# MAINE STATE LEGISLATURE

The following document is provided by the
**LAW AND LEGISLATIVE DIGITAL LIBRARY**
at the Maine State Law and Legislative Reference Library
http://legislature.maine.gov/lawlib

Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1959

# MAINE PUBLIC DOCUMENTS

## 1944-1946

(in three volumes)

VOLUME I

JAN 2

# STATE OF MAINE

# REPORT

OF THE

# ATTORNEY GENERAL

for the calendar years

1945-1946

## TABLE OF CONTENTS


| | Page |
|---|---|
| List, Attorneys General of Maine | 3 |
| List, Assistant Attorneys General | 5 |
| List, County Attorneys | 6 |
| Letter to the Honorable Horace Hildreth, Governor of Maine | 7 |
| Report of the Attorney General | 9 |
| Table, Inheritance Tax Receipts, 1940-1946 | 14 |
| Table, Workmen's Compensation Cases | 15 |
| Opinions | 16 |
| Tables, Criminal Statistics | 151 |
| Index | 183 |

## ATTORNEYS-GENERAL OF MAINE, 1820-1946

| | |
|---|---|
| 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 |
| Ralph W. Farris, Augusta | 1945 |

## 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- |

## ASSISTANT ATTORNEYS-GENERAL

| | Name | Years |
|---|---|---|
| | 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 | 1921-1946 |
| * | Herbert E. Foster, Winthrop | 1925 |
| | LeRoy R. Folsom, Norridgewock | 1929-1946 |
| | Richard Small, Portland | 1929-1935 |
| * | Ralph M. Ingalls, Portland | 1938-1940 |
| | Frank J. Small, Augusta | 1934-1946 |
| | 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, 1945- |
| | 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 | 1940-1946 |
| *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 | 1942-1945 |
| | Jean Lois Bangs, Brunswick | 1943- |
| | Henry Heselton, Gardiner | 1946- |
| | Boyd L. Bailey, Bath | 1946- |

*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 December 31, 1946

| | | |
|---|---|---|
| Androscoggin | A. F. Martin | Lewiston |
| " | Asst. T. E. Delehanty | " |
| Aroostook | George V. Blanchard | Presque Isle |
| Cumberland | Richard S. Chapman | Portland |
| " | Asst. D. C. McDonald | " |
| Franklin | Benjamin Butler | Farmington |
| Hancock | Harvard W. Blaisdell | Ellsworth |
| Kennebec | Henry Heselton | Gardiner |
| Knox | Stuart C. Burgess | Rockland |
| Lincoln | Charles M. Giles | Damariscotta |
| Oxford | Theodore Gonya | Rumford |
| Penobscot | John H. Needham | Orono |
| | Asst. Louis C. Stearns, 3d | Bangor |
| Piscataquis | Jerome B. Clark | Milo |
| Sagadahoc | Ralph O. Dale | Bath |
| Somerset | W. Philip Hamilton | Madison |
| Waldo | Hillard H. Buzzell | Belfast |
| Washington | Thomas S. Bridges | Calais |
| York | Harry S. Littlefield | Wells |

January 7, 1947

STATE OF MAINE

Department of the Attorney General

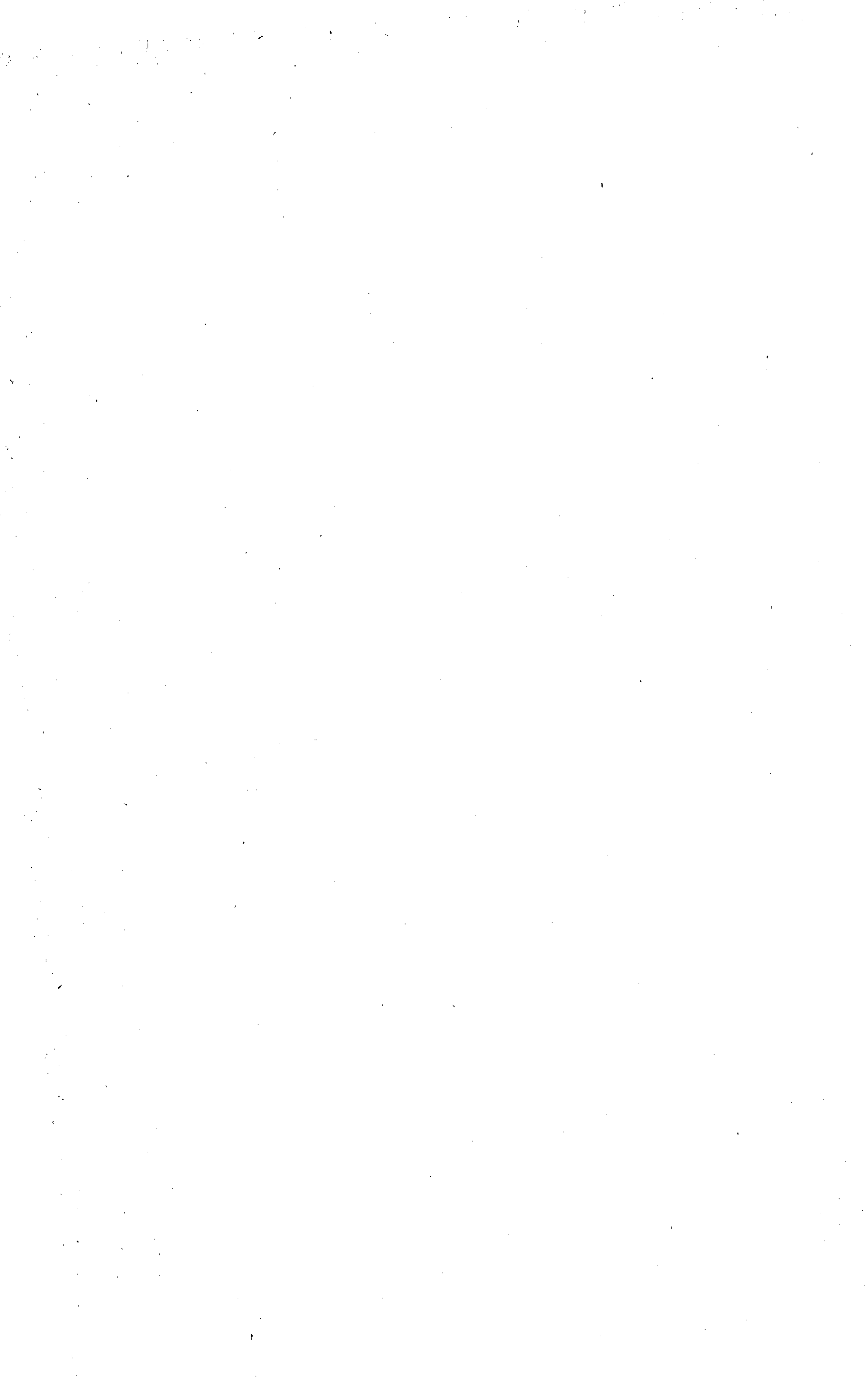
Augusta, December 1, 1946

To the Honorable
The Governor and Executive Council

In accordance with the requirements of the provisions of the Revised Statutes, I herewith submit my Report for the years 1945 and 1946.

RALPH W. FARRIS

Attorney General



# REPORT

In preparing and submitting herewith my report of the official business transacted by the Attorney General during the biennium beginning on January 1, 1945 and ending on December 31, 1946, I have considered the fact that it is neither practicable, nor do I deem it advisable, to incur the expense of publishing such minor and inconsequential transactions as do not contribute to the future administration of the State departments. I have therefore covered only such legal matters as are contemplated by Section 14 of Chapter 17 of the Revised Statutes.

The tabulations following include the number of suits and actions in which the Attorney General appeared, in the various courts of the State, and all legal matters handled for the State and its agencies and departments. They do not include the many daily conferences with various State officials, boards and commissions, or the oral advice given them. Many letters were written in answer to questions involving the administration of municipal and plantation affairs. Copies thereof are on file in the office.

The office of Attorney General also receives a great volume of letters from residents and non-residents of the State of Maine, asking legal questions involving private affairs, all of which were answered by referring the writers, unofficially, to the sources where the desired information could be obtained, or, in private litigation, by advising them to secure an attorney.

The volume of legal matters is constantly increasing. The 1945 Legislature added materially to the volume of business in the Attorney General's office.

The Assistant Attorneys General have been legal advisers to the Commissions, boards, or departments to which they have been assigned, thus relieving the Attorney General and his Deputy of some of the burden that falls on them.

## LITIGATION

In 1945, the State of Maine brought two suits against the York Utilities Company to recover excise taxes assessed by the State Tax Assessor for the years 1943 and 1944, and secured judgment in the Kennebec Superior Court against the defendant in both cases, in the sum of $2,189.49 and $2,087.88, respectively, together with interest. The York Utilities Company appealed the

cases to the Law Court. Opinion was handed down, February 11, 1946, upholding the contention of the State, and the State recovered $6000 taxes which the defending company claimed had been illegally assessed.

The legislature, in 1945, by a Resolve, Chapter 12 of the Resolves of 1945, gave consent to the Kennebec Towage Company to bring an action against the State of Maine, and the Attorney General was directed to defend same in an action to recover damages to the tugboat SEGUIN, which collided on June 18, 1940, with the abutment of the drawbridge across the Kennebec River between Richmond and Dresden. There was no limitation as to the amount that the plaintiff could recover in this suit. An action was brought against the State on August 14, 1945, in the sum of $10,000. The case was tried at the June term of the Superior Court of Kennebec County, 1946, and the jury awarded the plaintiff tugboat company a verdict of $5200. The case was appealed to the Law Court on exceptions and motion for new trial, and is now pending in that court.

In January, 1945, Georgianna Boucher Gosselin, an inmate of the Reformatory for Women at Skowhegan, brought a petition for writ of habeas corpus against the superintendent of the Reformatory. Hearing was had before a single Justice of the Superior Court of Somerset County, and the Attorney General appeared at the hearing. The Superior Court Justice issued a writ of habeas corpus, but after a hearing on the writ, the presiding Justice dismissed the writ, to which the petitioner took exceptions and the Justice released the petitioner on bail from day to day, pending final judgment of the Law Court on her exceptions. The question was a constitutional one as to whether or not her detention was unlawful, on the ground that she had been denied the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States and in violation of Section 3 of Article I of the Constitution of Maine. The petitioner's attorney claimed that the sentence to the said Reformatory was discriminatory, because under the statute creating the Reformatory for Men, for a man convicted of the same offense, the same being a misdemeanor, the period of detention is limited to two years as a maximum, whereas the maximum for a woman is three years. The State contended that the statute fixing the terms at the Reformatory for Women at Skowhegan and the Reformatory for men at South Windham did not violate the Constitution of

the United States or the Constitution of the State of Maine, and that the legislature, under its police power, had a right to enact laws for the welfare of its inhabitants and that in enacting these provisions relating to the Reformatories for two classes of offenders, the legislature did not act arbitrarily or unreasonably in the classification set up in the statute complained of. This case was argued before the Law Court and was decided on December 11, 1945, upholding the contention of the State. Since this case involved an alleged violation of the provisions of the Constitution of the United States, the petitioner appealed to the Supreme Court of the United States on February 15, 1946, and on April 20, 1946, the Supreme Court of the United States issued a per curiam dismissing the appeal for want of a substantial federal question, Mr. Justice Douglas and Mr. Justice Rutledge dissenting. 141 Maine 412.

This office has also handled many writs of error and petitions for writs of habeas corpus, seeking to release prisoners serving sentences in the State Prison and the State Reformatories, during the past biennium.

The Attorney General also appeared *ex rel.* for certain citizens of Portland against a member of the city council who refused to approve a warrant drawn on the city treasurer for the payroll for the wages and salaries of city employees and debts owed by the city, holding that an act of the legislature in 1945 was defective. Hearing was had before a single Justice of the Supreme Judicial Court, and he ruled that the legislation was valid, from which ruling exceptions were taken and the case went to the Law Court. The Law Court held that the statute was valid and that the respondent was a member of the city council and should sign the warrant for the salaries and wages of the city employees. Exceptions of the respondent were overruled. 141 Maine 362.

The Attorney General, during 1945 and 1946, appeared before the Senate and House Judiciary Committees of Congress to secure passage of a Resolution by Congress quitclaiming all right, title and interest to submerged lands three miles from the shore. Said Resolution was passed by both branches of Congress but vetoed by President Truman. Suit was instituted by the United States against the State of California, claiming title to said submerged tide lands off the shore of the State of California, and the Attorney General of Maine joined in the brief as amicus curiae. Said case is now pending in the United States Supreme Court.

The Attorney General also joined on the brief of the *Federal Power Commission, Petitioners vs. The Arkansas Power and Light Company*, with the Attorney General of Arkansas; and he also appeared for the State of Maine on the brief for the States, as amicus curiae, in the beverage tax case of the *State of New York and Saratoga Springs Commission vs. The United States of America*, which was argued in the United States Supreme Court. The case was decided against the State of New York.

## CRIMINAL CASES

During the years 1945 and 1946 there have been an unusual number of homicides in the State of Maine. In 1945 this office prosecuted eight cases of murder and nineteen cases which ended in conviction of manslaughter or convictions on pleas of guilty to manslaughter. In 1946 eight murder cases and twenty manslaughter cases came up for investigation and prosecution by this office.

In three murder cases, the respondents entered pleas of guilty, without trial, which is something unusual in Maine jurisprudence. However, the State's evidence was taken out and a record made for future reference in case of pardon petitions.

This office has brought suit in the name of the State to recover the penal sum of bonds under Chapter 57, Section 46, of the Revised Statutes, on violations of licensees of the State Liquor Commission, and has successfully collected $8209.35, which has been turned over to the State Treasury during the fiscal year of 1945-46, and does not accrue to the appropriations of this department.

## BAXTER STATE PARK

The Attorney General is one of three members of the Baxter State Park Authority, by virtue of his office. The Authority has had several meetings, and the Attorney General personally visited the Park with the other members of the Authority last year to secure first-hand information in regard to conditions in the Park.

Governor Baxter has made several more gifts of land in the neighborhood of Mount Katahdin, and the same have been accepted by the 1945 Legislature.

The department has also approved 530 corporations during the fiscal year, 1945-46.

## PERSONNEL

Philip D. Stubbs, Esquire, who was re-appointed Inheritance Tax Commissioner when I assumed office, retired on May 21, 1946, after twenty-five years' service, and Boyd L. Bailey of Bath was appointed Inheritance Tax Commissioner in his place.

Frank J. Small, Esquire, who had also served in the Inheritance Tax Division, for twelve years, retired under the Employees' Retirement System on June 30, 1946. No Assistant was appointed to take his place.

LeRoy R. Folsom, Esquire, who had been an Assistant Attorney General assigned to the Department of Health and Welfare since November 5, 1929, retired on July 6, 1946, and Miss Jean Bangs has since been carrying on the duties of legal adviser to that department and also to Institutional Service, without the aid of an assistant.

On assuming office I appointed John G. Marshall, Esquire, an Assistant Attorney General assigned to the Unemployment Compensation Commission. On December 10, 1945, Mr. Marshall resigned to take up his duties as Mayor of Auburn, and John S. S. Fessenden, Esquire, who had returned from naval service, on the same day assumed his old position as Assistant Attorney General assigned to that Commission.

On March 13, 1946, William H. Niehoff, Esquire, who had been re-appointed Assistant Attorney General assigned to the State Liquor Commission, resigned to devote his time to the practice of law, and Henry Heselton, Esquire, was appointed an Assistant Attorney General and assigned to the Liquor Commission to take Mr. Niehoff's place.

These are the only changes in personnel in this office during the biennium.

My Assistants and clerical staff ably and untiringly performed their duties and gave me their undivided loyalty and cooperation, for which I am grateful.

I extend to you the service and full cooperation of myself and my entire staff during the 1947 session of the legislature, at which time so many matters of great importance will be considered.

