	—	—
Sagadahoc	1	—	—	—	1	—	—	—	1	—
Somerset	1	—	—	—	1	—	—	—	1	—
Washington	1	—	1	—	—	—	—	—	—	—
York	1	—	—	—	1	—	—	1	—	1

1943 RAPE—INDICTMENTS AND APPEALS

Counties	Total (a)	Nol-prossed etc. (b)	Ac-quit-ted	Convicted		Con-tinued for Sen-tence (d)	Proba-tion (e)	Fine (f)	Im-prison-ment (g)	Pend-ing at end of year (h)
				Plead-ed not guilty	Plead-ed guilty (c)					
Totals	23	5	2	5	11	—	3	1	12	1
Aroostook	1	—	—	—	1	—	—	—	1	—
Cumberland	8	3	—	2	3	—	1	—	4	—
Franklin	2	1	—	—	1	—	—	—	1	—
Hancock	1	—	1	—	—	—	—	—	—	—
Knox	1	1	—	—	—	—	—	—	—	—
Lincoln	1	—	—	—	1	—	1	—	—	—
Washington	5	—	1	2	2	—	1	1	2	1
York	4	—	—	1	3	—	—	—	4	—

1943 ROBBERY—INDICTMENTS AND APPEALS

Totals	29	11	—	—	18	—	1	—	17	2
Aroostook	3	—	—	—	3	—	—	—	3	—
Cumberland	19	10	—	—	9	—	1	—	8	—
Hancock	1	—	—	—	1	—	—	—	1	—
Penobscot	5	1	—	—	4	—	—	—	4	2
York	1	—	—	—	1	—	—	—	1	—

1943 FELONIOUS ASSAULT—INDICTMENTS AND APPEALS

Totals	6	—	—	2	4	—	—	1	5	—
Cumberland	2	—	—	—	2	—	—	—	2	—
Somerset	2	—	—	2	—	—	—	—	2	—
Waldo	1	—	—	—	1	—	—	—	1	—
Washington	1	—	—	—	1	—	—	1	—	—

1943 ASSAULT AND BATTERY—INDICTMENTS AND APPEALS

Counties	Total (a)	Nol-prossed etc. (b)	Ac-quit-ted	Convicted		Con-tinued for Sen-tence (d)	Proba-tion (e)	Fine (f)	Im-prison-ment (g)	Pend-ing at end of year (h)
				Plead-ed not guilty	Plead-ed guilty (c)					
Totals	122	56	4	3	59	2	24	13	23	12
Androscoggin.	3	2	—	1	—	—	—	—	1	7
Aroostook	13	2	1	2	8	1	3	1	5	—
Cumberland	51	25	2	—	24	1	12	5	6	—
Kennebec	6	2	—	—	4	—	2	—	2	—
Knox	10	4	—	—	6	—	3	—	3	—
Lincoln	1	—	—	—	1	—	1	—	—	—
Oxford	10	10	—	—	—	—	—	—	—	—
Penobscot	8	3	—	—	5	—	1	3	1	3
Piscataquis	3	—	1	—	2	—	1	1	—	—
Sagadahoc	2	2	—	—	—	—	—	—	—	1
Somerset	2	1	—	—	1	—	—	—	1	—
Washington	2	2	—	—	—	—	—	—	—	—
York	11	3	—	—	8	—	1	3	4	1

1943 BREAKING, ENTERING AND LARCENY—INDICTMENTS AND APPEALS

Totals	159	75	3	9	72	3	27	—	51	27
Androscoggin.	13	11	—	1	1	—	1	—	1	2
Aroostook	7	1	1	—	5	1	2	—	2	—
Cumberland	42	13	—	3	26	—	7	—	22	—
Franklin	1	1	—	—	—	—	—	—	—	—
Hancock	5	4	—	—	—	—	—	—	1	3
Kennebec	11	7	—	1	3	—	—	—	4	—
Knox	9	7	—	—	2	—	1	—	1	1
Lincoln	7	4	—	—	3	—	—	—	3	8
Oxford	16	12	—	1	3	—	4	—	—	4
Penobscot	19	9	1	2	7	—	3	—	6	3
Piscataquis	2	—	—	—	2	—	—	—	2	—
Sagadahoc	4	—	—	—	4	1	1	—	2	4
Somerset	11	4	1	1	5	1	2	—	3	1
Waldo	2	—	—	—	2	—	—	—	2	1
Washington	10	2	—	—	8	—	6	—	2	—