Respectfully submitted,

RALPH W. FARRIS
Attorney-General

## INHERITANCE TAXES

| | July 1, 1940 to June 30, 1941 | July 1, 1941 to June 30, 1942 | July 1, 1942 to June 30, 1943 | July 1, 1943 to June 30, 1944 | July 1, 1944 to June 30, 1945 | July 1, 1945 to June 30, 1946 |
|---|---|---|---|---|---|---|
| Total Receipts from Resident Estates | $513,496.43 | $649,282.91 | $829,676.28 | $752,337.99 | $828,304.52 | $853,935.19 |
| Total Receipts from Non-resident Estates | 29.12 | None | 576.62 | 424.37 | 383.84 | None |
| Total Receipts from Resident and Non-resident Estates | $513,525.55 | $649,282.91 | $830,252.90 | $752,762.36 | $828,688.36 | $853,935.19 |
| Total Number of Resident Estates | 1119 | 1206 | 1123 | 1201 | 1166 | 1222 |
| Total Number of Non-resident Estates | 2 | None | 14 | 8 | 2 | None |
| Total Number of Resident Estates paying $5,000 or more Tax | 18 | 15 | 27 | 24 | 19 | 26 |
| Total Receipts from Resident Estates paying $5,000 or more | $181,687.06 | $281,651.36 | $436,046.69 | $274,330.11 | $278,134.56 | $324,036.67 |
| Total Receipts from Resident Estates paying less than $5,000 | $331,809.37 | $367,631.55 | $393,629.59 | $478,007.88 | $550,169.96 | $529,898.52 |

January 7, 1947

WORKMEN'S COMPENSATION CASES

Total amounts paid in various departments during 1945

| | No. Cases | Compensation Paid | Medical Paid |
|---|---|---|---|
| Accounts and Control | 2 | —— | $33.00 |
| Adjutant General | 16 | $1,290.07 | 446.21 |
| Agriculture | 5 | —— | 28.15 |
| Aroostook State Normal School | — | —— | —— |
| Attorney General | — | —— | —— |
| Auditor | — | —— | —— |
| Augusta State Hospital | 1 | 1,113.00 | |
| Bangor State Hospital | 2 | 191.75 | 13.55 |
| Bureau of Purchases | 1 | —— | —— |
| Central Maine Sanitorium | 1 | 43.50 | —— |
| Education | 3 | 923.65 | 35.50 |
| Forestry Service | 6 | 225.00 | 243.35 |
| Health and Welfare | 3 | —— | 30.50 |
| Highway Commission | 140 | 28,137.46 | 11,761.56 |
| Inland Fisheries and Game | 16 | 138.08 | 1,321.87 |
| Labor and Industry | — | —— | —— |
| Library | 1 | —— | 8.00 |
| Liquor Commission | 2 | 185.20 | 602.50 |
| Military and Naval Children's Home | 3 | 690.71 | 24.00 |
| Pownal State School | 4 | 340.00 | —— |
| Sea and Shore Fisheries | 1 | 614.00 | —— |
| State Park Commission | | | |
| State Police | 13 | 57.00 | 330.04 |
| State Prison | 1 | —— | 28.05 |
| State Reformatory for Men | 1 | 42.00 | 182.50 |
| State Reformatory for Women | 2 | —— | 5.00 |
| State School for Boys | 1 | 1,880.26 | 240.25 |
| State School for Girls | 4 | 41.10 | 72.75 |
| Supt. of Public Buildings | 9 | 323.20 | 169.15 |
| Unemployment Comp. Commission | 1 | 484.64 | 151.00 |
| Western Maine Sanatorium | 3 | 134.06 | 10.00 |

Total amounts paid in various departments during 1946 (11 months)

| | No. Cases | Compensation Paid | Medical Paid |
|---|---|---|---|
| Accounts and Control | 2 | —— | $8.00 |
| Adjutant General | 6 | $2,372.67 | 233.65 |
| Agriculture | 4 | 105.00 | 102.50 |
| Aroostook State Normal School | — | —— | —— |
| Attorney General | — | —— | —— |
| Auditor | 1 | —— | 8.00 |
| Augusta State Hospital | 2 | 273.00 | 100.00 |
| Bangor State Hospital | 1 | 689.55 | 131.20 |
| Bureau of Purchases | 1 | | 24.50 |
| Central Maine Sanatorium | — | —— | —— |

| | No. Cases | Compensation Paid | Medical Paid |
|---|---|---|---|
| Education | 3 | 952.14 | 547.40 |
| Forestry Service | 6 | —— | 173.65 |
| Health and Welfare | 1 | —— | 11.00 |
| Highway Commission | 188 | 34,326.29 | 12,391.02 |
| Inland Fisheries and Game | 28 | 567.00 | 1,459.54 |
| Labor and Industry | — | —— | —— |
| Library | — | —— | —— |
| Liquor Commission | — | 5.00 | 32.00 |
| Military and Naval Children's Home | — | 626.14 | 53.00 |
| Pownal State School | 5 | —— | —— |
| Sea and Shore Fisheries | — | 318.00 | —— |
| State Park Commission | 2 | —— | 9.00 |
| State Police | 17 | 300.00 | 864.93 |
| State Prison | — | —— | —— |
| State Reformatory for Men | 4 | —— | 62.50 |
| State Reformatory for Women | 1 | —— | 44.00 |
| State School for Boys | 1 | 1,008.00 | 17.00 |
| State School for Girls | 2 | 327.00 | 296.43 |
| Supt. of Public Buildings | 9 | —— | 41.50 |
| Unemployment Comp. Commission | 3 | 464.48 | 149.00 |
| Western Maine Sanatorium | — | 30.54 | —— |

# OPINIONS

January 25, 1945

To Fred M. Berry, State Auditor

1. I have your memo of January 19, 1945, asking if, in my opinion, the State Auditor has the legal authority to make an examination of accounts kept in probate courts. Assuming that you mean accounts kept by the Registers of Probate, it is my opinion that he has.

The next question is, "Does the State Auditor have the legal authority to proceed further than the court by making examinations of the account kept by administrators and executors appointed by the court?" In answering that question, my opinion is, No, for the reason that the general powers and duties of the Department of Audit are set forth in §3 of Chapter 16, which provides that the department is to perform a post-audit of all accounts and other financial records of the state government, or any department, or agency thereof; and, the office of State Auditor being a statutory office, the department should confine its duties to the specific powers conferred by the legislature.

2. The next question is: "Does the State Department of Audit have the authority to make examination of accounts handled by creditors as well as public administrators." My answer to that question is, No.

You will note that under §3 of Chapter 16 of the Revised Statutes of 1944, subdivision IV, which is the amendment made by the Public Laws of 1941, Chapter 27, the Department of Audit was empowered to perform post-audits for the clerks of superior courts, judges and recorders of municipal courts, trial justices and probation officers; but no mention was made of the registers of probate. However, the department has been performing a post-audit of the registers of probate in all counties, and I feel that your department has sufficient authority under subdivision I of §3, as the probate court is an agency of the State government.

RALPH W. FARRIS
Attorney General

February 6, 1945

To Fred M. Berry, State Auditor

. . . In accordance with Chapter 16, Section 4, of the Revised Statutes of 1944, the State Auditor, if he shall find in the course of his audit, evidence of illegal transaction, shall forthwith report such transaction to the Governor and the Attorney General.

In the case at hand, I believe it is your duty to notify any delinquent county officer who has not kept a satisfactory record of his fees and has failed to pay them to the county treasurer, as provided by law; and if he still refuses to comply with the law, you may notify my office, and I will take the matter up with the delinquent county officer and see if the law cannot be complied with, or ascertain the reason why.

RALPH W. FARRIS
Attorney General

February 6, 1945

To Fred M. Berry, State Auditor

I have your memo of February 6th asking for further advice in regard to the word "agency", as contained in §3, Part 1, of Chapter 16 of the Revised Statutes of 1944, which reads as follows:

> " . . to perform a post-audit of all accounts and other financial records of the State government, or any department or agency thereof."

You will note that there is a comma after the word "government," and the words "or any department or agency thereof" mean any department or agency of the State government. The words "agency of the State of Maine" in this sense mean municipal corporations, which include cities, towns, counties, taxing districts, and other sub-divisions of a State erected for the purpose of government or administration.

The State Auditor is not authorized by law to audit the private accounts of individuals or corporations that file returns to the State from various sources, because if he were, there would be no end of trouble and expense, and in fact any such law authorizing the State Auditor to audit private accounts would be unconstitutional. Your predecessor in office appeared before the Judiciary Committee during the session of the 1943 legislature and asked for an amendment to this statute suthorizing him to audit private accounts, where certain persons and corporations werre obliged to make returns to the State in accounting for fees, inheritance taxes, etc., and the legislature, for constitutional reasons, refused to confer this power upon the then State Auditor.

RALPH W. FARRIS
Attorney General

February 8, 1945

To Captain Laurence C. Upton, Acting Chief, Maine State Police

We have your memorandum of January 24th, which . . relates to the propriety of attaching to a semi-trailer a disabled tractor and hauling it from Bangor to Waterville for repairs. The hauling vehicle was a tractor and semi-trailer combination, and the entire unit was more than 45 feet in length.

We think that the acts stated by you are prohibited and are violative of the statute (Chapter 19, §15-III). We interpret the provision to mean that not only is the length of the vehicle or combination of tractor and semi-trailer not to exceed 40 feet in length over all (now 45, by executive order), but not more than 1 trailer may be attached to a motor vehicle, irrespective of the length of the combined unit. Thus the attachment, in the case under consideration, of a damaged or disabled tractor behind the semi-trailer to be hauled over the highway is prohibited by this provision.

ABRAHAM BREITBARD
Deputy Attorney General

February 12, 1945

A. M. G. Soule, Chief of the Division of Inspection,
Department of Agriculture

I have your letter of February 8th requesting an opinion concerning the provisions of Section 88, Chapter 34, R. S. 1944, and Section 91 of the same chapter.

On the statement of facts relating to violation of same, it is my opinion that Mr. ***** of Ipswich, Massachusetts, would come within the provisions of Section 91 of Chapter 34, and if he was found guilty in the municipal court, it would constitute a conviction for violation of this statute.

In regard to the question raised, whether it would be possible to issue a certificate to some other party to legalize the shipment of clams in interstate commerce, I will say that it would, and Mr. ***** would be permitted to ship clams as agent of the licensee or certificate holder.

RALPH W. FARRIS
Attorney General

February 12, 1945

To Lucius D. Barrows, Chief Engineer, State Highway Department

I have your memo of February 9th, asking for an interpretation of Chapter 269, P. L. 1943, which as now Section 5 of Chapter 137 of the Revised Statutes of 1944 and which relates to the collection and disposal of fines and costs in criminal cases. This section reads in part:

> "The county treasurer, upon approval of the county commissioners, shall pay to the state, town, city, or persons any portion of the fines, costs, and forfeitures that may be due."

It is my opinion that it was the intention of the legislature that the county should reimburse the State Highway Commission for the services of State Police officers for making arrests on highway violations. It seems to me that the statute is quite clear on this matter, except the words "upon approval of the county commissioners." I understand that some county commissioners have not approved the payment of some of the fees due the State Highway Commission for services of the State Police officers for making arrests for highway violations. Of course, if the county commissioners do not approve the payment of these costs, the county treasurer cannot pay them over to the State.

It is my understanding that some of the county commissioners are approving of the payment to the State Highway Commission of these fees of State Police officers, whether or not they are collected by the court; and some county commissioners have not been approving these bills, where they have not been collected as costs by the courts. There is no provision in the statute that compels the county commissioners to approve

these bills. However, I feel that it is their duty to approve all bills for costs under this statute, whether or not these costs have been collected, because the services have been rendered by the officers and the State Highway Commission should be paid, the same as a constable or city police officer.

An amendment to Section 123, Chapter 29, R. S. 1930, by Chapter 269, P. L. 1943, provided that arresting officers or aids or witnesses in any criminal case "shall be entitled to the same fees as any sheriff or deputy. Such fees shall be taxed on a bill of costs and shall accrue to the treasurer of state."

RALPH W. FARRIS
Attorney General

February 12, 1945

To Joseph H. McGillicuddy, Treasurer of State, and
David H. Stevens, State Assessor

Your memo of February 12th at hand, relating to §§78-83 inclusive of Chapter 14 of the Revised Statutes of 1944, and asking the following question:

"Whenever the state fails to collect state, county, and forestry district taxes, should the county taxes, plus interest, be paid to the county, and is it permissible to charge off state, county and forestry district taxes whenever title to lands assessed for these taxes has come to the State of Maine?

"It is understood that if county taxes are charged off, a record of such taxes will be maintained in a memorandum ledger and whenever lands on which such taxes are assessed are sold, then the county will receive payment for the taxes plus interest or a proportionate amount of taxes plus interest, provided the land is sold for less than the total amount of taxes, interest and cost."

The last paragraph of Section 79 of said chapter provides as follows:

"Proceeds of any tax sales under the provisions of this section shall be credited by the treasurer of state to the several accounts of state, county, and forestry district taxes, interest, and cost of advertising."

It is my opinion that the county taxes should be credited to the county, and the county should be paid when the lands involved in the tax deeds are sold. However, as the State has acquired title to the lands included in these tax deeds, and the State and forestry district taxes are taken care of, it is permissible to charge off these back taxes, provided the county is taken care of, as provided in the second part of your question.

RALPH W. FARRIS
Attorney General

February 13, 1945

To J. J. Allen, Controller

We have your memo of January 23rd, which is as follows:

> "Chapter 40, Section II of the Revised Statutes of 1930, Chapter 27, Section 53, R. S. 1944) provides that the Department of Agriculture pay indemnities on cattle condemned for Tuberculosis out of any moneys appropriated by the Legislature for that purpose up to $200.00 for cattle with a pedigree recorded or recordable, and $100.00 for cattle which have no recordable pedigree. Subsequent to the passage of this law there was created an act to provide for the issuance of State of Maine Agricultural bonds for the eradication of Bang's Disease and other contagious diseases. (Chpater 254, P. L. 1941.) "This act provides for the Commissioner of Agriculture to set up a program from the proceeds of such bond sales for the eradication of Bang's Disease and other contagious diseases under the powers vested in him by Chapter 40 of the Revised Statutes as amended, and by Chapter 297 of the Public Laws of 1933.
>
> "Chapter 297 of the Public Laws of 1933 provides for indemnities for cattle condemned for Bang's Disease up to $20.00 for a grade animal and $50.00 for a registered pure bred animal. As the money now being expended by the Department of Agriculture for indemnities on cattle condemned for contagious diseases is all derived from the proceeds of the bond issue for the eradication of Bang's Disease and other contagious diseases, we are wondering if the indemnities specified in Chapter 40, Section II, still apply."

*Answer.* We understand that since the enactment of Laws of 1941, Chapter 254, no appropriation has been made by the legislature for the payment of indemnities of cattle affected with tuberculosis. Section 6 of the above law provides:

> "*Disbursements of bond proceeds.* The proceeds of such bonds shall be expended under the direction of the commissioner of agriculture who shall immediately set up a program 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."

We think that the Commissioner of Agriculture by the above provision is authorized to pay these indemnities from the proceeds of the bonds issued thereunder. As to the amount to be paid, we find no change in any of the provisions, nor evidence of any intent to do so; hence the indemnities for cattle with tuberculosis condemned and ordered destroyed are to be paid in accordance with Section 53 of Chapter 53 of Chapter 27, Laws of 1944. See also Rule 14 pertaining to livestock sanitation issued by the Department of Agriculture (Division of Animal Industry.)

ABRAHAM BREITBARD
Deputy Attorney General

February 15, 1945

To Fred M. Berry, State Auditor

I have your memo of February 12th relating to the provisions of the last paragraph of Section 1, Chapter 216, P. L. 1931, "AN ACT relating to the Administration of the State." The Public Laws of 1931 were repealed at the special session of the 91st Legislature under Legislative Document 934; but this provision was excepted from the repealing act in said bill.

It is my opinion that the Board of Bar Examiners is not the judiciary, nor is the Revisor of Statutes the legislature. The members of the Board of Bar Examiners are appointed by the Governor on the recommendation of the Chief Justice, under the provisions of Section 1, Chapter 93, R. S. 1944, while the Revisor of Statutes is appointed by the Governor with the advice and consent of the council, under the provisions of Section 1, Chapter 10, R. S. 1944.

It is my opinion that the provisions of this law of 1931, which you cited in your question, do not apply to those two departments, which you are authorized to audit under Section 3 of Chapter 16, R. S. 1944.

RALPH W. FARRIS
Attorney General

February 20, 1945

To J. A. Mossman, Commissioner of Finance

I have your memo of February 19th asking my opinion as to the effect of the proposed amendment contained in L. D. 162, "AN ACT Relating to State Trust Funds," which is now before the committee on appropriations and financial affairs.

It is my opinion that this proposed amendemnt will not affect the investment of trust funds under Section 14 of Chapter 15 of the Revised Statutes of 1944. It would not prevent compliance with the provisions of the original trust regarding investment of said trust funds. I cannot see how the State might be liable to lose these funds to the heirs of the donors. In looking over the *Report on the Trust Funds of the State of Maine* prepared by my predecessor in office, which recently came to my desk, I have been unable to find any restrictions on investment of trust funds that would cause the State to lose any part of said trust funds, in case this proposed amendment becomes law.

RALPH W. FARRIS
Attorney General

February 22, 1945

To Fred M. Berry, State Auditor

I have your memo of February 22d relating to the duties of the State Auditor under the provisions of Chapter 16, Section 3, of the Revised Statutes of 1944, requesting my opinion in regard to Section 18 of Chapter 77 of the Revised Statutes of 1944, which concerns the licensees' keeping records under the State Racing Commission Law, as it applies to "agencies of the state government."

It is my opinion that the records of persons, associations or corporations conducting races under the provisions of this section are not subject to an audit by the State Auditor; but the State Racing Commission is a State agency in my opinion and its accounts are subject to a post-audit by your department.

RALPH W. FARRIS
Attorney General

February 26, 1945

To Harry V. Gilson, Commissioner of Education

I received your memo of February 14th with letter attached which you had received from the Federal Works Agency, pertaining to the allocation of Lanham Act funds to the town of Kittery. Also attached was a copy of the tabulation of the town of Kittery for the past three years. I note that in your 1944 tabulation on equalization you have placed in Item 14, under "Other Deductions," "Lanham Act funds in lieu of taxes, $13,262."

It is my opinion that you are not authorized by the Revised Statutes or the provisions of the Lanham Act to make a deduction of the full amount paid by the Federal Government under said Act, as the Act provides: "The Administrator shall pay from rentals annual sums in lieu of taxes to any State and/or subdivision thereof, with respect to any real property acquired and held by him under this Act, including improvements thereon. The amount so paid for any year upon such property shall approximate the taxes which would be paid to the State and/or subdivision, as the case may be, upon such property if it were not exempt from taxation, with such allowance as may be considered by him to be appropriate for expenditure by the Government for streets, utilities, or other public services to serve such property." In other words, you have taken a deduction for the full sum the Government has paid in lieu of taxes for such property for streets, utilities or other purposes, including schools.

I note from the attached letter from Frank S. Moore, Chief of the legal section of the Federal Works Agency, addressed to you and dated February 12, 1945, that he states that, if the assessed valuation of the Federal Housing Development is included in the valuation of the town as assessed by the State Bureau of Taxation, in his opinion no part of the $13,262 should be added to the three funds specifically enumerated in the statute. On the other hand, if the assessed valuation of the Federal Housing De-

velopment is not included in the valuation as assessed by the State Bureau of Taxation, only $5800 (if our computation is correct) should be added to the other three specified funds, instead of the full amount of $13,262.

I have been advised by the State Bureau of Taxation that the assessed valuation of the Federal Housing Development is not included in the valuation as fixed by the State Bureau of Taxation, and I am inclined to agree with the Federal Works Agency that your tabulation sheet on equalization fund subsidy for December 1944 should be revised to conform to Section 204 of Chapter 37, R. S. 1944.

RALPH W. FARRIS
Attorney General

February 27, 1945

To Hon. Harold I. Goss, Secretary of State

The American Railway Express Company has requested "zone privilege number plates" for trucks registered in the State of New Hampshire and garaged at Portsmouth and Dover in said State. These trucks are used not only in that State but also to make deliveries across the boundary line into this State and within an area of 15 miles from the boundary line of said State. The question is whether it is entitled to this privilege under Section 57 of Chapter 19, R. S. 1944.

Prior to 1937, zone privileges under the first paragraph of this section were limited to residents of the bordering State or country residing within 15 miles by highway of the border-line of this State to operate in an area on the ways of this State within 15 miles from the border-line of "his" State, providing reciprocal rights of the same nature were granted to residents of this State.

The American Railway Express Company could not have come within the provisions of this paragraph, since it was not a resident of either New Hampshire or Maine, it being a foreign corporation organized under the laws of another State.

By amendment in 1937, Chapter 239 of the session laws of that year, it was provided, so far as here pertains, that

> "motor trucks having a rated carrying capacity of 3 tons or less which are duly registered according to the laws of another state or country which grants like privileges to such trucks registered in this state, and to the operators thereof, shall not be required to be registered in this state when operating within the 15 miles zone limit herein provided."

I am of the opinion that by this amendment the intention was to extend the privilege to trucks registered in a bordering state or country, irrespective of the residence of the registered owner. In other words, residence is no longer a condition, registration in such bordering State or country being sufficient, providing of course reciprocity of similar privileges is granted to registrants of motor vehicles of this State.

The applicant American Railway Express Company would be entitled to zone privilege number plates for trucks rated as to carrying capacity of 3 tons or less under these provisions, if New Hampshire grants similar privileges to residents of this State.

ABRAHAM BREITBARD
Deputy Attorney General

February 28, 1945

To William O. Bailey, Department of Education

Referring to your memo of February 14, 1945, relating to funds received from the Federal Works Agency pertaining to the allocation of Lanham Act funds to the Town of Kittery, I will say that my ruling of February 26th, addressed to Commissioner Gilson, was based on the fact that the Town of Kittery had received only $13,262 in lieu of taxes under the Lanham Act. It was called to my attention this morning that payments in lieu of taxes by the FPH to the Town of Kittery, received in 1943, which is credited for the year 1944, as found on page 19 of the town report of Kittery, amounted to $34,942.92. 38% of this amount was allocated to common schools, which amounted to $13,261.73, which is the amount that you deducted under Item 14 of your minimum school program.

I note from the work-sheet on the Equalization Fund subsidy for December, 1944, that the total cost of the minimum school program was $56,592. Under deductions you have proceeds of 13-mill tax, State valuation, $34,056. Under Item 11, deduction, State school allocation, $9,886, and subsidies for special courses, $800. Under Item 14, Lanham Act funds in lieu of taxes, you have $13,262, making a total deduction of $59,004 that the Town of Kittery has received, $1412 more than the total cost of the minimum program.

Therefore I am revoking my opinion of February 26th, based on total receipts of $13,262, and ruling that the Town of Kittery is not entitled to receive any funds from the Department of Education under the Equalization Law.

RALPH W. FARRIS
Attorney General

March 6, 1945

To Earle R. Hayes, Secretary, Employees' Retirement System

I have your memo of March 6th relating to the University of Maine, in case L. D. 70 and L. D. 545, now pending before the legislature, become law.

Your questions were based upon the assumption that L. D. 70 will become law, thereby establishing the University of Maine as "an instrumentality and agency of the state," and upon the further assumption that L. D. 545 will be enacted into law, which bill provides that "all offi-

cers and employees of the University of Maine" shall be considered as employees for the purposes of the State Employees' Retirement System. It is my opinion that, inasmuch as Section 118 of Chapter 37, R. S. 1944, provides, "The University of Maine Fund shall be disbursed by the treasurer of state upon proper order by the trustees of the University of Maine and upon requisition approved by the governor and council," and that Chapter 216, Article I, Section 1, P. L. 1931, provides that the provisions of the administration of the state act shall not be construed to apply to the University of Maine, and that this provision of law is still in effect, having been exempted from the repealing act at the special session of the legislature held in September, 1944, by Senate Paper 524, L. D. 934; and inasmuch as Section 13, subsection 6 provides that budget estimates shall be broken down in such a way as to permit the proper allocation of costs among the general funds of the State, the general highway fund, and such other funds as it may be found practicable by the State budget officer to charge with their proportionate share of the cost of pensions; it would seem that the State budget officer has no authority over the University of Maine special mill fund, as set up in Section 117, Chapter 37, R. S. 1944, and cannot legally transfer money from that fund to the Employees' Retirement Fund to cover the State's liability for the employees of the University of Maine in case they should become members of the system under the provisions of L. D. 545, unless Section 13, subsection 6, Chapter 60, R. S. 1944 and Section 118 of Chapter 37, R. S. 1944, were amended by the legislature, and the last paragraph of Section 1, Chapter 216, P. L. 1931, so far as it relates to the University of Maine, were repealed.

It is also my opinion that in case L. D. 545 becomes law and the employees of the University of Maine become members of the Retirement System, it would be proper to allocate the cost of the pensions among the general funds of the State, as it would not be practicable under the present provisions of the statutes above cited for the State budget officer to charge the University of Maine Fund with the carrying out of the provisions of L. D. 545.

RALPH W. FARRIS
Attorney General

March 7, 1945

To Brig.-Gen. George M. Carter, Adjutant General

I received your memo of March 2nd relating to the settlement of recent loss in connection with the fire at the Stevens Avenue Armory in Portland, and note that you are faced with the necessity of working out an adjustment of insurance with certain representatives of the insurance companies.

Under Sections 24 and 25 of Chapter 12, R. S. 1944, the Commission does (a) have full charge of all military property owned by the State of Maine; (b) have the authority to conclude with the proper authority of the insurance companies a settlement in connection with losses of State armories, as the military law has been amended so that the State Military

Defense Commission takes the place of the old Armory Commission; (c) any moneys received in settlement of insurance as a result of said losses should be accepted by the Commission and placed to their credit and used for the replacement of the destroyed property at such time and under such conditions as the Commission may see fit to prescribe.

RALPH W. FARRIS
Attorney General

March 23, 1945

To W. H. Deering, Treasurer, Augusta State Hospital

Chapter 12, Section 15, of the Revised Statutes of 1944 provides:

> "The governor with the advice and consent of the council is hereby authorized to accept in the name of the state any and all gifts, bequests, grants, or conveyances to the State of Maine."

With respect to the gift for the benefit of the State Hospital about which you talked to me the other day, the above section is the authority for accepting it, and hence a council order should be prepared and submitted, authorizing the acceptance of the gift, with a statement attached to it describing the person making it, in whose memory the same was made, and the use to be made of the fund.

ABRAHAM BREITBARD
Deputy Attorney General

March 27, 1945

To Homer E. Robinson, Bank Commissioner

I received your letter of March 15th, but owing to my absence from town have been unable to give same my attention.

First, you state that Chapter 55, Section 3, provides:

> "No person, copartnership, association, or corporation shall do a banking business unless duly authorized under the laws of this state or the United States, except as provided by section 4."

Section 4 provides:

> "A corporation, desiring to encourage thrift among its employees by receiving deposits subject to interest at a specified rate, may apply to the bank commissioner for a license to receive such deposits and shall, at the same time, file with the said commissioner a complete statement of its financial condition," etc.

Your first question is: "Can a corporation organized under the laws of another State, with due regard to the provisions of Chapter 49, R. S. Sections 123 to 131, relating to foreign corporations, be authorized to engage in the business of making small loans in this State under the provisions of Chapter 55, Sections 190 to 207?"

My answer to that question is, No; because a foreign corporation cannot do anything that a domestic corporation cannot do, under the statute.

Your second question is: "Can a corporation organized under the provisions of Chapter 49, Section 8, be authorized to engage in the business of making small loans as provided under Chapter 55, R. S. Sections 190 to 207?"

My answer to that question is, No; because no corporation can be formed under that provision of statute which intends to derive profit from the loaning of money, except as a reasonable incident to the transaction of other business.

The next proposition is that Chapter 55, Section 197, provides, among other things:

> "No person shall owe any licensee at any time more than $300 for principal. No licensee shall induce or permit any borrower to split up or divide any loan, and all sums owed by any person at any one time shall be considered as 1 contract of loan for the purpose of computing the interest payable thereon. No licensee shall induce or permit any person, nor any husband and wife, jointly or severally to become obligated, directly or contingently or both, under more than 1 contract of loan at the same time, for the purpose or with the result of obtaining a higher rate of interest than would otherwise be permitted by this section."

After quoting this provision of law, you state, "My understanding is that under the general interest law a person may charge any rate of interest provided that the agreement is in writing, and that there is no fraud in the transaction. Under the provisions of Chapter 55, R. S., Sections 190 to 207, a person is permitted on loans up to $300 to charge interest at the rate of 12% per annum without a license, and at the rate of 3% per month on the first $150 and 2½% per month on any remainder, after having obtained a license from the Bank Commissioner."

The third question is: "Does a person, copartnership, or corporation, holding a small loan license and operating under the provisions of Chapter 55, R. S., Sections 190 to 207, forfeit the right to make loans in amounts exceeding $300 at rates as provided for under the General Interest Law?"

My answer to this question is: Any person can exercise this right to lend money under the general interest law; but it should not be done in connection with his small loan business. It should be altogether separate, and the person so doing should keep a separate set of books available for the Examiners from your office, so that you can check upon the question of whether or not he is doing business under the general interest law or as a licensee under the small loan law.

RALPH W. FARRIS
Attorney General

April 5, 1945

To David H. Stevens, State Assessor
Re: Passamaquoddy Land Co. 4 N. Div., Hancock

I have your memo of April 3rd stating that the Board of Equalization of the State of Maine is required to file the so-called State valuation with the Secretary of State before December 1st of those years preceding a regular meeting of the legislature, and that on the basis of this valuation the legislature establishes a rate and authorizes the assessment of the State tax. You state that on December 11, 1944, the Passamaquoddy Land Co. deeded certain land to the State Military Defense Commission, and now the question arises as to whether or not the Passamaquoddy Land Co. is entitled to abatement for the taxes on this land for 1945 and 1946.

It is my opinion that the tax will be assessed as of April 1, 1945, and that the title to this land in question was at that time in a non-taxable agency of the State of Maine. For that reason my advice is: Assess the tax according to the State valuation, to keep your records straight, and then abate the taxes on this land for 1945 and 1946. . .

RALPH W. FARRIS
Attorney General

April 5, 1945

To David H. Stevens, State Assessor

I received your memo of April 3rd relating to deorganized towns under acts effective March 30, 1945, stating that it is necessary for the county commissioners to have funds to maintain the roads in these deorganized towns for the year April 1, 1945 to April 1, 1946. You want to know, if the road taxes are included in the assessment of the taxes on the property in these deorganized towns by the State tax assessor and, following collection by that individual, paid over to the county treasurer by the State treasurer, would the county commissioners have authority to expend the funds on roads?

My answer to your question is that the county commissioners would have authority to expend these funds to maintain the roads in these deorganized towns for 1945 and 1946.

RALPH W. FARRIS
Attorney General

April 9, 1945

To N. S. Kupelian, M.D., Superintendent, Pownal State School
Re: Transfers to State Hospitals

Your memorandum of the 31st of March to the Attorney General has been referred to me. While the statute under consideration, Section 13 of Chapter 23, in the opening sentence provides that

> "Any person who is committed to a state charitable or correctional institution, and is under the control of the department (Institutional Service), who becomes insane, or who is found to be insane by the examination authorized by the preceding section, shall be transferred to either of the state hospitals. . ."

we find further on that it proceeds in the second paragraph as follows:

> "Such patient shall be there detained in custody in the same manner as if he or she had been committed thereto originally. The transfers authorized in this and the preceding section shall have no effect on the original sentences which shall continue to run, and if the original sentence has not expired when the patient has been declared ready for discharge or release, the patient shall be returned to the institution to which he or she was originally committed. . ."

It is further provided that where the patient is to be detained after the expiration of the sentence, then he must be recommitted upon application to the proper court in accordance with the sections of the statute therein quoted.

From these quotations it would appear that transfers may be made only from those institutions wherein the "patient" is serving a sentence. That, of course, is not the case of a person committed to the Pownal State School.

In view, then, of its doubtful application to Pownal, it would be best to have no question arise as to the legality of the patient's detention. The inmate should be committed to either of the State hospitals, by application to the proper court.

ABRAHAM BREITBARD
Deputy Attorney General

April 9, 1945

To J. A. Mossman, Budget Officer
Re: Funds for Veterans Graves Registration Service

Answering your request for my opinion on the present effect of Chapter 284 of the Public Laws of 1939, I will say that Section 3 of Chapter 54, R. S. 1944, provides that each town, parish, religious society, etc., shall keep in good condition and repair the graves, headstones, monuments or markers of soldiers or sailors who have served in the United States Army, Navy or Marine Corps in any war. There is a penalty for neglect to maintain in good repair said graves and fences around said cemeteries. The only other provision of law now on our statute books relating to graves of soldiers is contained in Section 94, Chapter 80, R. S. 1944. This provides that every city, town and plantation is required to decorate the graves of veterans on Decoration Day, May 30th; and the cities, towns and plantations are empowered by this statute to raise sufficient money by taxation for this purpose.

You wanted my opinion as to whether or not Chapter 284, P. L. 1939, was still in effect, and in reply I will say that the Laws of 1939 were repealed by Legislative Document 934, at the special session of the legislature held in September, 1944, except Chapters 77 and 121. Inasmuch as this chapter was not retained in the new revision, the Revisor of Statutes and the Revision Committee no doubt considered it an emergency measure which authorized the Adjutant General to cooperate with the Works Progress Administration. I understand that the WPA used $68,000 for this purpose, and the 1939 Legislature authorized $11,000. If the Adjutant General's office desires to carry on this work, it will be necessary to ask the legislature for further authorization.

RALPH W. FARRIS
Attorney General

April 10, 1945

To Fred M. Berry, State Auditor
Re: Capital Reserve Funds, Towns and Counties

I have before me your memo of March 19, 1945, in regard to the capital reserve funds for towns and counties, creation of which is authorized under the provisions of Section 130 of Chapter 80, R. S. 1944, requesting my opinion as to who is legally authorized to create such a fund. Is it the voters of a town or county; or is it the selectmen in the case of a town or the county commissioners in the case of a county?

This legislation was enacted in 1943, P. L. 262, under the title of "AN ACT to Permit Towns to Create Protected Reserves," and the first section of that act provides that any town may annually appropriate money for the purpose of providing a reserve of borrowing power, etc., etc. This is now Section 127 of said Chapter 80 of the Revised Statutes of 1944.

After a study of this act of 1943 and the legislative history of same, it is the opinion of this office that it is for the voters of a town to establish capital reserve funds for certain financing as permitted under said Section 130. The statute does not say that a specific program must be outlined, although it does state that it must be for a specific item or items of equipment, or the acquisition of title to capital improvement or a title to capiital equipment; and it is our opinion that these items should be specified for which the capital reserve fund is used in financing these projects.

In the case of a county, it is the opinion of this office that this capital reserve fund should be created by the county commissioners from a county tax levied for this purpose.

RALPH W. FARRIS
Attorney General

April 18, 1945

To Earle R. Hayes, Secretary, Employees' Retirement System

Re: Status of temporary institutional employees re retirement payroll deductions

I have your memo of April 18th calling the attention of this department to the critical situation which exists in our State institutions on account of the man-power shortage, especially the difficulty which institutions are having to keep employees fifty years of age or over, on account of payroll deductions under the Employees' Retirement System. On account of this situation you ask of a ruling can be made whereby under the provisions of subsection 4 of Section 3 of Chapter 60, R. S. 1944, persons fifty years of age or more at the time of employment may be considered as "temporary" for the duration of the war emergency, thereby enabling the Board of Trustees to make membership in the Retirement System optional for this class of employees.

It is the opinion of this office that the Board of Trustees have the authority, under the provisions of said subsection 4 of Section 3 of Chapter 60, R. S. 1944, to retain employees fifty years of age or over on a temporary basis during the war emergency; but it should apply to all employees under the system, as well as to institutional employees.

RALPH W. FARRIS
Attorney General

April 18, 1945

To David H. Stevens, State Assessor

Re: Computation of the Railroad Tax

I have your letter of April 18th with reference to the second paragraph of Section 111 of Chapter 14, R. S. 1944, and note what you say *in re* the report of the Boston & Maine Railroad to the Public Utilities Commission, disclosing a figure of 114 miles of track in the State of Maine as of December 31, 1944. You ask my opinion as to whether, in computing the gross transportation receipts tax referred to in Section 111, the number of miles of track as of December 31st should be used as the basis of the computation, or the average number of miles of track operated within the State during the calendar year 1944.

It is the opinion of this office that the computation should be based on the average number of miles operated in the State of Maine in the calendar year 1944.

RALPH W. FARRIS
Attorney General

April 25, 1945

To J. Elliott Hale, Secretary, Board of Barbers and Hairdressers

With reference to your recent inquiry whether a person is eligible to take the examination under the act relating to hairdressing and beauty culture, now R. S. 1944, Chapter 22, Sections 205-222, before attaining 18 years of age, where the applicant qualifies as having "satisfactorily completed a course of instruction in a school":

Under the rules and regulations which were duly adopted by the State Board of Barbers and Hairdressers, it is provided in Section 11 that students are not eligible to take up instruction in a school until they have reached the age of 17½ years. By Sections 212 and 214 of Chapter 22, a course of study in an approved school of 1000 hours distributed over a term of not less than 6 months is a prerequisite to admission to examination. It would thus appear that no person could become eligible for examination under these provisions until she has become 18 years of age.

ABRAHAM BREITBARD
Deputy Attorney General

April 26, 1945

To Harry V. Gilson, Commissioner of Education
Re: Federal Grants to Municipalities

Receipt is acknowledged of your letter of April 5th, which is as follows:

"Apparently consideration is being given to the federal allocation of funds directly to municipalities for the purpose of building community facilities including school buildings. A question has arisen as to whether municipalities of Maine can legally accept donations or allotments of money for the purpose of planning and building such community and school facilities.

"The only law pertaining to the acceptance of federal grants which I have been able to find is section 1 of chapter 315, passed at the Special Session of 1942.

"I would appreciate your opinion on the following questions:

1. Can municipalities legally accept federal grants?
2. Is it the intent of section 1, chapter 315, that all federal grants shall be made through the state to the municipalities?"