1943 FORGERY—INDICTMENTS AND APPEALS

Counties	Total (a)	Nol-prossed etc. (b)	Ac-quit-ted	Convicted		Con-tinued for Sen-tence (d)	Proba-tion (e)	Fine p (f)	Im-rison-ment (g)	Pend-ing at end of year (h)
				Plead-ed not guilty	Plead-ed guilty (c)					
Totals	59	32	—	—	27	—	16	—	11	2
Androscoggin	19	16	—	—	3	—	2	—	1	—
Aroostook	2	—	—	—	2	—	2	—	—	1
Cumberland	13	6	—	—	7	—	2	—	5	—
Franklin	4	3	—	—	1	—	1	—	—	—
Hancock	—	—	—	—	—	—	—	—	—	1
Kennebec	7	—	—	—	7	—	4	—	3	—
Knox	2	1	—	—	1	—	1	—	—	—
Oxford	1	—	—	—	1	—	1	—	—	—
Penobscot	5	3	—	—	2	—	—	—	2	—
Sagadahoc	1	1	—	—	—	—	—	—	—	—
Somerset	2	1	—	—	1	—	1	—	—	—
Washington	1	1	—	—	—	—	—	—	—	—
York	2	—	—	—	2	—	2	—	—	—

1943 LARCENY—INDICTMENTS AND APPEALS

Totals	136	82	—	4	50	1	15	3	35	10
Androscoggin	16	10	—	—	6	—	4	1	1	4
Aroostook	4	4	—	—	—	—	—	—	—	—
Cumberland	27	13	—	1	13	1	2	—	11	—
Hancock	3	1	—	—	2	—	—	—	2	—
Kennebec	8	6	—	—	2	—	—	—	2	4
Knox	3	2	—	—	1	—	—	—	1	—
Lincoln	1	—	—	—	1	—	—	—	1	—
Oxford	4	—	—	—	4	—	—	1	3	—
Penobscot	54	41	—	—	13	—	5	1	7	1
Piscataquis	1	—	—	1	—	—	—	—	1	—
Sagadahoc	2	—	—	—	2	—	—	—	2	—
Somerset	3	—	—	2	1	—	1	—	2	1
Waldo	1	—	—	—	1	—	—	—	1	—
Washington	4	3	—	—	1	—	1	—	—	—
York	5	2	—	—	3	—	2	—	1	—

1943 SEX OFFENSES—INDICTMENTS AND APPEALS

Counties	Total (a)	Nol-prossed etc. (b)	Ac-quit-ted	Convicted		Con-tinued for Sen-tence (d)	Proba-tion (e)	Fine (f)	Im-prison-ment (g)	Pend-ing at end of year (h)
				Pleaded not guilty	Pleaded guilty (c)					
Totals	162	74	6	6	76	2	39	9	32	8
Androscoggin...	31	24	—	—	7	—	4	2	1	7
Aroostook.....	1	1	—	—	—	—	—	—	—	—
Cumberland....	52	31	—	1	20	2	12	1	6	—
Hancock.....	1	1	—	—	—	—	—	—	—	—
Kennebec.....	4	—	—	—	4	—	2	—	2	—
Knox.....	5	1	1	—	3	—	2	—	1	—
Oxford.....	9	3	—	1	5	—	1	—	5	—
Penobscot.....	34	10	1	1	22	—	9	4	10	1
Piscataquis.....	3	1	—	—	2	—	—	—	2	—
Sagadahoc.....	1	—	—	—	1	—	—	—	1	—
Somerset.....	2	—	—	2	—	—	—	—	2	—
Waldo.....	1	—	—	—	1	—	—	1	—	—
Washington....	6	—	4	—	2	—	2	—	—	—
York.....	12	2	—	1	9	—	7	1	2	—

1943 NON-SUPPORT—INDICTMENTS AND APPEALS

Totals.....	17	10	—	—	7	1	4	—	2	3
Androscoggin...	3	1	—	—	2	—	—	—	2	—
Cumberland....	5	2	—	—	3	—	3	—	—	—
Kennebec.....	3	2	—	—	1	—	1	—	—	—
Knox.....	1	1	—	—	—	—	—	—	—	—
Penobscot.....	3	3	—	—	—	—	—	—	—	2
Somerset.....	2	1	—	—	1	1	—	—	—	1

1943 LIQUOR OFFENSES—INDICTMENTS AND APPEALS

Totals.....	35	20	2	—	13	—	—	11	2	—
Androscoggin...	3	—	—	—	3	—	—	2	1	—
Aroostook.....	9	6	1	—	2	—	—	1	1	—
Cumberland....	10	7	—	—	3	—	—	3	—	—
Hancock.....	2	1	—	—	1	—	—	1	—	—
Knox.....	3	1	1	—	1	—	—	1	—	—
Penobscot.....	1	1	—	—	—	—	—	—	—	—
Piscataquis.....	2	1	—	—	1	—	—	1	—	—
Sagadahoc.....	2	1	—	—	1	—	—	1	—	—
Washington....	2	2	—	—	—	—	—	—	—	—
York.....	1	—	—	—	1	—	—	1	—	—