*Answer to Question* 1: No. The only provision relating to acceptance by municipalities of gifts is Section 103 of Chapter 80. This, however, has reference only to gifts under a will or "by any individual" who intends to make a conditional gift. It is not applicable to federal grants.

*Answer to Question* 2: The law referred to in your inquiry is now Section 14 of Chapter 11, R. S. 1944. It is there provided:

> "The governor, with the advice and consent of the council is authorized and empowered to accept for the state any federal funds or any equipment, supplies, or materials apportioned under the provisions of federal law and to do such acts as are necessary for the purpose of carrying out the provisions of such federal law. The governor, with the advice and consent of the council, is further authorized and empowered to authorize and direct departments or agencies of the state, to which are allocated the duties involved in the carrying out of such state laws as are necessary to comply with the terms of the federal act authorizing such granting of federal funds or such equipment, supplies, or materials, to expend such sums of money and do such acts as are necessary to meet such federal requirements."

Since municipalities are agencies of the State upon which the State law imposes the duty of maintaining schools and other facilities, this provision by its express terms is applicable to federal grants to municipalities for such purposes.

I therefore answer this question in the affirmative.

ABRAHAM BREITBARD
Deputy Attorney General

April 26, 1945

To C. P. Bradford, State Park Commission
Re: Police Authority and Arrest Procedure

You ask this office to define Section 23 (IV) of Chapter 32, relating to the powers of the agents and representatives of the State Park Commission, designated for that purpose, to make arrests.

By subdivision IV the Commission is empowered to exercise police supervision over all State Parks and memorials. This reads as follows:

> "To exercise police supervision over all state parks and memorials; and the agents or representatives of the state park commission designated for that purpose by said commission are authorized and empowered to arrest with or without warrant any person within the state who is committing, or to detain, until a warrant has been obtained, any person within the state who has been seen by said agents or representatives committing any offense against the state laws, or any violation of any rule or regulation of the state park commission within a state park or memorial, but no dwelling-house shall be searched for the purpose of such arrest without a warrant, and then only in the day time, and no sealed railroad car shall be entered for the purpose of such arrest without such warrant."

In my advice to you for brevity I shall refer to these persons as agents.

1) Agents may without a warrant arrest and detain a person who has committed any crime against the laws of this State or who has violated any rule or regulation of the Commission within a State park or memorial, providing:

(a) that such agent has seen such person commit the crime, or violation; that is, that such crime or violation has been committed in his presence;

(b) that such agent take said person before a trial justice or judge of a municipal court forthwith, if said court is in session or at the opening of said court the next day and procure such warrant.

2) To arrest with a warrant any person who has committed any offense against the laws of this State or has violated any rule or regulation within said parks or memorials, although not committed in the presence of the agent.

3) No dwelling house is to be searched for the purpose of arresting the offender without a warrant, and then such process may be executed in the day time only.

ABRAHAM BREITBARD
Deputy Attorney General

April 30, 1945

To David H. Stevens, State Tax Assessor

Re: The Ministerial Fund of the Town of Salem

Your memo of April 24th relating to the above matter has been received. It is my opinion that interest on this trust fund should be applied to the support of schools and transferred to the Unorganized Township Fund. I find no statutory authority for paying the income of the ministerial fund over to religious societies. From the information which I have before me, it seems to me that the title in this case vests in the inhabitants of the town; and since the town is deorganized, the State is trustee of the fund for the use of the town and, as I said before, the income thereof should go towards the support of the schools.

RALPH W. FARRIS
Attorney General

April 30, 1945

To Earle R. Hayes, Secretary, Employees' Retirement System

I have your memo of April 26th asking in behalf of the Board of Trustees of the Employees' Retirement System my opinion on the following question:

> "Under the terms of Chapter 98 of the Public Laws of 1945 as recently enacted by the 92nd Legislature, does the University of Maine thereby become a 'department' within the meaning of Subsection III of Section 1 of Chapter 60, R. S.?"

My answer to that question is in the negative, for the reason that the legislature declared the University of Maine to be an 'agency' of the State for the purpose for which it was established and for which it has been managed and maintained under the provisions of Chapter 532 of the

Private and Special Laws of 1865 and supplementary legislation thereto Chapter 532, P. & S. L. 1865, establishes the State College of Agriculture and the Mechanic Arts as a body politic and corporate, and the name was changed to the University of Maine under the provisions of Chapter 551, of the Private and Special Laws of 1897, preserving all the rights, powers and privileges, property, duties and responsibilities of the trustees of the State College of Agriculture; and the said corporate existence of the University of Maine was in full force and effect when the provisions of Chapter 60 of the Revised Statutes of 1944 were enacted by the legislature of 1941. The enactment of Section 111-A of Chapter 37 of the Revised Statutes was for the purpose of removing the uncertainty which had existed for several years as to whether or not the University of Maine was an agency of the State, so that the Federal Government, in providing funds for various purposes, would not raise the question as to federal funds to which the University might be entitled by various Acts of Congress and various executive orders of the Federal Government. Hence, the University is not a department within the meaning of Subsection III of Section 1 of Chapter 60 of the Revised Statutes.

RALPH W. FARRIS
Attorney General

May 1, 1945

To Col. L. M. Hart, Assistant Adjutant General
Re: Officials and Employees of the State on Pay While in Military Training

I have your memo of May 1st stating that the State of Maine is planning three week-end manoeuvers and two seven-day encampments for the Maine State Guard and that these tours on duty will be on a pay basis; and you ask a ruling on the following question:

> "Are officials and other employees of the State of Maine, who are members of the Maine State Guard—which is taking place of the the National Guard while the latter is in federal service—entitled to their regular pay as state officials or employees while on military duty and in addition pay of their rank or grade as members of the State Guard ordered by the Governor to perform active military duty?"

My answer to the question is in the affirmative without reference to any ruling made by any of my predecessors in the office of Attorney General, as the second paragraph of Section 80 of Chapter 12, R. S. 1944, which you cite in your memo and which is part of the amendment of the military law made by Chapter 257 of the Public Laws of 1943, amply clarified the situation in this regard.

RALPH W. FARRIS
Attorney General

May 8, 1945

To Lucius D. Barrows, Chief Engineer, State Highway Commission
Re: Town Road Improvement Fund, Chapter 371 of the Public Laws of 1945

I have your memo dated May 3rd, stating that the State Highway Commission is uncertain concerning the meaning of certain sections of the "Cross" bill, so-called, an act to create the Town Road Improvement Fund, and that you request my interpretation on the following questions:

"1) In Sec. 42-B re *allocation of funds* to towns, what is meant by 'unimproved roads'? More specifically is this term limited to unimproved portions of 4th Class (Town Ways) or does it also include unimproved portions of State, State Aid, and Third Class designations?"

In answer to this question, my advisory opinion is that the phrase "unimproved roads" means only unimproved portions of 4th class town ways and does not include State, State Aid, and third class designations.

"2) In Sec. 42-D, re *location for expenditures* by towns, what is meant by this same term 'unimproved roads' as qualified by the words which precede it, 'No money from this fund shall be expended on any road which is a part of the Federal Aid, State, State Aid, or Third Class roads?' "

My answer to Question 2 is that it is my advisory opinion that this means unimproved 4th class town ways.

My reason for answering the questions as above is that under Section 42-A of Chapter 371 aforesaid, the legislature created a special fund to be known as the "Town Road Improvement Fund," and in Section 42-D the legislature provided that no money shall be expended on any road which is a part of the federal aid, state, state aid, or third class roads, which would seem to limit the act to 4th class town ways or "dirt roads," so-called; and in Section 42-E the legislature provided that "it shall be the intent and purpose of sections 42-A to 42-E inclusive to set up a fund and a method for more equal distribution of money for unimproved roads than can be had by the present blanket road resolve, so-called." While the funds from the so-called special resolves in the past have been expended on third class designations, it appears to me that the intent of the legislature was to limit the expenditures of this fund to unimproved 4th class town roads.

RALPH W. FARRIS
Attorney General

May 9, 1945

To Fred M. Berry, State Auditor

Supplementing our memo of May 4, 1945, relating to the costs to be paid by a prisoner to obtain a release from jail where he is imprisoned in default of payment of fine and costs: Your inquiry is whether the officers' fees for service of the "mittimus to commit a person to jail. . .

and usual travel, with reasonable expenses incurred in the conveyance of such prisoner" (Chapter 79. §166 (29) ) may be included in the costs to be paid by the prisoner.

Section 44 of Chapter 136 provides:

> "Whoever is convicted in any court or by a trial justice, of a crime which is punishable by a fine only, without imprisonment, and is liable to imprisonment in a county jail for the non-payment of said fine, may be sentenced to pay said fine and the costs of prosecution, and in default of payment thereof to be imprisoned in accordance with law; but the payment of said fine and costs at any time before the expiration of the imprisonment shall be a full performance of the sentence."

I am of the opinion that "costs of prosecution" would include all costs incurred, including those payable to the officers to convey the prisoner to jail in accordance with the judgment and sentence of the court.

This interpretation also finds support in Section 46 which authorizes the liberation of the prisoner after he had served 30 days upon giving his note "for the amount due to the treasurer of the same county." The amount due to the county would include the cost of the commitment and conveyance to jail, as that would have to be paid by the county to the officer.

ABRAHAM BREITBARD
Deputy Attorney General

May 21, 1945

Honorable Earl L. Russell, Justice, Superior Court

I have examined my notes on the subject about which I wrote you the other day. I was satisfied that in the case that I had under consideration the respondent was convicted of three larcenies, as that offense is defined in Section 3 of Chapter 119, the form of indictment there used being that found in "Directions and Forms in Criminal Procedure" by Whitehouse & Hill, on page 74, which charges the breaking and entering and larceny, but which omits that the breaking and entering was with the intent to commit a felony or the intent to steal the goods and chattels of a third person. I think the allegation of the intent to steal takes it into the offense of either common-law or statutory burglary, and that is the distinguishing feature in *Commonwealth v. Hope.* In that case, you will notice, the last paragraph on page 3 of the opinion speaks of the combined charge of housebreaking and larceny, and, going further on in the opinion, it is said that, while the respondent there might have been convicted of either larceny or housebreaking, when he was found guilty as charged in the indictment, the larceny was merged in the greater offense of house-breaking. Also in that case the form of pleading, that is to say, where the intent to commit a felony is charged and then in addition that he actually did consummate the felony, is justified by the fact that proof that he actually committed the offense tends to prove beyond any doubt that his intent was to commit the offense and consequently supports the finding of burglary or house-breaking.

If you will look on page 71 of Whitehouse & Hill you will find that in their form of indictment for burglary at common law they too not only set forth the intent but the actual consummation of the attempt.

In the forms that follow and which are the statutory crimes, they merely set out the intent to commit a felony, and of course that would sufficiently charge the offense, as burglary is the breaking and entering a dwelling-house or the other buildings described in the statute, with intent to commit a felony therein.

It would seem to me that, if the indictments in the case before you merely charge the breaking and entering and the actual commission of the larceny, following the form at the bottom of page 74, the crime charged is merely an aggravated or compound larceny. I think that is clear from the case of *State v. Savage*, 32 Maine 583, which was the case I found in my notes. My impression is that in Massachusetts house-breaking either was a separate offense or was another name for statutory burglary, because, as I recall it in their statute, the acts are set out which constitute the offense and then the punishment is fixed, without referring to it as burglary; but, however that may be, as I said before, I think that in *Commonwealth v. Hope* they held that the indictment there charged burglary in the forms which were in common use at that time.

ABRAHAM BREITBARD
Deputy Attorney General

May 24, 1945

To Harrison C. Greenleaf, Commissioner of Institutional Service

You request a ruling as to the right of arrest of a paroled prisoner from the State Prison who has committed a breach of the conditions of his parole, when his arrest cannot be accomplished until after the time when his sentence would normally have expired, had he observed the conditions of his parole.

The facts in the case under consideration, as you state them, are that the subject was received at the State Prison on January 20, 1942, to serve a sentence of two to four years for larceny. He was paroled August 27, 1943. He would have been entitled to a discharge, if he had fully observed the conditions of his parole, on April 21, 1945. In December of 1944 he was convicted in a federal court for the crime of larceny and sentenced to a year and a day in the federal penitentiary at Danbury, Conn. A parole violator's warrant was issued and filed with the proper authority of the penitentiary at Danbury. He is now serving his sentence at the penitentiary and has not as yet been released; and the question is whether upon his release he may be arrested and brought back to the State Prison to serve out the unexpired term of his sentence.

Under Chapter 136, Section 19, a prisoner who has been paroled is deemed, while on parole, to be still serving the sentence imposed upon him and entitled to good-time deductions the same as if he were confined in prison.

Under Section 20, every prisoner on parole remains under the control and legal custody of the warden and may be returned to the prison "for any reason that may be satisfactory to the warden" and full power to retake and return is expressly conferred on the warden, ". . whose written order shall be a sufficient warrant authorizing all officers named therein to return such paroled prisoner to actual custody in the prison. . "

In Section 22, it is provided:

> "A prisoner violating the provisions of his parole, and for whose return a warrant has been issued by the warden, shall, after the issuance of such warrant, be treated as an escaped prisoner owing service to the state, and shall be liable, after arrest, to serve out the unexpired portion of his maximum sentence. The length of service owed the state in any such case shall be determined by deducting from the maximum sentence the time from date of commitment to the prison to date of violation of parole and 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. . ."

It is perfectly clear from this provision that a parolee who has broken his parole and for whom a warrant has been issued can no longer be said to be serving his sentence, when under this section he is to be treated as an escaped prisoner. One who has escaped from prison cannot be said to be serving his sentence. Consequently, in the case under consideration, in December of 1944, when the warden issued his warrant, the prisoner was no longer serving his sentence while on parole, but his parole came to an end and he was then to be treated as an escaped prisoner, liable after his arrest to serve the unexpired portion of his maximum sentence.

Section 24 provides that

> "After a prisoner has faithfully performed all the obligations of his parole for the period of time fixed, and has regularly made his monthly reports as required by the rules providing for his parole, he shall be deemed to have fully served his entire sentence, and shall then receive a certificate of final discharge from the warden in whose custody he is. A copy of such final discharge shall be kept on file by the clerk of the parole board."

In order, then, for this prisoner to have earned his discharge, the full performance of all conditions of his parole was a prerequisite. This he did not do.

I therefore advise you that this prisoner is subject to arrest under the warden's warrant to serve the unexpired term of his original sentence, and extradition would be in order when he is to be released from the Danbury penitentiary.

ABRAHAM BREITBARD
Deputy Attorney General

Note. Section 22 was amended in 1943 and went into effect on July 9th of that year. By this amendment, the prisoner would forfeit the deductions for good behavior while on parole and also at the prison prior to his parole. This amendment would apply to prisoners whose crimes were committed prior to July 9, 1943, only in so far as forfeiture of deductions for good behavior while on parole is concerned, if they were paroled after July 9, 1943. I have said nothing about this in the foregoing memorandum. . . as it will very soon be two years since the amendment was enacted, and hence the first part of it would apply to very few persons, if any, while the latter part would be effective as against prisoners who were paroled after July 9, 1943. . .

June 1, 1945

To David H. Stevens, State Assessor

Re: Funds Received from Land Sales Authorized by the Legislature

I have your memo of May 31st, calling my attention to the facts that the 92nd Legislature passed several Resolves authorizing the Forest Commissioner to give deeds conveying the State's interest to certain parcels of wild land acquired by the State through the so-called land sale procedure outlined in Sections 78-83 inclusive, R. S. 1944, and that in practically all cases where tax deeds are going to be passed, the purchasers or land owners have deposited with the State Treasurer the amounts to cover the taxes due in each case before said Resolves received passage and were approved by the Governor. You further state in your memo that the deeds will not be passed until the Resolves become effective on July 1, 1945, and that you would like at this time to take the money so deposited with the State Treasurer, which is now held in the so-called suspense account, and credit the unpaid tax account for the purpose of clearing up these outstanding tax accounts on your books before the end of the fiscal year.

In my opinion it is proper for you to credit these tax accounts as a practical matter of bookkeeping and of clearing these outstanding accounts off your books before the beginning of the next fiscal year.

RALPH W. FARRIS
Attorney General

June 1, 1945

To David H. Stevens, State Assessor

Re: Redemption of Land Following Land Sales

I have your memo of June 1st, relating to provisions of Sections 78-82 inclusive, R. S. 1944, which provide that wild lands may be redeemed within one year from the date of the so-called land sale, by payment of the taxes, interest and costs, provision being made for interest to be charged at the rate of 20% per annum, and you call my attention to the amendment of said section under the provisions of Chapter 41, P. L. 1945, which

eliminates the land sale and substitutes therefor the tax mortgage lien procedure. Said chapter also had a proviso retaining the provisions of Sections 77-83 inclusive, until the assessment, collection and disposition of the proceeds of the land sales for all taxes on wild lands up to and including the taxes assessed for 1944 have been completed; and you ask my opinion as to whether or not your department should continue to charge 20% interest on taxes up to and including those assessed in 1944, whenever such taxes, interest and costs are paid in connection with the redemption of the land.

My answer to this question is in the affirmative. As you understand, the 6% interest rate would become effective for the taxes assessed in 1945, under the provisions of the new act.

RALPH W. FARRIS
Attorney General

June 5, 1945

To Paul A. MacDonald, Deputy Secretary of State

I have your memo of May 29th, requesting an interpretation of Section 24 of Chapter 19, R. S. 1944. The pertinent part of your inquiry is as follows:

"Section 24 of Chapter 19 of the Revised Statutes provides for the payment of a transfer fee of $2 when making a transfer of registration from one motor vehicle to another.

"The section further provides that no portion of any fee once paid in any calendar year shall be returned, but does provide that if a person surrenders his registration certificate and plates to the Secretary of State he shall have a credit to the full amount paid set up in his name good until September 1st to be applied to the registration of another vehicle.

"The fees for the registration of passenger automobiles are $10, $12, $14 and $16, depending on horsepower. If a person desires to transfer the registration of a car the fee for which was $16 to a car whose registration fee is $14, can the $2 transfer fee be taken from the credit established upon discontinuance of the original registration? In other words, must the person pay $2 additional as a transfer fee notwithstanding the fact that there remains a $2 credit to his account?"