1943 DRUNKEN DRIVING—INDICTMENTS AND APPEALS

Counties	Total (a)	Nol-prossed etc. (b)	Ac-quit-ted	Convicted		Con-tinued for Sen-tence (d)	Proba-tion (e)	Fine (f)	Im-prison-ment (g)	Pend-ing at end of year (h)
				Plead-ed not guilty	Plead-ed guilty (c)					
Totals	140	36	5	8	91	—	5	77	17	14
Androscoggin	13	5	1	—	7	—	—	6	1	5
Aroostook	27	7	—	2	18	—	3	9	8	3
Cumberland	42	13	1	4	24	—	2	25	1	—
Hancock	4	2	—	—	2	—	—	2	—	1
Kennebec	8	1	1	—	6	—	—	5	1	1
Knox	5	2	1	—	2	—	—	2	—	—
Lincoln	1	—	—	—	1	—	—	1	—	—
Oxford	4	1	—	—	3	—	—	2	1	—
Penobscot	15	1	—	1	13	—	—	12	2	2
Sagadahoc	1	—	—	—	1	—	—	1	—	—
Somerset	4	2	1	—	1	—	—	—	1	1
Waldo	2	—	—	—	2	—	—	1	1	1
Washington	2	—	—	—	2	—	—	2	—	—
York	12	2	—	1	9	—	—	9	1	—

1943 INTOXICATION—INDICTMENTS AND APPEALS

Totals	131	34	—	4	93	1	20	46	30	10
Androscoggin	8	2	—	—	6	—	1	3	2	3
Aroostook	14	2	—	—	12	—	4	—	8	2
Cumberland	51	16	—	3	32	—	2	23	10	—
Hancock	4	3	—	—	1	—	—	—	1	1
Kennebec	9	—	—	—	9	—	5	3	1	1
Knox	7	3	—	—	4	—	1	3	—	—
Oxford	1	—	—	—	1	—	1	—	—	—
Penobscot	22	4	—	—	18	—	2	12	4	—
Sagadahoc	—	—	—	—	—	—	—	—	—	1
Somerset	5	2	—	—	3	—	2	—	1	—
Waldo	2	—	—	—	2	—	1	—	1	—
Washington	1	1	—	—	—	—	—	—	—	—
York	7	1	—	1	5	1	1	2	2	2

1943 MOTOR VEHICLE—INDICTMENTS AND APPEALS

Counties	Total (a)	Nol-prossed etc. (b)	Ac-quit-ted	Convicted		Con-tinued for Sen-tence (d)	Proba-tion (e)	Fine (f)	Im-prison-ment (g)	Pend-ing at end of year (h)
				Plead-ed not guilty	Plead-ed guilty (c)					
Totals	105	61	2	5	37	—	4	34	4	9
Androscoggin	7	5	—	—	2	—	—	2	—	3
Aroostook	9	8	—	—	1	—	—	1	—	2
Cumberland	36	15	1	1	19	—	3	15	2	—
Franklin	3	3	—	—		—	—	—	—	—
Hancock	3	3	—	—	—	—	—	—	—	—
Kennebec	4	3	—	—	1	—	—	1	—	—
Knox	5	4	—	—	1	—	—	1	—	—
Oxford	1	—	—	—	1	—	—	1	—	—
Penobscot	18	8	1	1	8	—	—	7	2	2
Piscataquis	2	1	—	1	—	—	—	1	—	—
Sagadahoc	3	3	—	—	—	—	—	—	—	—
Somerset	4	4	—	—	—	—	—	—	—	1
Washington	1	—	—	—	1	—	—	1	—	—
York	9	4	—	2	3	—	1	4	—	1

1943 JUVENILE DELINQUENCY—INDICTMENTS AND APPEALS

Totals	22	6	—	—	16	—	15	—	1	1
Androscoggin	1	1	—	—	—	—	—	—	—	1
Cumberland	7	2	—	—	5	—	5	—	—	—
Oxford	1	—	—	—	1	—	—	—	1	—
Penobscot	1	1	—	—	—	—	—	—	—	—
Piscataquis	1	—	—	—	1	—	1	—	—	—
Waldo	11	2	—	—	9	—	9	—	—	—

1943 MISCELLANEOUS—INDICTMENTS AND APPEALS

Totals	264	139	8	13	104	2	27	59	29	54
Androscoggin	13	5	1	1	6	—	1	5	1	5
Aroostook	17	7	—	3	7	—	3	7	—	3
Cumberland	51	33	—	2	16	1	2	6	9	—
Franklin	13	10	1	—	2	1	—	1	—	—
Hancock	8	4	—	—	4	—	—	4	—	4
Kennebec	14	6	1	—	7	—	3	—	4	3
Knox	26	25	—	—	1	—	—	—	1	—
Lincoln	1	1	—	—	—	—	—	—	—	—
Oxford	8	1	—	—	7	—	4	2	1	—
Penobscot	40	14	2	1	23	—	3	16	5	22
Piscataquis	7	3	—	2	2	—	—	3	1	—
Sagadahoc	3	1	1	—	1	—	1	—	—	—
Somerset	11	4	1	2	4	—	—	5	1	4
Waldo	2	—	1	—	1	—	—	—	1	1
Washington	25	12	—	2	11	—	5	6	2	6
York	25	13	—	—	12	—	5	4	3	6

1943 BAIL

Counties	Bail Called, Cases and Amounts		Scire Facias Begun		Scire Facias Continued for Judgment		Scire Facias Cases Closed		Scire Facias Pending at End of Year		Cash Bail Collected	Bail Collected by Co. Atty.
Androscoggin	21	$11,000.00		———		———		———		———	———	———
Aroostook		———		———		———		———		———	———	———
Cumberland		———		———		———		———		———	———	———
Franklin		———		———		———		———		———	———	———
Hancock		———		———		———		———		———	———	———
Kennebec		———		———		———		———		———	———	———
Knox		———		———		———		———		———	———	———
Lincoln		———		———		———		———		———	———	———
Oxford		———		———		———		———		———	———	———
Penobscot	3	1,600.00	2	$1,500.00	1	$500.00	2	$1,066.60	1	$500.00		$1,016.60
Piscataquis		———		———		———		———		———	———	———
Penobscot		———		———		———		———		———	———	———
Somerset		*		*		*		*		*	*	*
Waldo		———		———		———		———		———	———	———
Washington		———		———		———		———		———	———	———
York	1	50.00		———		———		———		———	———	———
Totals	25	$12,650.00	2	$1,500.00	1	$500.00	2	$1,066.60	1	$500.00	$ 0.00	$10,166.60

* Missing

1943 LAW COURT CASES

County	Name of Case	Outcome
Androscoggin	Harold B. Kane	Judgment for State
Androscoggin	Parker B. Smith	Pending
Aroostook	Sam Jalbert	Pending
Aroostook	Patrick Jalbert	Pending
Cumberland	Carl E. Ahlquist	Judgment for State
Franklin	None	
Hancock	None	
Kennebec	Carl Roberts	Judgment for State
Kennebec	William C. Howard	Judgment for State
Knox	None	
Lincoln	None	
Oxford	Linwood Louis Saba and Stanley J. Korbett	Pending
Oxford	Anthony Smith and Edward Poirier	Judgment for State
Penobscot	None	
Piscataquis	None	
Sagadahoc	None	
Somerset	None	
Waldo	None	
Washington	None	
York	None	

FINANCIAL STATISTICS, YEAR ENDING NOVEMBER 1, 1943

COUNTIES	Cost of Prosecution Superior and S. J. Courts	Paid for Prisoners in Jail	Paid Grand Jurors	Paid Traverse Jurors Criminal Cases	Fines, etc. Imposed Superior Court	Fines, etc., Collected Superior Court
Androscoggin	$ 6,820.92	$17,423.75	$ 1,719.69	$ 3,117.12	$ 2,322.10	$ 8,798.80
Aroostook	4,146.50	7,521.24	836.81	1,419.32	3,057.71	21,557.95
Cumberland	18,418.77	48,225.44	981.36	1,827.48	6,269.81	68,486.22
Franklin	771.40	4,590.88	190.40	432.68	407.30	4,746.80
Hancock	200.54	1,238.68	297.20	788.50	464.09	3,432.08
Kennebec	6,054.79	13,204 08	737.96	2,647.74	1,470.29	13,622.50
Knox	394.19	3,170.65	310.52	128.00	818.36	5,374.73
Lincoln	1,423.16	6.00	327.80	288.76	675.00	675.00
Oxford	618.30	3,795.76	612.40	726.76	660.20	5,104.12
Penobscot	6,475.03	12,284.40	936.39	2 896 52	2.788.88	16,273.11
Piscataquis	1,422.14	2,436.19	271.84	698.56	273.54	2,402.31
Sagadahoc	540.73	4,411.58	362.28	1,139.33	75.00	5,220.15
Somerset	1,063.25	3,694.94	501.44	1,739.36	131.66	7,489.74
Waldo	202.99	4,503.16	345.12	305.08	212.70	2,573.56
Washington	4,987.33	3,544.43	880.76	1,575.57	1,966.71	6,600.74
York	2,581.28	13,304.65	1,136.20	1,812.60	2,666.91	2,470.85
Totals	$56,121.32	$143,355.83	$10,448.17	$21,543.38	$24,260.26	$175,008.66

1944

1944 FORGERY—INDICTMENTS AND APPEALS

Counties	Total (a)	Not-prossed etc. (b)	Ac-quit-ted	Convicted		Con-tinued for Sen-tence (d)	Proba-tion (e)	Fine (f)	Im-prison-ment (g)	Pend-ing at end of year (h)
				Plead-ed not guilty	Plead-ed guilty (c)					
Totals	54	16	—	—	38	7	8	1	22	6
Androscoggin	5	1	—	—	4	—	—	—	4	3
Aroostook	3	—	—	—	3	—	1	—	2	—
Cumberland	7	1	—	—	6	3	1	—	2	—
Franklin	2	2	—	—	—	—	—	—	—	—
Hancock	—	—	—	—	—	—	—	—	—	1
Kennebec	9	4	—	—	5	—	3	—	2	—
Knox	6	6	—	—	—	—	—	—	—	—
Oxford	6	2	—	—	4	1	—	—	3	2
Penobscot	2	—	—	—	2	—	—	—	2	—
Sagadahoc	5	—	—	—	5	1	2	1	1	—
Somerset	5	—	—	—	5	2	—	—	3	—
York	4	—	—	—	4	—	1	—	3	—