I am of the opinion that the transfer fee is separate and distinct from the registration fee and is a payment to effect the transfer of the registration fee and is a payment to effect the transfer of the registration from one vehicle to another of the same class of registration.

Under the first paragraph of this section the transfer may be effected by

> ". . payment of a transfer fee of $2, provided the fee (registration) is the same as that of the former vehicle; but if the fee for the vehicle to be registered is greater he (the registrant) shall pay in addition to the transfer fee of $2 the difference between the fee paid by him for the vehicle first registered and the fee for the vehicle to which the transfer is to be made. . ."

This provision makes it quite clear that it is the difference between the registration fees that is to be paid in addition to the transfer fee of $2. The second paragraph is as follows:

"No portion of any fee once paid in any calendar year shall be repaid to any person, but from January 1 to September 1 in the same calendar year any amount paid for registration of a vehicle shall remain as full credit toward the registration of another vehicle in place of the one represented by the surrendered registration, and from September 1 to December 31 in the same calendar year such credit shall not exceed ½ of the amount of the original fee."

In determining the credit, it is only the registration fees that are to be considered. It is the amount paid for registration that is to remain as a full credit toward the registration of another vehicle. If there is an excess, the credit may not be applied towards the transfer fee. The excess is lost by the express provisions of the statute.

ABRAHAM BREITBARD
Deputy Attorney General

June 12, 1945

To J. J. Allen, Controller

This department has your memo of June 11, 1945 relating to the increase in compensation made to county attorneys in the various counties therein enumerated by the 92nd Legislature.

You inquire whether the increases in compensation thus allowed fo these counties become effective on July 1, 1945 or July 21, 1945. These acts take effect on July 21, 1945, and that is the date on which the increased compensation commences.

In the cases of the county attorney of Androscoggin and his assistant as well as the county attorney of Waldo County, the legislature in 1943 in each of these counties increased the salary as it was fixed in the Revision of 1930; but in each act there was a limitation that the act was to remain in force for a period of two years only, after which period the statute then in existence was to be in force and effect. The salary thus to be paid to these officials under the 1943 amendment will cease after July 9th and their compensation will revert to what it was by the law in existence at the time that the amendment took effect upon July 9, 1943.

These officials are thus to be paid the compensation provided in the amendment of July 9, 1943 up to and including July 9, 1945. Thereafter, from July 10 to July 20 inclusive they are to be paid at the rate of compensation fixed by law prior to July 9, 1943. On and after July 21, the compensation is to be computed on the amounts fixed by the Public Laws of 1945.

ABRAHAM BREITBARD
Deputy Attorney General

June 21, 1945

To Earle R. Hayes, Director of Personnel

Re: Laborers, Patrolmen, Truck Drivers, etc.

Your memo of June 16th received, asking if the above designated State employees, who are paid on an hourly basis, for only time actually worked-should be considered classified employees or not, for the purposes of Chap, ter 135 of the Private and Special Laws of 1945.

In my opinion these employees of the State Highway Commission come within the provisions of Section 6 of Chapter 59 of the Revised Statutes of 1944.

RALPH W. FARRIS
Attorney General

June 22, 1945

To Harold I. Goss, Esq., Secretary of State

Your inquiry concerns Chapter 346 of the Public Laws of 1945, namely an act amending the financial responsibility law by adding thereto a new paragraph to be lettered 'F,' which is as follows:

> "To the owner or licensed operator of a motor vehicle, trailer, or semi-trailer involved in an accident if the said motor vehicle, trailer or semi-trailer at the time of the accident was insured by the owner thereof under a motor vehicle liability policy as defined by this chapter."

Your question is whether this amendment applies to those persons who in the past have been required to furnish proof of financial responsibility, although the owner of the vehicle carried liability insurance; and whether they would in the future, by reason of this amendment, be relieved from furnishing such proof.

This amendment was the result of considerable agitation on the part of those persons who protected themselves by carrying liability insurance; and it was because of this that the amendment was introduced and enacted.

It was the intent of the legislature to relieve those persons, and hence, when this law becomes effective, it is my opinion that irrespective of the date of the accident, if at such time the vehicle or the operator thereof was protected by liability insurance, then this provision would be applicable.

ABRAHAM BREITBARD
Deputy Attorney General

June 22, 1945

To Fred W. Hollingdale, Deputy Treasurer of State

I received your memo dated May 21st on June 20th, with a copy of the memo from former Attorney General Cowan dated July 10, 1944, relating to the responsibility of the State Treasurer; and you suggest the following questions:

1) What is the responsibility of the State Treasurer's office under Section 8, Chapter 15?

2) Does Section 8, Chapter 15, require all state units to certify all items of income accruing to the state immediately or does it allow the several units to certify to the State Treasurer a list of unpaid and overdue accounts monthly, quarterly, etc.?

*Answers*

1) It is the responsibility of the State Treasurer under Section 8 of Chapter 15 to "receive and keep a record of all items of income accruing to the State. . . He shall promptly collect all taxes and accounts due the state and certified to him as provided herein." In case he cannot collect said accounts and taxes, he shall institute court action through the Attorney General's office. That is about the limit of his responsibility under this section.

There are many legal definitions of the word "promptly," depending on the nature of the thing to be done. In our court decisions, "promptly" in some cases means "at once," and is synonymous with "quick," "sudden," "precipitant." In most cases the courts have held that "promptness" means "within a few days," especially in the performance on contracts; but in the handling of State funds and the intricate machinery for collecting taxes in a municipality, there are bound to be many delays, so that the word "promptly" would not apply in those specific cases. For instance, how could the State Treasurer promptly collect the taxes, if the person taxed refused to pay? In my opinion the word "promptly" in this statute means a reasonable time considering the facts in every case. The collector of a large number of items of tax assessments cannot act promptly and report and turn over the proceeds until he has had an opportunity to make demand, collect the money, make up his statement and turn over the proceeds. This machinery takes time and clerk hire, and should be done as promptly as may be.

In regard to former Attorney General Cowan's ruling upon the same, it is appropriate to your office.

2) Section 8 of Chapter 15 requires of State units to certify promptly to the Treasurer of State the items of income with which they are charged, and I should say that if a department did not certify to the Treasurer within three months over-due accounts, it would not be promptly done.

RALPH W. FARRIS
Attorney General

June 27, 1945

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

Pardon my delay in answering your letter of June 6th in which you asked my interpretation of questions on matters covered by Chapter 320, P. L. 1945. You call my attention to Section 1, which provides that no official shall issue a certificate of birth which discloses illegitimacy.

My answer to that question is that when you are requested to furnish a certified copy of your record, you would have to inquire whether or not such record was to be used in court or was in response to the illegitimate, his or her legal guardian or legal counsel, and if the answer was in the affirmative, you should issue the certificate. If the answer is in the negative, you should advise the requesting party of this provision of law and inform him that you are not permitted under this act to deliver such certified copy of your record.

You state in the third paragraph of your letter that Section 5 permits use of data contained in records pertaining to births, deaths, or marriage for research purposes, but forbids giving or showing records which will identify the person to whom the records relate except in records of death. That provision is contained in subsection 5 of Section 3 of the act. Your inquiry is made as to whether the person who is making genealogical studies or searching for missing or unknown heirs may be permitted to view the records of the State Registrar. My opinion is that those persons who are interested in searching the records for legitimate reasons should be permitted to view the records, and it is incumbent upon the State Registrar to interrogate those persons searching the records as to their interest in the same.

Section 4 of the act provides for an amendment to Section 388 of Chapter 22 of the Revised Statutes, which mentions a "tangible" interest in recorded matters. That section gives the State Registrar and the clerk of the city or town discretion as to whether or not the applicant has a direct and tangible interest in the matter recorded. If the Registrar or the clerk, in the opinion of the applicant, should make a harsh or wrong decision, the applicant can apply to the Superior Court, or any Justice thereof in vacation, and ask for an inspection of the records over the objections of the clerk and the State Registrar. A direct interest would mean the attorney or guardian or a near relative. That would be up to the clerk or State Registrar to determine. I think that the word "tangible" is a misnomer, as a tangible thing is one which has physical substance. All other things are intangible. Under the common law "tangible property" is that which may be felt or touched, and is necessarily corporeal, although it may be either real or personal. I should say that the word "tangible" means "material" or "substantial," as defined in Webster's Dictionary. So, under this section, the State Registrar or the city or town clerk should inquire whether or not the applicant has a material or substantial interest in the record as a relative, guardian or counsel.

RALPH W. FARRIS
Attorney General

July 2, 1945

To John W. Moran, Executive Secretary to Governor Hildreth

This department is in receipt of your memorandum of June 27th, inquiring whether any member of the present Legislature may be appointed to any civil office of profit under this State which has been created by the legislature, or the emoluments of which have been increased during the session.

Article IV, Part Third, §10 of the Constitution is as follows:

> "No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which increased during such term except such offices as may be filled by election by the people. . . "

It is very clear from this provision that the answer to your inquiry is in the negative. Therefore, no senator or representative is eligible for appointment to any office created, or the salary of which has been increased during the term and the disability continues, of course, during the whole term for which he was elected.

ABRAHAM BREITBARD
Deputy Attorney General

July 2, 1945

To Harry V. Gilson, Commissioner of Education
Re: Authority to Approve School Building Plans

This office acknowledges receipt of your memo of June 28th, relative to the approval by the Commissioner of plans and specifications of proposed school buildings, or reconstruction or remodeling of any school building where the cost is in excess of $500. R. S., Chapter 37, §21.

Your inquiry is whether the Governor and Council may withhold State school funds in the event that the school committee fails to have the plans approved, or fails to provide for suitable "heating, lighting, ventilating and hygienic conditions," as you require.

I am of the opinion that you may, in that event, recommend to the Governor and Council that such funds be withheld under section 26. This ruling also applies to cases where the Federal Government makes a grant or gift to the town of funds to build such schools. Our statutes above cited cannot be ignored by the town or the Federal Government.

ABRAHAM BREITBARD
Deputy Attorney General

July 6, 1945

To: Hon. Harold I. Goss, Secretary of State
Re: Chapter 342 of the Public Laws of 1945

. . . This statute provides for what are called reciprocity privileges. It provides:

"No motor truck or trailer travelling in this state only in interstate commerce, and owned in a state wherein an excise or property tax shall have been paid on said vehicle, and which grants to Maine owned trucks and trailers the exemptions herein contained, shall be subject to this excise."

I note that in making up your schedule of reciprocal privileges to be granted to motor vehicle operators resident in States other than Maine you learned that two States on the Atlantic seaboard have no provision for the assessment of either excise or personal property tax on motor vehicles owned in said States, and that your interpretation is that the legislature intended by this reciprocity law to grant to the owners of vehicles resident in other States all privileges that such States grant to owners of motor vehicles resident in the State of Maine.

It is my opinion that the reciprocity privliege of operating in Maine in interstate commerce without the payment of the Maine excise tax should be extended to owners of vehicles resident in States wherein no excise or property tax is levied.

RALPH W. FARRIS
Attorney General

July 10, 1945

To Harrison C. Greenleaf, Commissioner of Institutional Service
Re: Salaries of Institution Heads

Agreeably to my conversation with you yesterday relating to the salaries of the institution heads, I will say that I have made a study of the history of the establishment of the Department of Institutional Service, and find that in 1939, under the provisions of Section 5 of Chapter 223, the legislature provided as follows:

"The salary of the commissioner, the director and all other employees established under this act shall receive such compensation as shall be fixed by the governor and council."

You will note that Section 5 of Chapter 223 of the Public Laws of 1939 is incorporated in Section 1 of Chapter 23, R. S. 1944; and Chapter 300 of the Public Laws of 1941 is also incorporated in Section 1, Chapter 23, R. S. 1944. Section 1 of said Chapter 23, R. S. 1944, provides as follows:

"Said commissioner shall have the power to appoint institution heads as shall be necessary for the proper performance of the duties of said department said appointments to be with the approval of the governor and council."

It is my opinion that inasmuch as the legislature in 1939 provided that all salaries should be fixed by the Governor and Council, and inasmuch as the Governor and Council must approve your appointments of institution heads, it would be necessarily implied that the Governor and Council should fix and regulate the salaries upon your recommendation.

You told me in our conference yesterday that the institution heads were in the classified service under the Personnel Law, and I wish to call your attention to the ruling of former Attorney General Frank I. Cowan, which will be found on page 114 of the Report of the Attorney General for 1943-1944, and I quote from the last paragraph of said opinion, on page 115 of said Report:

"Whether or not the institution 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 to 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.'"

The provision for unclassified service is now Section 7 of Chapter 59, R. S. 1944, and I quote from Subdivision III of said section:

> "Heads of departments and members of boards and commissions required by law to be appointed by the governor with the advice and consent of the council, bureau directors, and the official clerk of the public utilities commission and of the state liquor commission."

I will say that I concur with the opinion of Mr. Cowan, and I think you will agree with me that the institution heads are heads of departments or bureau directors required by law to be appointed by the Governor and Council; and it would naturally follow that they would be in the unclassified service and that their salaries, upon your recommendation, should be fixed by the Governor and Council.

I just talked with Mr. Hayes, Secretary of the Personnel Board, and he informed me that the institution heads have not been in the classified service since February 17, 1944, the date of the opinion of former Attorney General Cowan.

RALPH W. FARRIS
Attorney General

July 11, 1945

To C. P. Bradford, State Park Commission
Re: Lapsing of Funds

I received your memo dated March 7th on July 9th, as per my request, as I cannot find my office copy of said memo. With the memo of March 7th you enclosed copies of letters from the State Controller and the State Auditor, referring to the lapsing of Commission funds.

In the memo from Mr. Allen, dated January 15, 1945, he quotes Chapter 144, Section 2 (k) of the Public Laws of 1935, as follows:

> "All moneys received by the commission shall be deposited with the treasurer of state, who shall maintain a separate fund which shall be used for the continued maintenance and development of said parks."

Chapter 144 of the Public Laws of 1935 was repealed by the legislature in September, 1944. The Revision Committee rewrote Section 2 of Chapter 144, P. L. 1935, which is now incorporated in Section 23 of Chapter 32, R. S. 1944, and I note that paragraph (k) was left out of Section 23, and all of that section of Chapter 144, P. L. 1935, was repealed except paragraph (g) of said Section 2, which was the interpretation clause of said Act.

In regard to the amount lapsed by the Controller in the amounts of $38.41 on June 30, 1943, and $30.44 on June 30, 1944, it is my opinion that this revenue should not have been lapsed, and that future balances existing because of revenues received from the State parks and memorials should be carried over to the next fiscal year.

RALPH W. FARRIS
Attorney General

July 18, 1945

To Charles P. Bradford, Park Commission

Re: Lapsing of Funds

Referring to my memo of July 11, 1945, I wish to change said memo, in that I stated that it was my opinion that the legislature repealed paragraph (k) of Section 2 of Chapter 144, P. L. 1935, inasmuch as my attention has been called to the fact that that particular provision of law is now incorporated in Section 25 of Chapter 32, R. S. 1944, and of course is now in effect.

This strengthens my opinion that the amounts on hand at the close of the fiscal year, which were taken in by the Park Commission after the appropriation had been expended, should not lapse, but should be carried over to the next fiscal year for the continued maintenance and development of park areas.

RALPH W. FARRIS
Attorney General

July 18, 1945

To Fred M. Berry, State Auditor

Re: Overlay Assessed by Municipalities

The subject of your memorandum of June 11th relates to the assessment of an overlay by assessors in towns of the State, and your question is whether an assessment is proper, so long as the overlay is within the 5% allowed by statute.

Chapter 81, Section 49, R. S. 1944, reads as follows:

> "The assessors may assess on the polls and estates such sum above the sum committed to them to assess, not exceeding 5% thereof, as a fractional division renders convenient, and certify that fact to their town treasurer."

The first statute on the subject, enacted in 1821, Chapter 113, Section 14, was as follows:

> "Be it further enacted, That the Assessors for any town or plantation may and are hereby authorized and empowered to apportion on the polls and estates according to law, such additional sum over and above the precise sum to them committed to assess, as any fractional division of such precise sum may render convenient in the apportionment thereof, not exceeding five per centum on the sum so committed; and it shall be the duty of such assessors to certify such town or plantation Treasurer thereof."

This was taken from the statutes of the Commonwealth of Massachusetts, the language of which was practically the same; and the statute in the present Revision and in earlier revisions is a condensation of this original section on the subject, the meaning of which would be the same, the intent being merely to condense it.

In *Alvord v. Cullen*, 20 Pick. (Mass.) 418 (1838) at page 423, the Massachusetts Court said of its act:

> "The practice of *overlaying* prevailed and was general, long before the above statute was enacted. It is not only convenient but indispensable, to avoid impracticable fractional divisions, *and to guard against deficiencies.*" (Emphasis of the last clause ours.)

This case is also authority for the proposition that if the overlay is within 5%, the assessment is good. See also *Lord v. Parker*, 83 Maine 531. It would thus seem that the only limitation is that the 5% shall not be exceeded.

I am therefore of the opinion that a tax assessed would be valid, if the overlay was not in excess of 5% of the sum committed to the assessors for assessment.

ABRAHAM BREITBARD
Deputy Attorney General

July 18, 1945

To Francis G. Buzzell, Chief, Division of Animal Industry

You ask for an interpretation of the word "control" in the third line of Section 66, Chapter 27, R. S. 1944, and it is my opinion that the word "control" in this connection means that situation where the Federal Government has full control of the cattle being shipped into this State from any other State or country. I do not believe that the meaning should be construed to include cattle imported from Canada and subject to

border inspection by the Federal Government, because they do not have control of the cattle in transit. Your department should carry out the provisions of this law and see that the shipments from other countries meet the requirements of the rules and regulations of the Commissioner of Agriculture. You will note the language of the statute in the second line, "from any other state or country," which would cover the Dominion of Canada. . .

RALPH W. FARRIS
Attorney General

July 25, 1945

To Lucius D. Barrows, Chief Engineer, State Highway Commission

I have your memo of July 19th enclosing a copy of a letter from Fernand Despins, corporation counsel for the City of Lewiston, relating to the establishment of a bus terminal in the center of Main Street between Lisbon and Middle Streets in Lewiston.

Inasmuch as Main Street is a part of the State Highway and Federal Aid Highway system, I do not believe that the Highway Commission has authority to grant permission to build platforms and safety islands within this area for a private corporation to use to take on and discharge passengers from its buses.

As to whether such a terminal would be considered an obstruction of a public highway, I do not believe it would be so considered, in view of the width of Main Street at that point, and the parking area maintained there at the present time, where they contemplate building platforms and safety islands.

RALPH W. FARRIS
Attorney General

July 25, 1945

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

I have your memorandum of July 24th relative to paragraph 8 of Section 32 of the Fish and Game Laws, enacted by P. L. 1945, providing for a free permit to residents of Maine in and out of the armed forces of World War II. In answer thereto I advise you that the following persons are entitled to receive a permit, free of charge, to hunt and fish within the State, from the clerk of the town in which he or she resides, or, if resident in an unorganized place, then from the clerk of the nearest town:

1) A person who has not been dishonorably discharged in World War II. As I understand from the War Department, there are issued three types of discharges: (a) an honorable discharge, (b) a discharge, and (c) a dishonorable discharge. A person possessing the last of these three is excluded thus from obtaining the benefits of this provision. These permits are for a period of two years from the date of discharge or two years from the official declaration, *by the United States Government*, of the

termination of World War II, whichever is the later date. Permits issued prior to the termination of World War II will remain effective until two years after the official declaration. Those issued after the official declaration, to a serviceman discharged subsequent to that time, will remain in force for two years after the date of discharge.

2) Residents of Maine in the armed forces who are on furlough or who are stationed in Maine may have from the town clerk of the town in which they reside, or, if they reside in an unorganized place, then from the clerk of the nearest town, a furlough permit. These are to expire at the end of the year in which they were issued, or earlier, if the war is officially declared terminated by the *United States Government.*

ABRAHAM BREITBARD
Deputy Attorney General

July 26, 1945

To Fred M. Berry, State Auditor

I have your memo of July 25th, enclosing a copy of a letter received from .............., Register of Probate, inquiring as to the effect of Chapter 359, P. L. 1945, relating to charging a filing fee on petitions in the probate court; and you ask my opinion concerning this question.

I will say that it is my opinion that the legislature intended that the filing fee should be for the original petition to probate a will and for the original petition to administer an estate. The statute in question reads as follows:

> "The register of probate shall receive a filing fee of $3 for each petition to probate a will and for each petition for the administration of an estate, when the estimate value of such estate, as stated in the petition, is $1,000 or over."

Of course, there would be only one petition for the probate of a will and subsequent petitions would be supplementary, in the case of d. b. n., c. t. a. In my opinion the same would apply to petition for administration.

RALPH W. FARRIS
Attorney General

July 26, 1945

To Earle R. Hayes, Secretary, Employees' Retirement System

I have your memo of July 20th inquiring whether or not the provisions of Section 15 of Chapter 60 of the Revised Statutes give the local participating districts any and all of the benefits and privileges provided for in said Chapter 60.

It is my opinion that the employees of any county, city, town or other local participating districts have all the benefits and privileges provided

for State employees, in so far as it is possible under Chapter 60 to provide same for them. However, you will note that under subsection VI of Section 15, the statute reads as follows:

> "Notwithstanding anything to the contrary, the retirement system shall not be liable for the payment of any pensions or other benefits on account of the employees or pensioners of any county, city, or town participating under the provisions of this section for which reserves have not been previously created from funds contributed by such county, city, or town, or its employees for such benefits."

It would seem from the reading of this subsection that the legislature did not intend to create a reserve for these local participating districts by State appropriation.

RALPH W. FARRIS
Attorney General

August 2, 1945

To J. Elliott Hale, Acting Director, Bureau of Sanitary Engineering

In reply to your memo of August 1st: I believe that a public sewer, as that term is used in Section 2 of the State Plumbing Code, refers to a sewer constructed and maintained by a municipality for the benefit of the general public, and the cost of construction of which, and the maintenance and repairs, are assessed to the abutting owners proportionately, and in which they all have a right to enter upon payment of the proportionate assessment against that particular owner.

It would thus not apply to a private or common sewer (Chapter 84, Section 153, R. S. 1944), which can be entered only by the consent of the owner thereof.

I think, however, that this section may be amended so as to require the owner abutting a private or common sewer to connect therewith, whenever the owner of the sewer is willing to permit entry therein. I have the impression that owners of common sewers are willing to have others join, upon payment of the proportionate share of the expense.

ABRAHAM BREITBARD
Deputy Attorney General

August 14, 1945

To E. E. Roderick, Deputy Commissioner of Education

This department acknowledges receipt of your memorandum of August 10th, dealing with Chapter 239 of the Public Laws of 1945, which amends the existing non-contributory pension laws by providing an increase.

The question has been raised whether the increase is applicable to pensions which have been created by legislative resolve for particular indi-

viduals, although there were at the time of the enactment of the resolve statutes allowing pensions in varying amounts, depending upon the number of years of service, to those teachers who have retired from active service and who shall on application formally made receive from the state during the remainder of the applicant's life an annual pension.

Since the increase by this amendment in 1945 is incorporated in the existing statutes creating the pensions aforesaid, it cannot be applicable to pensions created by special resolves of the legislature in the case of particular individuals, as was the case of Ethel W. Knowlton, which brought about this inquiry.

I understand, however, from your memorandum, that there are approximately eight teachers who are beneficiaries of pensions created by special resolves; and I think that we might work out their problem in a practical manner by asking them, in case they apply for the increase, to submit formal proof of the length of their service while engaged in teaching, and if we find that at the time the resolve was enacted they had put in years of service which would have entitled them to receive under the statute a pension equivalent to the amount granted by the resolve, then I think that we may properly allow them the increase provided by the general statutes, as they would be entitled to relinquish their rights under the resolve and come in under the general statutes.

I am prompted in offering this solution by the fact that there are so few teachers receiving pensions under special resolves and we should not deny to them the increase if at the time of the enactment of the resolve they could have come in under the statute and received the same amount allowed in the resolve.

ABRAHAM BREITBARD
Deputy Attorney General

August 21, 1945

To Hon. A. K. Gardner, Commissioner of Agriculture

I have your communication of August 20th relating to the provisions of Chapter 125, Section 145-C, entitled "AN ACT Imposing a Tax on Sweet Corn for the Suppression of the European Corn Borer." You ask for an interpretation of the wording of this section, and also ask whether the committee should be appointed at once or at some time prior to September 1, 1946.

This section provides for a tax committee consisting of three members appointed annually in the following manner:

> ". . . The commissioner of agriculture shall appoint 1 member from the department of agriculture and 1 member who shall be a grower; the Maine Canners' Association shall appoint the 3rd member. The tax committee is authorized to determine the amount of the tax to be levied and imposed each year after 1945."

This law became effective on July 21st and it is my opinion that the committee should be appointed and get organized for next year. However, this is purely an administrative matter. I agree with you that it would appear logical for the committee to function in 1945, even though the tax for this current year is set up in the act.

RALPH W. FARRIS
Attorney General

August 24, 1945

To Earle R. Hayes, Secretary, Employees' Retirement System
Re: Return of Contributions to Beneficiary under Certain Conditions

I have your memo of August 23rd, in which you state that the Board of Trustees of the Retirement System would like my opinion as to whether or not I believe it permissible to return to the beneficiary any contributions that an employee may have made in the event of such employee's death prior to the time he actually received his first check as a retiree.

You give a specific case, that of Mr. Euba C. Pratt, an employee of the Reformatory for Men, who applied for his retirement benefits on April 21st, 1945, and whose retirement was to be effective as of May 21st, thirty days after his application. News came to your department of Mr. Pratt's death prior to the date on which the check would have been mailed out, and the check in this case is being held at the present time in the office of the Controller, pending my ruling. You further state in your memo that Mr. Pratt has some $370 and odd dollars to his credit in the System, representing the amount of contributions made by him while an employee.

It is my opinion that this amount of money should be refunded to Mr. Pratt's widow, she being his beneficiary, by reason of his death taking place before his retirement became effective, as he had not actually retired until the thrity days required by law had elapsed.

RALPH W. FARRIS
Attorney General

August 24, 1945

To Harry V. Gilson, Commissioner of Education

I have your memo of August 21st relating to the operation of vocational training for the War Production Workers' Program from July, 1940, to June 30, 1945; and you state that in accordance with disposition procedures of the National Youth Administration since June, 1943, the State has acquired various types of machinery and equipment, most of which will be used in local schools. You further state that in the applications to expend federal funds to make purchases of this equipment for training purposes and in making purchases of NYA equipment, the State Board for Vocational Education was designated as applicant and recipient, and you ask the following questions relating to the same:

"1. As the agents named in all titles to ownership, to what extent would we be legally responsible for maintenance, inventory, accident, and final disposition of worn out machinery if such is loaned on memorandum receipt to local systems? Would it be legal to transfer possession and title to local school systems?

"2. In the enclosed quotations from Public Law #124, 79th Congress, 1st Session, an interpretation of our position as to moving equipment from one school to another in view of the last provision, 'That no school or school system shall be required to surrender possession or use of any property or equipment which it is using in its educational or training program.' "

In answer to Question 1, I will say that in my opinion, as the agents named in titles to ownership, you would be legally responsible for maintenance, inventory, accident, and final disposition of worn out machinery; and it would be legal to transfer possession and title to local school systems.

In answer to the second question, it is my opinion that Public Law #124, 79th Congress, 1st Session, is broad enough to allow you to move equipment from one school to another.

RALPH W. FARRIS
Attorney General

August 27, 1945

To Harrison C. Greenleaf, Commissioner of Institutional Service

I received your memo of August 20, 1945, relating to the collection of $2 per week by Institutional Service from the Department of Health and Welfare for care and treatment furnished in State Sanatoria in unsettled cases, which include several accepted State paupers, and you also gave me an outline of the position of your department in this matter. You stated that Mr. Page, former Commissioner of Health and Welfare, obtained from one of my assistants, assigned to that department, an opinion on this matter. Therefore I requested Mr. Folsom, my assistant, to furnish me a copy of this opinion, which I have before me.

Before answering your question I wish to comment on the provisions of Section 167 of Chapter 23, relating to charges for treatment of patients, which read as follows:

> "Residents of the state may be admitted to these sanatoriums, if found by any regular practicing physician in the state or by the superintendent of any one of the sanatoriums to be suffering from tuberculosis. All patients in said sanatoriums, or relatives liable by law for their support, shall pay to the state for treatment, including board, supplies, and incidentals, the amount determined by the department; . . ."

You will note that this section was taken from Chapter 1, Section 464 of the Laws of 1933 and was amended by Section 6 of Chapter 223 of

the Public Laws of 1939, and is now Section 167, Chapter 23, R. S. 1944; and that it authorizes your department to exercise the rights, powers and duties heretofore vested by law in the Department of Health and Welfare. Paragraph 23 of Section 6, Chapter 223, P. L. 1939, provides as follows:

> "22. To fix rates and collect fees for the support of patients in state hospitals, sanatoria, and other institutions; . . ."

After reading the history of this law and Mr. Folsom's opinion dated June 14, 1945, addressed to H. O. Page, Commissioner of Health and Welfare, I am obliged to sustain Mr. Folsom's opinion, that there is no provision of statute, or appropriation, which authorizes the Department of Health and Welfare to pay the Department of Institutional Service any fee for State charges who are admitted to any of the State Sanatoria for treatment. The wording of Section 167 of Chapter 23 is as follows:

> ". . . if such patient or relatives are unable to pay, the city, town or plantation in which the patient has a settlement, if any, shall pay to the institution the sum of $2 per week so long as the patient remains therein."

This language is not broad enough to cover any State department, and I am told that there is no appropriation except for paupers, and you will note at the end of said Section 167 that no pauper disabilities shall be created by reason of any aid or assistance given under the provisions of this section.

Therefore it is my opinion that money appropriated for paupers cannot be used to transfer from one department to the other, as you suggest in your memo of August 20th.

In regard to Section 16 of Chapter 22, it provides that the Department of Health and Welfare may "compensate hospitals at such rates as it may establish for hospital care of persons whose resources or the resources of whose responsible relatives are insufficient therefor." This section does not cover State sanatoria, and appropriations by the legislature for the Department of Health and Welfare to aid public and private hospitals do not apply to State sanatoria.

Therefore it is my opinion that you will have to have legislation broadening Section 167 of Chapter 23 to cover State paupers or persons who are State charges who are found to be suffering from tuberculosis and are committed to the State sanatoria, before any departmental charge can be made by the Department of Institutional Service to the Department of Health and Welfare.

RALPH W. FARRIS
Attorney General

August 27, 1945

To David H. Stevens, State Assessor

Re: Lands Acquired by the State through Land Sale, so-called

I have your memo of July 11th relating to the provisions of Chapter 41 of the Public Laws of 1945, where the State Tax Assessor is responsible for the supervision and the administration of lands acquired by the State for tax delinquency through the so-called land sale procedure.

I note from your memo that the Township of Medford was originally a town and deorganized on March 31, 1940. It reorganized on November 1, 1941, as a plantation. The plantation was deorganized on March 30, 1945. Previous to the date of the first deorganization on March 31, 1940, the town placed tax liens on several parcels of land from which town taxes were due. Following the date of the first deorganization State taxes were assessed on these same parcels. In most cases the State tax assessed for the year 1940 was unpaid, and, as a result, on November 25, 1942, a State land sale took place and these properties were sold, and apparent title was placed in the State of Maine after one year from the date of the sale, or November 25, 1943. In each case the redemption period on the town tax liens expired before the State land sale took place.

You state further in your memo that in the case of these particular parcels, during the period when the municipality was reorganized as a plantation, the assessors of the plantations sold the lands on a quit claim deed to those buyers who made an offer, and that these sales were made without the knowledge that the State had any claim or potential claim on the properties, and that the situation now arises where innocent third parties have purchased lands whereon the State may have a claim.

"Question 1. Should those state taxes on those parcels which were sold by the assessors of the plantation, be charged off from the state books, taking into consideration the fact that the land sale to secure the delinquent tax and subsequent assessment of the state taxes, were made after the redemption period on the town's tax liens had expired?"

*Answer.* It is my opinion that after the redemption period on the town's tax liens had expired, the tax title inured to the town, and the State tax assessor's office should not have assessed a tax to the former owners, for the reason that the town had a prior tax lien which had matured, and the land sale to secure delinquent taxes and the subsequent assessment by the State on property which was owned by the township was invalid; and I believe that these particular assessments, where the assessors of the township had a good tax lien on these properties and had given good deeds, are of no effect and should be marked off on the State books.

Your second question in said memo of July 11th is, where you have made a preliminary check which revealed the fact that in many cases lands had been sold through the so-called land sale for delinquent State taxes, the redemption period of one year has expired, the assessment of

the lands for State tax purposes has ceased, but the lands are being used, either by the same person who failed to pay the tax, or in many cases by the innocent purchaser who purchased the property from the original owner, or from the owner who supposedly acquired the property through foreclosure of a mortgage, and many of these lands are being farmed and the present (supposed) owners apparently know nothing at all about any claims that the State may have on these properties, what action should the State Tax Assessor take, if any?

*Answer.* It is my opinion that the State Tax Assessor should get in touch with the owners of these properties and advise them that the State has tax liens on these various parcels of land, and that these tax liens have been recorded in the office of the Forest Commissioner, as required by law, and you should then make a demand upon them for the amount of tax due the State, plus interest and costs of sale and recording the same; and if you cannot collect the full amount of these tax lien claims, together with interest and costs, you will submit to me an itemized statement of same, and you can make a compromise. As attorney for the State, I will authorize you to compromise any case where there is any doubt as to the legality of the State's claim, or where there has been any accident or mistake whereby innocent purchasers may suffer.

RALPH W. FARRIS
Attorney General

August 29, 1945

To Max L. Wilder, Bridge Engineer, State Highway Commission

I have your letter of August 20th to which was attached a print of the survey plan of Minot Corner bridge over the Little Androscoggin River between the towns of Minot and Poland. You state . . that there are three spans, one over the main river and two of shorter length over openings at the easterly end. You further state that there was formerly a dam downstream from the bridge and at that time water at normal pitch flowed through all three openings, but that this dam is not now in existence and that except at high water, the river flows through the westerly opening only. It is, however, understood that the dam may be rebuilt.

You further state . . that the towns of Minot and Poland have applied for State and county aid for the reconstruction of the bridge, under the Bridge Act, and at the joint board meeting the estimated cost of the whole bridge was given, divided between the State, county and towns, and the towns' share was divided between Minot and Poland in proportion to the State valuation of the towns in accordance with your understanding of Section 88 of Chapter 20, R. S. 1944.

You further state that the municipal officers of Poland objected to this division of costs and stated that the Town of Poland should not participate in the cost of the entire project, which would include the two spans, the area between them and the approaches at both ends, but only in one-half of the main span and the Poland approach. It was stated that the

town of Minot had been maintaining one-half of the main span and both the smaller easterly spans and the Minot approach, and that therefore Minot should be the only town participating in the cost of this portion of the project.

On the basis of the foregoing facts you have requested an opinion from me.

It is my opinion that after the Town of Poland, through its municipal officers, petitioned the Commissioners of the county for reconstruction of this bridge under the Bridge Act, it is bound by the decision of the joint board and there is nothing in the statute which permits a breakdown of any part of the construction of the bridge. I am assuming that at the joint board meeting the estimated cost of the whole project was given and the State, county and towns' share was divided in proportion to the State valuation of the towns, as provided in the last sentence of Section 88 of Chapter 30, R. S. 1944, and that the town of Poland is bound to accept the apportionment of costs under the provisions of the Revised Statutes, regardless of the opinion of the municipal officers of Poland that the Town of Poland should not participate in the cost of the entire project. . .

RALPH W. FARRIS
Attorney General

August 29, 1945

To Harrison C. Greenleaf, Commissioner of Institutional Service

I have your memo of August 17, 1945.