1944 LARCENY—INDICTMENTS AND APPEALS

Totals	199	57	1	2	139	19	52	9	61	22
Androscoggin	13	8	1	—	4	—	—	—	4	1
Aroostook	21	8	—	—	13	—	7	—	6	—
Cumberland	51	10	—	—	41	16	18	1	6	5
Franklin	5	3	—	—	2	—	2	—	—	—
Hancock	—	—	—	—	—	—	—	—	—	1
Kennebec	20	8	—	—	12	—	6	—	6	—
Knox	12	5	—	—	7	—	1	—	6	—
Lincoln	2	—	—	1	1	—	—	1	1	—
Oxford	7	1	—	—	6	1	4	—	1	2
Penobscot	15	3	—	1	11	—	5	—	7	9
Piscataquis	—	—	—	—	—	—	—	—	—	2
Sagadahoc	12	1	—	—	11	1	—	—	10	1
Somerset	4	—	—	—	4	—	—	3	1	1
Waldo	3	1	—	—	2	—	—	—	2	—
Washington	9	1	—	—	8	—	3	4	1	—
York	25	8	—	—	17	1	6	—	10	—

1944 ALL COUNTIES—TOTAL INDICTMENTS AND APPEALS

Dispositions	Total (a)	Nol-prossed etc. (b)	Ac-quit-ted	Convicted		Con-tinued for Sen-tence (d)	Proba-tion (e)	Fine (f)	Im-prison-ment (g)	Pend-ing at end of year (h)
				Pleaded not guilty	Pleaded guilty (c)					
Totals	1329	416	46	36	831	107	185	280	295	158
Murder	6	—	—	4	2	—	—	—	6	—
Manslaughter	16	2	5	—	9	1	—	4	4	—
Rape	21	4	4	—	13	1	1	3	8	—
Robbery	22	4	—	3	15	1	—	—	17	3
FeloniousAssault	23	5	2	2	14	4	—	2	10	—
Assault and Battery	98	49	2	4	43	4	8	21	14	3
B.E.andLarceny	192	44	3	6	139	39	27	17	62	25
Forgery	54	16	—	—	38	7	8	1	22	6
Larceny	199	57	1	2	139	19	52	9	61	22
Sex	124	38	4	2	80	16	24	10	32	22
Non-Support	15	7	—	—	8	1	4	1	2	2
Liquor	146	41	9	7	89	1	5	85	5	33
DrunkenDriving	41	13	4	—	24	2	11	10	1	—
Intoxication	129	31	—	1	97	—	27	43	28	5
Motor Vehicle	73	34	1	1	37	2	2	31	3	8
Juvenile Delinquency	6	5	—	—	1	—	1	—	—	—
Miscellaneous	164	66	11	4	83	9	15	43	20	32

1944 MURDER—INDICTMENTS AND APPEALS

Totals	6	—	—	4	2	—	—	—	6	—
Cumberland	1	—	—	1	—	—	—	—	1	—
Hancock	1	—	—	1	—	—	—	—	1	—
Penobscot	1	—	—	1	—	—	—	—	1	—
York	3	—	—	1	2	—	—	—	3	—

1944 MANSLAUGHTER—INDICTMENTS AND APPEALS

Totals	16	2	5	—	9	1	—	4	4	—
Androscoggin	1	—	1	—	—	—	—	—	—	—
Aroostook	3	2	1	—	—	—	—	—	—	—
Cumberland	2	—	1	—	1	1	—	—	—	—
Kennebec	4	—	—	—	4	—	—	3	1	—
Piscataquis	1	—	—	—	1	—	—	1	—	—
Sagadahoc	1	—	1	—	—	—	—	—	—	—
Waldo	1	—	—	—	1	—	—	—	1	—
Washington	1	—	1	—	—	—	—	—	—	—
York	2	—	—	—	2	—	—	—	2	—

1944 RAPE—INDICTMENTS AND APPEALS

Counties	Total (a)	Nol-prossed etc. (b)	Acquitted	Convicted		Continued for Sentence (d)	Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Pleaded not guilty	Pleaded guilty (c)					
Totals	21	4	4	—	13	1	1	3	8	—
Androscoggin	1	—	1	—	—	—	—	—	—	—
Aroostook	3	—	1	—	2	—	1	1	—	—
Cumberland	2	—	1	—	1	1	—	—	—	—
Kennebec	7	2	—	—	5	—	—	—	5	—
Lincoln	1	—	1	—	—	—	—	—	—	—
Oxford	2	2	—	—	—	—	—	—	—	—
Penobscot	2	—	—	—	2	—	—	1	1	—
Washington	2	—	—	—	2	—	—	—	2	—
York	1	—	—	—	1	—	—	1	—	—

1944 ROBBERY—INDICTMENTS AND APPEALS

Totals	22	4	—	3	15	—	1	—	17	3
Aroostook	3	—	—	1	2	—	1	—	2	—
Cumberland	8	2	—	1	5	—	—	—	6	1
Kennebec	5	—	—	—	5	—	—	—	5	—
Penobscot	5	2	—	—	3	—	—	—	3	2
York	1	—	—	1	—	—	—	—	1	—

1944 FELONIOUS ASSAULT—INDICTMENTS AND APPEALS

Totals	23	5	2	2	14	4	—	2	10	—
Aroostook	2	—	1	1	—	—	—	—	1	—
Cumberland	12	3	—	—	9	4	—	1	4	—
Franklin	1	—	—	—	1	—	—	—	1	—
Kennebec	3	2	1	—	—	—	—	—	—	—
Lincoln	2	—	—	—	2	—	—	—	2	—
Oxford	1	—	—	—	1	—	—	—	1	—
Sagadahoc	1	—	—	1	—	—	—	—	1	—
York	1	—	—	—	1	—	—	1	—	—

1944 ASSAULT AND BATTERY—INDICTMENTS AND APPEALS

Counties	Total (a)	Nol-prossed etc. (b)	Ac-quit-ted	Convicted		Con-tinued for Sen-tence (d)	Proba-tion (e)	Fine (f)	Im-prison-ment (g)	Pend-ing at end of year (h)
				Plead-ed not guilty	Pleaded guilty (c)					
Totals	98	49	2	3	44	4	8	21	14	3
Androscoggin	10	9	—	—	1	—	—	—	1	—
Aroostook	10	2	—	—	8	—	—	6	2	—
Cumberland	34	16	1	—	17	4	7	2	4	2
Franklin	3	—	—	—	3	—	—	3	—	—
Hancock	2	1	—	1	—	—	—	1	—	—
Kennebec	3	—	—	—	3	—	1	1	1	—
Knox	1	1	—	—	—	—	—	—	—	—
Lincoln	1	—	—	1	—	—	—	1	—	—
Oxford	4	3	—	—	1	—	—	—	1	—
Penobscot	12	6	1	—	5	—	—	3	2	—
Piscataquis	1	—	—	—	1	—	—	1	—	—
Sagadahoc	2	2	—	—	—	—	—	—	—	—
Somerset	4	1	—	1	2	—	—	2	1	—
Washington	1	1	—	—	—	—	—	—	—	—
York	10	7	—	—	3	—	—	1	2	1

1944 BREAKING, ENTERING AND LARCENY—INDICTMENTS AND APPEALS

Totals	192	44	3	6	139	39	27	17	62	25
Androscoggin	9	5	—	—	4	—	—	—	4	5
Aroostook	11	4	—	—	7	—	3	—	4	3
Cumberland	48	3	1	—	44	21	9	—	14	—
Franklin	12	3	—	—	9	7	1	—	1	—
Hancock	4	—	—	1	3	—	—	—	4	1
Kennebec	14	4	—	—	10	1	3	—	6	—
Knox	3	1	—	—	2	—	2	—	—	3
Lincoln	3	—	1	—	2	—	1	—	1	—
Oxford	3	—	—	—	3	—	3	—	—	2
Penobscot	5	2	—	—	3	—	1	—	2	6
Sagadahoc	14	—	—	3	11	9	—	—	5	1
Somerset	7	2	—	2	3	—	—	—	5	—
Waldo	7	1	—	—	6	1	2	—	3	3
Washington	5	1	—	—	4	—	2	—	2	—
York	47	18	1	—	28	—	—	17	11	1

1944 SEX OFFENSES—INDICTMENTS AND APPEALS

Counties	Total (a)	Nol-prossed etc. (b)	Ac-quit-ted	Convicted		Con-tinued for Sen-tence (d)	Proba-tion (e)	Fine (f)	Im-prison-ment (g)	Pend-ing at end of year (h)
				Plead-ed not guilty	Plead-ed guilty (c)					
Totals	124	38	4	2	80	16	24	10	32	22
Androscoggin	14	11	—	—	3	—	—	—	3	2
Aroostook	12	4	1	—	7	—	1	3	3	—
Cumberland	21	4	—	—	17	13	—	—	4	1
Franklin	1	1	—	—	—	—	—	—	—	1
Hancock	1	—	—	—	1	—	—	—	1	—
Kennebec	16	7	—	—	9	—	1	—	8	—
Knox	—	—	—	—	—	—	—	—	—	2
Lincoln	7	—	—	—	7	1	2	1	3	—
Oxford	4	—	—	—	4	—	4	—	—	3
Penobscot	20	9	—	—	11	1	6	1	3	9
Piscataquis	1	—	—	—	1	—	—	—	1	—
Somerset	10	—	1	2	7	—	5	2	2	—
Washington	8	—	2	—	6	—	2	1	3	—
York	9	2	—	—	7	1	3	2	1	—

1944 NON-SUPPORT—INDICTMENTS AND APPEALS

Totals	15	7	—	—	8	1	4	1	2	2
Androscoggin	1	—	—	—	1	—	—	—	1	
Aroostook	2	2	—	—	—	—		—	—	1
Cumberland	4	1	—	—	3	—	3	—	—	—
Knox	—	—	—	—	—	—	—	—	—	
Oxford	1	—	—	—	1	—	—	1	—	—1
Penobscot	4	3	—	—	1	—	—	—	1	—
Sagadahoc	1	—	—	—	1	1	—	—	—	—
Waldo	1	1	—	—	—	—		—	—	—
Washington	1	—	—	—	1	—	1	—	—	—