Section 12 of Chapter 23 would not authorize a transfer from a penal or correctional institution to a state hospital for treatment of the inmate. Such transfer may only be made "for further study or observation of his mental condition." The inmate could be detained at the hospital for such time only as may be necessary to determine his mental condition. The evident purpose was to allow time for study and observation to diagnose and classify the particular case, especially where the disease is uncertain or obscure.

This view is quite clear from a reading of Section 13, which allows a transfer to a state hospital of a person "who becomes insane, or who is found to be insane by the examination authorized by the preceding section."

ABRAHAM BREITBARD
Deputy Attorney General

September 5, 1945

To Fred M. Berry, State Auditor

I have your memo of August 30th requesting my opinion concerning audit limitations under the provisions of Chapter 361, P. L. 1945.

This chapter amends Section 18 of Chapter 77 of the Revised Statutes, which provided that within sixty days after the conclusion of every race meeting, every person, association or corporation conducting a race shall submit to the Commission a complete audit of its accounts certified by a public accountant qualified to practice in this State and approved by the Commission. The amendment cited in your memo as Chapter 361, P. L. 1945, strikes out that wording and substitutes,

> "which books and records shall be subject to audit at any time by the state department of audit."

It seems to me that the wording of the statute is plain and needs no interpretation.

RALPH W. FARRIS
Attorney General

September 13, 1945

To Hon. Horace Hildreth, Governor of Maine

I am submitting herewith the draft of a proclamation to bring to an end Chapter 330 of the Laws of 1941, by which the standard time of this State was advanced one hour beginning February 9, 1942, at 2 o'clock A. M. By terminating this act, the confusion would be removed which would result otherwise from the federal government's being on standard time, which would be an hour earlier, as under the federal law all common carriers operating in interstate commerce and all federal activities, judicial, legislative and executive, must be governed by standard time as established by Congress in the various zones. It would also remove the confusion which would arise if our neighboring States followed the lead of Congress in terminating the standard time as established during the war, which was commonly referred to in this zone as Eastern War Time.

You will notice that our statutes define standard time in this State to be that which is known and designated by the federal statute as "United States Eastern Standard Time." This act was suspended by Chapter 330, Laws of 1941, which advanced standard time by one hour, so that unless this act was terminated, Section 4 of Chapter 1 of the Revised Statutes would remain suspended until the act ceased to be effective by its own limitation.

I find that so far as daylight saving time is concerned, there is nothing in our laws which specifically authorizes it. On the other hand, at the present time, there is nothing in our laws which prohibits towns and municipalities from going on daylight saving time; but this is purely the voluntary act of the municipal officers in establishing an earlier hour when all offices in the municipality are to open and an earlier hour of

closing, thus giving its employees an additional hour of daylight during a certain specified time of the year; and in those localities it has been customary for industry and business to follow the action of the municipal officers.

Therefore what we are doing now has nothing to do with daylight saving or its revival between April and September.

ABRAHAM BREITBARD
Deputy Attorney General

September 20, 1945

To Edward E. Chase, President, Board of Trustees, University of Maine

I have your letter of September 7th . . . asking my opinion on two legal points:

First. "Would it be legal for the Trustees so to invest endowment funds, provided, of course, that the bequest or gift did not contain a specific inhibition?"

It is my opinion that if there is no specific inhibition in the creation of said trust, the trustees can invest endowment funds under the provisions of Chapter 80, P. L. 1945: "A fiduciary shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital, etc."

Second. "If the Trustees, with the consent of the Governor and Council as required by law, should borrow money by giving notes or bonds, to be paid for out of dormitory profits at an agreed rate of retirement, but in form of direct obligation of the University of Maine, would such bonds be exempt from federal income taxes on the ground that the University is an agency and instrumentality of the State of Maine?"

It is my opinion that such bonds would be exempt from federal income taxes on the grounds mentioned in your opinion.

RALPH W. FARRIS
Attorney General

September 20, 1945

To Lucius D. Barrows, Chief Engineer, SHC

I have your memo of September 7th enclosing a memorandum from Ralph H. Sawyer, traffic engineer, relating to parking on highways. You state that your department is frequently requested to take action to control parking and that there is question in your mind whether the department has any definite or specific authority to do that.

It is my opinion that Section 99 of Chapter 19 confers such authority upon the State Highway Commission and upon the appropriate highway officials. The last part of said section reads as follows:

> ". . . the intent of this chapter being to confer upon the state highway commission, and upon the appropriate highway officials, broad regulative authority to encourage reasonable use of the ways and bridges and to correct abuse thereof; such delegated authority being necessary in the opinion of the legislature for the reasonable use and proper protection and continued maintenance of the ways and bridges of this state."

It is my opinion that the language of this statute gives the Commission authority to restrict parking along the highways or on the approaches to bridges, where the parking of cars has become a nuisance and a hazard to the free movement of traffic.

RALPH W. FARRIS
Attorney General

October 8, 1945

To John C. Burnham, Administrative Assistant, SHC

Your memo of October 4th received, asking my opinion whether under the Personnel Board Rule 11, Part 2, a state employee, receiving injury by accident arising out of and in the course of his employment, would be entitled to benefits under the provisions of the Workmen's Compensation Act and the balance of his weekly wages as sick leave pay up to the number of days of sick leave due him.

My opinion is that the employee receiving the benefits under the provisions of the Workmen's Compensation Act is not entitled to the balance of his weekly wages as sick leave, as sick leave and accidents should be distinguished in the payment of benefits under the Workmen's Compensation Act.

RALPH W. FARRIS
Attorney General

October 17, 1945

To Miss Esther Lipton, Director of Special Education for Physically Handicapped Children

Re: Examinations of Physically Handicapped Children

I have your memo of October 17th propounding four questions:

1. Is the diagnosis of an M. D. considered legal in the State of Maine?
*Answer.* Yes.

2. Is the diagnosis of an Osteopath considered legal in the State of Maine?

*Answer.* The diagnosis of an osteopath would be legal for certain physical conditions which said osteopath has been trained to treat.

3. Is the diagnosis of a Chiropractor considered legal in the State of Maine?

*Answer.* Yes, for certain ailments which said chiropractor is authorized to treat.

4. May the Division of Special Education for Physically Handicapped Children require the diagnosis of a specialist—an Orthopedist, a Heart Specialist, Ophthalmologist, Otologist, Neurologist, Psychiatrist, and others—as an aid in determining the eligibility of an applicant for the special services of this Department?

*Answer.* Section 180-B of Chapter 149, P. L. 1945, provides as follows:

> "There is hereby created in the state department of education a division of special education to foster, inspect, approve and supervise a program of education for physically handicapped children as defined in sections 180-A to 180-I, inclusive."

This gives the Department of Education a Division of Special Education with the power to make rules and regulations in supervising and carrying out this program for the education of physically handicapped children. It is for your department to say whom you will have to examine these children in order to determine whether or not they are physically handicapped. It is my opinion that you can require a specialist in each one of the branches named in your question 4.

RALPH W. FARRIS
Attorney General

October 17, 1945

To Earl Hutchinson, Director of Secondary Education

Re: Secondary School Tuition by a Maine Town to a New Hampshire Town

I have your memo of October 16th requesting an interpretation of the statute relating to school pupils attending schools in another State, namely Section 99, Chapter 37, R. S. 1944, as amended by Chapter 270, P. L. 1945.

Section 99 of Chapter 37 provides in part as follows:

> "Provided further, that any town not maintaining a high school may pay tuition for any student who with parents or guardian resides in said town and who attends an approved school. . . in a town adjacent to the state of Maine in another state, when distance and transportation facilities make attendance in a Maine high school or academy inexpedient. . ."

This provision of Section 99 was enlarged upon by Chapter 270 of the Public Laws of 1945, in that it added the following provisions:

> "Any youth who resides with a parent or guardian in a town that maintains, or contracts for school privileges in, an approved second-

ary school which offers less than 2 approved occupational courses of study, and whose qualifications for such training are approved by the superintending school committee of the town, may elect to attend some other approved secondary school to which he may gain admission for the purpose of studying an occupational course not offered or contracted for by the town of his legal residence."

After giving these sections some study I am of the opinion that it was the intent of the legislature to equalize opportunities for education in occupational training. If the Commissioner of Education deems it expedient in this particular case—that of South Berwick sending certain pupils mentioned in a petition to him dated October 8, 1945, to Dover, N. H., which the petitioners state is only 4 miles away, instead of to Traip Academy, Kittery, which is 15 miles away—I am of the opinion that he would be justified in authorizing the Town of South Berwick to send these pupils to the Dover High School under the provisions of Section 99 of Chapter 37, R. S. 1944, and Chapter 270, P. L. 1945. This opinion is a little different from what I had in mind when I talked with the Deputy Commissioner last June before this amendment of 1945 became effective. In fact, I could not at that time give these statutes sufficient study and did not render a written opinion. I believe that the State Department of Education should reimburse the Town of South Berwick for tuition payments to the City of Dover, N. H.

RALPH W. FARRIS
Attorney General

October 18, 1945

To William O. Bailey, Deputy Commissioner, Planning and Research, Education Department

I have your memo of October 15th stating that one of the towns in Maine has a high school offering manual training and that the manual training shop is located in another school building, five minutes' walk from the high school; that pupils usually walk for the manual training period, but that on occasion they ride to the manual training shop in the private cars which they have used for their own transportation to school and take with them a carful of classmates.

Your question is: "If an accident were to occur on one of these trips, and the children were injured during school hours, could the town or school officials be in any way held responsible?"

My answer to this question is, No. The town does not provide the transportation which these children voluntarily assume for themselves, and the insurance company that covers the cars would be liable if any injuries were occasioned by accident to the passengers in said cars. The parents of the children could sue the owner of the car to get at the insurance company, in case the car was operated negligently and the children were free from contributory negligence.

RALPH W. FARRIS
Attorney General

October 18, 1945

To David H. Stevens, State Assessor
Re: Widow's Exemption

I have your memo of October 9th in regard to the question as to whether or not the widow of a soldier killed in action is entitled to property tax exemptions set up in paragraph 10 of Section 6, Chapter 81, R. S. 1944, as amended. Your question is:

> "Is the widow of a soldier killed in action and who is receiving a widow's allowance from the United State Veterans' Administration, entitled to the property tax exemption under our taxation laws?"

It is my opinion that this exemption mentioned in paragraph 10, Section 6, Chapter 81, does not apply to widows of soldiers killed in action.

RALPH W. FARRIS
Attorney General

October 19, 1945

To the Honorable Governor and Council
Re: Maine Port Authority (Enlargement and Extension of the Present Port Facility.)

I have received from Mr. Nathan W. Thompson, attorney for the Maine Port Authority, a copy of the petition dated October 11, 1945, wherein the Directors of the Authority seek the approval of the Governor and Council to borrow funds with which to enlarge the State Pier in accordance with the plan and the facts set out in the petition. My understanding is that my advice is sought only as to the legality of this proposed undertaking, and hence I do not concern myself with the value of or the necessity for this improvement and extension.

I am of the opinion that there is ample authority in the law for the Commission to enlarge and extend the facility, and, if its funds derived from income are insufficient, to borrow funds for that purpose, providing it has first obtained the consent of the Governor and Council; but in addition to this, I am of the opinion that it also needs the consent of the Governor and Council to the making of a contract which would involve the expenditure of more than $5000. Hence, the approval would be twofold: 1) the making of a contract for the enlargement of the pier facilities and expending therefor the income now on hand, which it is stated amounts to approximately a quarter of a million dollars; and, 2), borrowing an additional $300,000 by a bond issue.

For the purpose of further enlightenment of the Governor and Council I shall refer briefly to the act as amended by Chapter 5, of the Private and Special Laws of 1941.

Under Section 1 (b) the Port Authority was vested with the broad purposes of acquiring, constructing and operating piers and terminal facilities at the Port of Portland. In this same section, however, it is

provided that "the net income of the Port Authority may be used for improvements and extensions of the property of the Port Authority in the discretion of its directors." This clause is the same as in the law prior to the amendment of it by Chapter 5, P&SL of 1941. Prior to this amendment, however, extensions and improvements were limited to the use of the net income, and that only with the consent of the Governor and Council where the sum exceeded $5000. By this amendment, however, which was passed as an emergency measure, you will notice that in subsection (d) there were additional powers vested in the Directors, which they could exercise with the consent of the Governor and Council and which would permit the proposed improvement of the pier. You will notice that in paragraph 1 of this subsection it is provided that it may "make any contract not otherwise authorized relating to the purposes, duties, rights, powers and privileges enumerated in chapter 114 of the private and special laws of 1929 as amended." (This is the act that created the Port of Portland Authority.) The proposed extension would be a contract "not otherwise authorized," because the contract for the enlargement of the pier would involve an expenditure of money above the net income.

Next, under paragraph 5, the Directors were authorized to borrow money on its debentures, notes or bonds, either secured or unsecured, and, if secured, by mortgage of its property or by pledge of any part of its revenue not required for the maintenance and operation of the pier. Here is an express provision, not only to borrow money, but to secure it by mortgage on the property.

I also believe that the trend of the legislation, not only this amendment, but amendments in 1943 and 1945, would tend to show a desire on the part of the legislature to enlarge the powers of the Directors, so as to supplement that part of Section 4 (d) of the Private and Special Laws of 1929, Chapter 114, which provided in substance that it shall be the duty of the Directors to make, and so far as may be practicable, to put into execution, comprehensive plans providing on the lands now owned or hereafter acquired by the Port Authority at the Port of Portland adequate piers, capable of accommodating the largest vessels, and in connection with such piers, suitable highways, waterways, railroad connections and storage yards, and sites for warehouses and industrial establishments.

Respectfully submitted,

ABRAHAM BREITBARD

Deputy Attorney General

October 23, 1945

To David H. Stevens, State Assessor

I have your memo of October 22nd in which you state that the 1945 legislature amended Section 145 of Chapter 14, dealing with the taxation of Loan and Building Associations, so as to permit prepaid shares to be included in the taxable base reported to your office by such associations for taxable purposes. You state that the question has arisen as to whether or not prepaid shares sold by the associations previous to July 21, 1945, the

effective date of the amendment, should be included in the returns filed by the associations in October, covering the six-month period previous to September 29, 1945.

In answer to your question I will say that where a statute imposing a tax is enacted during the fiscal year, it has been held invalid by the weight of authority of the courts of this country, as retroactive so far as it applies to that part of the year already expired. So I would say that the prepaid shares sold by the associations previous to July 21, 1945, the date this law became effective, should not be included in the returns filed by the associations covering the six-month period prior to September 20, 1945.

RALPH W. FARRIS
Attorney General

October 24, 1945

To David H. Stevens, State Tax Assessor

I have your memo of October 12th, asking for a ruling on the following:

> "A qualified veteran's real and personal property is exempt from taxation to an amount not exceeding $3,500."

You ask if in the event such amount of property is held jointly in the names of the veteran and his wife, does it follow that the veteran can claim only one-half of such property so held as an exemption?

In my opinion, under paragraph 10 of Section 6 of Chapter 81, R. S. 1944, the veteran can claim exemption only on that part which he owns. If one-half is owned by his wife, it should be taxed to her, as she is not entitled to exemption under this provision of the statute.

RALPH W. FARRIS
Attorney General

October 31, 1945

To Caleb W. Scribner, Warden Supervisor

I have your letter of October 13, 1945, inquiring about the provisions of Section 64 of the Fish and Game Laws, particularly with regard to the last paragraph, which provides that trial justices, or judges or recorders of municipal courts, and the clerks of the Superior Courts, upon conviction of any person for violation of any of the provisions of the chapter, are required to forward to the Commissioner immediately a transcript of the record, as well as the record of an appeal entered, "together with the license or licenses of the offender." Your inquiry is whether or not the judge is, under this provision, authorized to take up the license after conviction. Your other inquiry is whether, pending an appeal, the license is suspended until the appeal is determined.

I have given due consideration to this provision, and I feel that this section is not clear enough to justify the judge hearing the case in taking

any action concerning the license, and I can see where a judge would entertain some doubt about ordering the accused to surrender to him the license. Under our motor vehicle law, provision is made whereby the judge is authorized after conviction to suspend a license and take it up, and the accused is directed to surrender it, and, having the same in his possession by virtue of this authority, the judge is directed to forward it to the Secretary of State.

There is also this difference. In the motor vehicle law, the judge is authorized to suspend, while under this law the Commissioner is the only person authorized to suspend or revoke. Assuming, therefore, that the judge did take up the license, this in and of itself would not suspend it, since the Commissioner is the only one who could suspend it.

I don't think I can say to you that this paragraph of Section 64 would authorize the judge to order the accused to surrender the license.

As a practical matter, however, since the Commissioner alone is empowered to suspend the license after a conviction and pending an appeal, according to the fourth paragraph of this section, I think that the warden making the arrest and attending court should inform the Commissioner immediately of the result of the hearing, and if the accused is convicted and enters an appeal, the Commissioner may then act under the fourth paragraph. This would accomplish the result to be attained by this section.

ABRAHAM BREITBARD
Deputy Attorney General

November 16, 1945

To Arthur R. Greenleaf, Commissioner Sea and Shore Fisheries

Your message relating to the licensing of freight planes was received by me. As I read Section 116 of Chapter 34, it authorizes you to issue licenses "only to smackmen, or truckmen, who buy, sell and transport lobsters by smack, boat, automobile or truck." These categories would not include planes.

"Common carriers engaged in carrying any general freight on fixed schedules may without license transport within or without the state lobsters legally caught. . . provided that said lobsters are received by said common carriers at one of their regular established places of business upon land for receiving freight. . ." (Section 116, Chapter 34.) Common carriers such as are here described would be railroads and motor trucks engaged in that business, operating on fixed schedules and licensed by the Interstate Commerce Commission or some other similar agency. I presume that when planes carrying freight are eventually included by the Interstate Commerce Commission or other agency in the category of common carriers, they would fit into the provisions of Section 116 of Chapter 34 and would be authorized to carry and transport, without a license, lobsters legally caught.