1944 LIQUOR OFFENSES—INDICTMENTS AND APPEALS

Totals	41	13	4	—	24	2	11	10	1	—
Androscoggin	1	1	—	—	—	—	—	—	—	—
Aroostook	13	4	1	—	8	—	6	2	—	—
Cumberland	9	4	—	—	5	2	2	1	—	—
Hancock	3	1	—	—	2	—	—	2	—	—
Kennebec	1	—	—	—	1	—	1	—	—	—
Penobscot	4	1	1	—	2	—	—	2	—	—
Somerset	2	—	—	—	2	—	—	2	—	—
Washington	7	2	2	—	3	—	2	—	1	—
York	1	—	—	—	1	—	—	1	—	—

1944 DRUNKEN DRIVING—INDICTMENTS AND APPEALS

Counties	Total (a)	Nol-prossed etc. (b)	Ac-quit-ted	Convicted		Con-tinued for Sen-tence (d)	Proba-tion (e)	Fine (f)	Im-prison-ment (g)	Pend-ing at end of year (h)
				Plead-ed not guilty	Plead-ed guilty (c)					
Totals	146	41	9	7	89	1	5	85	5	33
Androscoggin	28	13	1	—	14	—	—	13	1	10
Aroostook	23	7	1	2	13	—	2	13	—	5
Cumberland	37	14	2	3	18	—	2	19	—	9
Franklin	2	—	—	—	2	—	—	2	—	—
Hancock	2	—	—	1	1	—	1	—	1	—
Kennebec	11	1	1	—	9	—	—	7	2	—
Knox	4	—	—	—	4	1	—	3	—	—
Oxford	2	—	—	—	2	—	—	2	—	—
Penobscot	20	2	3	1	14	—	—	14	1	3
Sagadahoc	3	1	—	—	2	—	—	2	—	—
Somerset	—	—	—	—	—	—	—	—	—	1
Waldo	2	1	—	—	1	—	—	1	—	1
Washington	2	1	—	—	1	—	—	1	—	—
York	10	1	1	—	8	—	—	8	—	4

1944 INTOXICATION—INDICTMENTS AND APPEALS

Totals	129	31	—	1	97	—	27	43	28	5
Androscoggin	10	3	—	—	7	—	—	2	5	2
Aroostook	17	3	—	1	13	—	9	3	2	1
Cumberland	40	6	—	—	34	—	6	20	8	2
Franklin	2	—	—	—	2	—	—	2	—	—
Hancock	3	3	—	—	—	—	—	—	—	—
Kennebec	13	5	—	—	8	—	6	—	2	—
Knox	10	—	—	—	10	—	1	4	5	—
Penobscot	20	7	—	—	13	—	3	6	4	—
Sagadahoc	2	—	—	—	2	—	—	2	—	—
Waldo	2	—	—	—	2	—	1	1	—	—
Washington	2	1	—	—	1	—	—	—	1	—
York	8	3	—	—	5	—	1	3	1	—

1944 MOTOR VEHICLE—INDICTMENTS AND APPEALS

Counties	Total (a)	Nol-prossed etc. (b)	Ac-quit-ted	Convicted		Con-tinued for Sen-tence (d)	Proba-tion (e)	Fine (f)	Im-prison-ment (g)	Pend-ing at end of year (h)
				Pleaded not guilty	Pleaded guilty (c)					
Totals	73	34	1	1	37	2	2	31	3	8
Androscoggin	12	9	—	—	3	—	—	3	—	4
Aroostook	6	5	—	—	1	—	—	1	—	—
Cumberland	22	8	—	—	14	1	—	13	—	2
Hancock	1	1	—	—	—	—	—	—	—	—
Kennebec	4	—	—	—	4	—	2	2	—	—
Knox	3	1	—	—	2	—	—	1	1	—
Lincoln	1	—	—	—	1	—	—	1	—	—
Penobscot	10	3	—	—	7	—	—	6	1	—
Piscataquis	1	—	—	—	1	—	—	1	—	—
Sagadahoc	2	1	1	—	—	—	—	—	—	—
Somerset	—	—	—	—	—	—	—	—	—	2
Waldo	2	—	—	1	1	1	—	1	—	—
York	9	6	—	—	3	—	—	2	1	—

1944 JUVENILE DELINQUENCY—INDICTMENTS AND APPEALS

Totals	6	5	—	—	1	—	1	—	—	—
Aroostook	1	1	—	—	—		—	—	—	—
Kennebec	1	1	—	—	—	—	—	—	—	—
Oxford	1	1	—	—	—	—	—	—	—	—
Waldo	1	—	—	—	1	—	1	—	—	—
Washington	1	1	—	—	—	—	—	—	—	—
York	1	1	—	—	—	—	—	—	—	—

1944 MISCELLANEOUS—INDICTMENTS AND APPEALS

Totals	164	66	11	4	83	9	15	43	20	32
Androscoggin	7	4	—	—	3	—	—	3	—	4
Aroostook	8	5	—	—	3	—	1	1	1	—
Cumberland	42	17	1	2	22	5	6	5	8	3
Franklin	5	2	—	—	3	—	—	2	1	—
Hancock	2	1	1	—	—	—	—	—	—	—
Kennebec	32	16	—	—	16	—	4	10	2	—
Knox	3	2	—	—	1	—	—	—	1	1
Lincoln	1	—	—	1	—	—	—	1	—	—
Oxfotd	7	1	1	—	5	1	1	2	1	5
Penobscot	17	7	1	1	8	—	—	6	3	18
Piscataquis	3	—	—	—	3	—	—	3	—	—
Sagadahoc	1	1	—	—	—	—	—	—	—	—
Somerset	11	4	—	—	7	2	1	3	1	1
Waldo	5	—	1	—	4	1	1	1	1	—
Washington	10	4	5	—	1	—	—	—	1	—
York	10	2	1	—	7	—	1	6	—	—

1944 BAIL

COUNTIES	Bail Called, Cases and Amounts		Scire Facias Begun		Scire Facias Continued for Judgment		Scire Facias Cases Closed		Scire Facias Pending at End of Year		Cash Bail Collected	Bail Collected by Co. Atty.
Androscoggin	5	$3,500.00		———		———		———		———	———	———
Aroostook	2	1,000.00		———		———		———		———	———	———
Cumberland	9	9,700.00	1	$3,000.00		———	1	$2,000.00		———	$3,000.00	$4,200.00
Franklin		———		———		———		———		———	———	———
Hancock		———		———		———		———		———	———	———
Kennebec	4	1,700.00	4	1,700.00		———	1	1,000.00		———	1.000.00	1,000.00
Knox		———		———		———		———		———	———	———
Lincoln		———		———		———		———		———	———	———
Oxford		———		———		———		———		———	———	———
Penobscot	7	3,100.00	7	3,100.00	2	600.00	4	63.62	6	$1,900.00	———	———
Piscataquis		———		———		———		———		———	———	———
Sagadahoc		———		———		———		———		———	———	———
Somerset		———		———		———		———		———	———	———
Waldo		———		———		———		———		———	———	———
Washington	1	500.00		———		———		———		———	———	———
York		———		———		———		———		———	———	———
Totals	28	$19,500.00	12	$7,800.00	2	$600.00	6	$3,063.62	6	$1,900.00	$4,000.00	$5,200.00

1944 LAW COURT CASES

County	Name of Case	Outcome
Androscoggin	Parker B. Smith	Judgment for State
Aroostook	Thomas A. Cormier	Pending
Cumberland	None	
Franklin	None	
Hancock	Charles H. Davis	Dismissed
Kennebec	None	
Knox	None	
Lincoln	None	
Oxford	George E. Bragg	Pending
Penobscot	Bainbridge Baker	Pending
Piscataquis	None	
Sagadahoc	None	
Somerset	None	
Waldo	None	
Washington	None	
York	None	

FINANCIAL STATISTICS, YEAR ENDING NOVEMBER 1, 1944

COUNTIES	Cost of Prosecution Superior and S. J. Courts	Paid for Prisoners in Jail	Paid Grand Jurors	Paid Traverse Jurors Criminal Cases	Fines, etc. Imposed Superior Court	Fines, etc. Collected Superior Court
Androscoggin	$5,529.53	$18,996.69	$ 942.52	$ 2,665.76	$ 2,331.30	$ 2,306.30
Aroostook	3 487.35	8,161 98	651.76	1,663.58	2,712.77	2,712.77
Cumberland	19,948.55	44,487.90	810.96	2,149.60	9,603.17	9,603.17
Franklin	702.11	4,008.08	195.82	367.19	740.74	800.74
Hancock	638.04	2,614.03	333.86	1,541.98	1,058.06	258.06
Kennebec	4,831.46	13,117.91	735.12	1,722.66	3,777.51	3,777.51
Knox	111.92	3,750.19	284.84	64.00	708.76	708.76
Lincoln	848.28	1,254.26	440.65	1,007.68	637.88	637.88
Oxford	3,975.11	3073.35	579.72	432.00	366.61	366.61
Penobscot	5,205.79	11,552 25	584 64	2,537.16	3,771.97	3,706.56
Piscataquis	175.73	1,885.18	196.44	48.00	675.55	675.55
Sagadahoc	870.10	3,434.94	366.00	1,719.38	0.00	0.00
Somerset	1,079.87	4,098.37	620.36	1 260.20	114.38	*
Waldo	404.72	1,446.05	304.04	670.08	234.84	347.54
Washington	2,190.40	2,359.40	763.04	1,700.28	1,492.70	1,281.70
York	3,107.76	10,274.99	1,148 00	2,636.80	2,769.07	2,769.07
Totals	$53,106.72	$134,515.57	$8,957.77	$22,186.35	$31,295.31	$29,952.22

* Missing

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