Section 119, however, prohibits transportation by the owner and the master or captain of any smack, vessel or boat or the driver of any automobile or truck or other means of transportation engaged in transporting lobsters without the State, unless licensed and having given bond as therein described; but this provision also excludes common carriers as above defined. I think that under the wording of this section "other means of transportation" would include planes; hence a license for this form of transportation may be issued and would have to include a bond as provided in this section and also include the agreements with the owner and operator as to compliance and forfeiture of the bond upon non-compliance.

ABRAHAM BREITBARD
Deputy Attorney General

November 20, 1945

To David H. Stevens, State Tax Assessor
Re: Tax on Sweet Corn

I have your memo of November 13th relating to the provisions of Chapter 125 of the Public Laws of 1945, which is an amendment to Chapter 27 of the Revised Statutes of 1944 and imposes a tax on sweet corn and adds new sections 145-A to 145-J inclusive to said chapter. You call my attention especially to Section 145-F which provides the imposition of the tax and the collection of same and provides that one-half the tax shall be paid by the contractor and one-half by the grower. You recite in your memo that the contractor in many cases supplies seed and fertilizer to the grower on credit and at the end of the season the grower receives the total value of his crop turned in to the contractor, less the charge for seed and fertilizer; and now that there is a tax, the contractor pays the tax and charges the grower with one-half the tax and deducts one-half the tax, as well as the cost of seed and fertilizer, before paying off the grower. You further state that in some cases, due to a poor crop, the amount due the grower for the corn turned in is not equal to the costs of the seed, fertilizer and tax.

On the basis on the foregoing statement you desire an opinion as to whether the contractor is justified in reimbursing himself first and paying what is left on account to the grower, or whether the tax should be paid first and the contractor should then apply the balance of the grower's return toward the charge for the seed and fertilizer, even though it does not balance the account.

It is my opinion that the tax has precedence over the charge for seed and fertilizer, and the tax must be paid regardless of whether the amount for the seed and fertilizer is paid from the amount received. In other words, this is a tax measure placed on the statute books by the industry itself, and it should be considered strictly for the benefit of the industry, and the tax should come first, notwithstanding the fact that some growers may have a poor crop some years.

RALPH W. FARRIS
Attorney General

November 20, 1945

To David H. Stevens, State Tax Assessor

I have your memo of November 13th relating to the provisions of Section 143 of Chapter 14 as amended, which provides that the assessed value of real estate owned by a savings bank shall be exempt from the savings bank tax and that such assessed value is to be deducted from the sum of the average amount of deposits, reserve fund and undivided profits.

I note that in figuring the tax under this statute, the starting figure is the sum of the average of the deposits, the average of the reserve fund, and the average of the undivided profits for the period covered by the return and that from this total is deducted either the full amount or three-fifths of the book value of certain investments as of the last day of the period. You also state in your said memo that certain banks have seen fit to reduce the value of the bank premises and to debit the undivided profits and credit the account representing the bank premises, thereby decreasing the liabilities and the total assets. You further state that in some cases the book value is brought down to a figure away below the assessed value, and if any exemption is allowed for the full assessed value, it results in the bank getting a double exemption, because in charging down this item, the bank has already made a deduction in the starting figure, and if the full assessed value is deducted again, the result is a double credit.

From this statement of facts you desire a ruling as to whether in the opinion of this office the intent of the legislature under this statute was to not tax the book value of the bank premises up to the amount on which these premises were taxed locally, or whether the wording of this statute should be taken literally, even though it results in a double exemption.

It is the opinion of this office that the starting figure should be the assessed value, and the book value should not be less than the amount of the assessed value, if the bank claims an exemption according to the assessed value of the real estate owned by the bank. In other words, if the book value is $50,000 and the assessed value is $25,000, the bank would be entitled to deduct $25,000 as an exemption under this statute; but if the bank should place a nominal figure of $1 as the book value of its real estate and the assessed value should be several thousand dollars, in all fairness to the State, in my opinion, the bank should deduct only the book value, where it is reduced so far below the assessed valuation as to show an apparent intent to evade taxation.

RALPH W. FARRIS
Attorney General

November 20, 1945

To David H. Stevens, State Tax Assessor
Re: Taxation of Savings Banks

I have your memo of November 13th relating to Section 145 of Chapter 14 as amended in regard to the "average of undivided profits" for the period covered by the return. In explanation you state that most banks

close their books every six months. In the meantime the income from all investments is accumulated from week to week in an "Income Account" and when the books are closed the total of this "Income Account" is transferred to the "Undivided Profit Account;" and in arriving at the average of the undivided profits, it has been the custom to consider the undivided profits as shown in the account plus the income as it accumulates in the "Income Account."

You further state . . that one bank arrives at the average of the undivided profits by taking the total of the "Undivided Profit Account" for five months and the new total for the sixth month, after the accumulated income for the period has been transferred to it, and that this computation results in an average figure more than $100,000 less than the actual average for the period.

You further state that the treasurer of this bank maintains that the bank is in no position to invest this accumulated income and derives no profit from it, because 90% of the accumulated interest is paid out at the end of the period and does not stay with the bank in the form of deposits; and for this reason you ask for an interpretation of this provision of the statute. . . .

It is my opinion that the wording of the statute, "the average of the undivided profits" means the actual average, and the statute should be construed strictly in favor of the State and that the tax on this bank should be computed in the same manner as is now being used to compute the tax on the other savings banks in the State of Maine.

RALPH W. FARRIS
Attorney General

November 21, 1945

To David H. Stevens, State Tax Assessor

I received your memo . . . in regard to certain savings banks whose condition at the time of the bank holiday was not considered satisfactory, but which were allowed to re-open after having borrowed money from the Reconstruction Finance Corporation through the issue of debentures. You state in your memo that the proceeds from these debentures were mingled with other moneys of the savings banks and became part of all the assets of such banks, many of which are exempt from taxation. You call my attention to Section 143 of Chapter 14, R. S. 1944, as amended, and state that this provision of the statute does not contain any specific application to these debentures and that you desire a ruling from this office as to whether or not the proceeds of these debentures should be considered as part of the deposits, due to the fact that some of the investments made with the money are subject to exemptions.

It is my opinion that these debentures should be included with the deposits, undivided profits and reserves in computing the tax on savings banks.

RALPH W. FARRIS
Attorney General

December 5, 1945

To Hon. Horace Hildreth, Governor of Maine
Re: Passamaquoddy District Authority

I have examined the letter of Ralph C. Masterman, one of the directors of this Authority, dated November 29th, and he seems to be disturbed about the appointments to the Authority of directors for definite terms. The statute, Chapter 65 of the Public Laws of 1945, Section 3, provides that a board of seven directors of the Authority shall be nominated by the Governor and appointment shall be made with the advice and consent of the Council, one director being designated by the Governor as chairman. The term of each director shall be seven years and until his successor has been chosen and qualified, "except that the initial terms of the directors shall be respectively: 1, 2, 3, 4, 5, 6, and 7 years. The initial term of the Chairman shall be 7 years and the Board of Directors shall determine by lot the initial terms of the other directors." Thereafterwards, appointments are to be made at the expiration of these terms for seven years, except in case of vacancy by resignation, death, etc., when the appointment shall be made for the unexpired term.

I have examined the nomination of the directors and their commissions, which were issued by the Governor, and find that there were six persons appointed and the term that they were to hold office was provided for in each case. Under the statute, however, the Governor could only fix the term of the chairman at seven years. The terms of the others, you will notice, were to be determined by the other directors at a board meeting after their appointment and qualification. Consequently, the fixing of the number of years that each was to serve, other than the chairman, was not in accordance with the statute; and in that respect I must agree with Mr. Masterman.

I am of the opinion, however, that the appointments by the Governor are not affected by the fact that the term for which they were to hold office was specified. The appointments and the commissions issued are legal and valid, in so far as they are appointed directors of the Authority. The additional provision fixing the term must be treated as surplusage. Being legally appointed as directors, they may now meet as a board and by lot fix and determine the term that each is to serve. When this is done, they should send an attested copy of the meeting to the Secretary of State, so that he will have a record of the expiration of their terms. While there is no provision for this latter procedure, I believe it to be advisable that they shall do so.

I also desire to bring to your attention the fact that only six directors have been appointed to date, whereas seven are provided for.

ABRAHAM BREITBARD
Deputy Attorney General

December 5, 1945

To Hon. Horace Hildreth, Governor of Maine
Re: University of Maine

The chairman of the Council has requested that I advise you whether a trustee of the University of Maine is by law required to be a resident of the State.

I find that the act establishing the college, then under the name of State College of Agriculture and Mechanic Arts, Chapter 532, Private and Special Laws of 1865, provided in Section 4 thereof that "No person shall be a trustee who is not an inhabitant of this State, nor anyone who has reached the age of seventy years."

I am of the opinion that the term "inhabitant," as used in the Act of 1865, is synonymous with domicile or legal residence, and implies a permanent abode in the State of Maine.

I also find, however, that "all vacancies occurring in the Board of Trustees shall be filled by the Governor and Council *on the nomination of the trustees. In case the nomination by the Trustees shall not be confirmed by the Governor and Council, the Trustees shall make another nomination, amd so on until a nomination shall be confirmed.*" (Emphasis mine.) Chapter 362 of the Private and Special Laws of 1867.

ABRAHAM BREITBARD
Deputy Attorney General

December 6, 1945

To Hon. Frank E. Southard, Chairman, Public Utilities Commission

You have orally inquired from this department whether George E. Hill, a member of the Public Utilities Commission, who was filling an unexpired term, which term ended on November 28, 1945, held over until the appointment and qualification of a successor to that office.

I have examined the statutes on the subject, including the act of 1913 (Chapter 129) which created the Commission, and from cases which I have read where the question was considered I am of the opinion that the incumbent would hold over until a successor is appointed and qualifies. See *Bath v. Read*, 78 Maine 280; *Bunker v. Gouldsborough*, 81 Maine 194; *Bowen v. Portland*, 119 Maine 282 at page 286.

In these cases a general rule of law is recognized that the incumbent of an office will hold over after the conclusion of his term, even though there is no express provision in the statute to that effect, unless the statute shows an intent to limit it to the term therein provided.

The department so ruled with reference to the members of the Liquor Commission. See opinion of the writer at page 161 of the Report of the Attorney General, State of Maine, 1943-1944.

Although these two statutes, that is, the one creating the Liquor Commission and the one creating the Public Utilities Commission, differ in that, in the act creating the Public Utilities Commission, the intent was that the term of one of the members thereof should expire every two years (the initial appointments under the Act of 1913 being for 7, 5, and 3 years, and thereafter appointments were to be made for a full term of 7 years) and vacancies by reason of death or resignation were to be filled for the unexpired term of that incumbent, so as to continue the rotation in the appointments in accordance with the original plan, nevertheless it has been held that a statute providing for such an arrangement does not prevent the incumbent from holding over under the rule above enunciated by the courts, since the term of the successor is reduced by the period in which the prior incumbent held over and thus the continuity of the rotation is preserved in that way. See *Hayward v. Long*, 178 S. C. 352; 114 A.L.R. 1130 at page 1144. This principle is recognized by our court in *Bowen v. Portland* at page 286. See also 46 C. J. 971.

On the assumption, thus, that Mr. Hill's term ended on November 28, 1945, in accordance with the design and plan of the Act of 1913 which created the Commission, then his mere holding over would not disturb or disarrange that plan, as his present appointment should be made to expire on November 28, 1952.

ABRAHAM BREITBARD
Deputy Attorney General

December 10, 1945

To Hon. Horace Hildreth, Governor of Maine
Re: Trustees of the University of Maine

Since writing the memo of December 5, 1945, with regard to filling of vacancies on the Board of Trustees of the University of Maine, my attention has been directed by Mr. Edward E. Chase to Chapter 194 of the Public Laws of 1874, which provides that all vacancies occurring in the Board of Trustees of the State College of Agriculture and the Mechanic Arts shall be filled by the Governor with the advice and consent of the Council and by Section 2 provides that all laws inconsistent with this act are hereby repealed.

I may say that this was enacted as a Public Law and hence does not appear in our Index of the Private and Special Laws; nor does it appear in any Revision since 1874, except in the Revision of 1883, where the general act repealing all public acts not contained in the Revision except those which are specifically preserved by that general act, names this law as one of those thus preserved.

I also find that by Chapter 196, P. L. 1883, an additional trustee was provided for, and among the qualifications for that person it was provided that he was to be a graduate of the college and that he was to be nominated by the Alumni Association and appointed by the Governor and Council. That law also provided that the secretary of the Maine Board of Agriculture was to be included, but that was later repealed and the

Commissioner of Education is, under the Revised Statutes, an ex officio trustee of the Board. Thus at present there are nine members of that Board, including the ex officio member, the Commissioner of Education.

It would thus appear that vacancies are now filled by the nomination of the Governor and confirmed by the Council, except that the Alumni Association trustee is nominated by the alumni.

ABRAHAM BREITBARD
Deputy Attorney General

December 12, 1945

To Earle R. Hayes, Secretary, Employees' Retirement System
Re: Houlton Water Company

This department acknowledges receipt of your memo of December 5th wherein you request an opinion as to whether the employees of the Houlton Water Company are eligible to become members of the Employees' Retirement System of the State. Attached to your memo is a history of the legislation of this corporation, from which it appears that, although it was originally organized as a private corporation, legislation in 1901 by Chapter 464 of the Private and Special Laws authorized the Town of Houlton to acquire all the stock of this corporation so that complete ownership is in the Town of Houlton and its directors are chosen by the inhabitants of the town.

In 1943 by amendment (Chapter 26, P&SL) it was provided that said corporation shall hereafter be deemed for all purposes of taxation a *public municipal corporation.* Evidently this amendment was passed so as to relieve it of taxation in towns outside of Houlton where it maintained poles and transmission lines to supply electricity. Because of the fact that the corporation not only supplied the Town of Houlton with water and electricity, but also a number of additional towns and villages outside of that town, in *Greaves, Collector of the Town of Hodgdon vs. Houlton Water Company,* 140 Maine 158, the Court held that so far as the Town of Houlton was concerned the corporation was to be regarded as a public municipal corporation for the purpose of being immune from tax; but due to the fact that in supplying these outside towns it was in effect engaging in business of a private nature, its poles and transmission lines located in towns outside of Houlton were taxable by those towns.

I do not believe, however, that, if the tax question had not been remedied by the legislature, that would bear directly on the question of eligibility of its employees to join the State Employees' Retirement System, in view of the amendment contained in Chapter 101 of the Public Laws of 1945, by which the "employees of any . . . water district, or any quasi-municipal corporation" of the State may participate in the Retirement System. This amendment, which brought in employees of a water district or any other quasi-municipal corporation, would embrace the Houlton Water Company. I therefore advise you that its employees will be

eligible to become members of the State Employees' Retirement System, if the directors or trustees of the Water Company vote to approve such participation.

ABRAHAM BREITBARD
Deputy Attorney General

December 27, 1945

To Hon. Horace Hildreth, Governor of Maine
Re: Application for Pardon

It has been brought to my attention that an application for a pardon has been made by the mother of a fourteen-year-old boy who was recently committed to the State School for Boys, upon adjudication by the Judge of the Municipal Court that he was guilty of juvenile delinquency.

Under Section 2 of Chapter 133, judges of the municipal court, when sitting in a cause where a minor under seventeen years of age is charged with a criminal offense (in this case, a misdemeanor) exercise exclusive jurisdiction and hold a "juvenile court." It is further provided by specific provision in said section that "Any adjudication or judgment . . . shall be that the said child was guilty of juvenile delinquency, and no such adjudication or judgment shall be deemed to constitute a conviction for crime."

I am of the opinion that this case does not present a proper case for pardon under the provisions of the Constitution of Maine, since the adjudication is not a conviction of crime, which is an essential requirement under the Constitution which empowers the Governor with the advice and consent of the Council to exercise the powers of pardon therein enumerated.

It is very plain to me that it is only in cases of conviction of crime that the Governor is empowered to act, as in the last sentence of Section 11 of Article V, Part First, of the Constitution, it is provided that the Governor "shall communicate to the Legislature at each session thereof, each case of reprieve, remission of penalty, commutation or pardon granted, *stating the name of the convict, the crime of which he was convicted,* the sentence and its date, the date of the reprieve, remission, commutation or pardon, and the conditions, if any, upon which the same was granted."

It seems, where the legislature has by express provision protected minors from the stigma of having been convicted of crime, by providing that the adjudication shall be one for juvenile delinquency which shall not be considered a conviction for crime and cannot be used in any court or any other place as a record of conviction, that the grant of a pardon or reprieve would be a contradiction of what the legislature, by the legislation referred to, has tried to accomplish.

ABRAHAM BREITBARD
Deputy Attorney General

December 27, 1945

To J. J. Allen, Controller

I return herewith the documents attached to your memo of Nov. 21, 1945, inquiring with regard to the propriety of reimbursement by the State Highway Commission to the Town of Moscow for overdraft on State Aid construction during a previous year. In this particular case the overdraft was in 1941. I took the question up with the Highway Commission and was informed that the expenditure here concerned was made with the consent of the Commission in anticipation of this money's becoming available. See Chapter 20, §109. The State Aid was afterwards withheld because of the enactment at a special session of the legislature of Chapter 105 of the Laws of 1941, effective January 24, 1942. It is not quite clear to me that the State Highway Commission, notwithstanding this legislation, could not have paid the State Aid in the specific cases where they had authorized the towns to go ahead with the work; but anyway there is money now available and the State Highway Commission has approved the payment of this invoice, and I am of the opinion that it may properly be audited and paid now.

ABRAHAM BREITBARD
Deputy Attorney General

December 27, 1945

To David H. Stevens, State Assessor

Please be advised that no person, unless he is engaged in the business of *selling* cigarettes, either at wholesale or at retail, is required to be licensed under the cigarette tax law.

Thus, any group of persons who are members of or connected with or affiliated with any charitable or social organization and who want to distribute cigarettes to sick and disabled veterans at Togus or at any other institution, need not be licensed to do so, as they are not engaged in the selling of cigarettes, which is essential before they can be required to comply with the licensing law of this act.

ABRAHAM BREITBARD
Deputy Attorney General

January 16, 1946

To Hon. Harold I. Goss, Secretary of State
Re: Reciprocity to Non-Resident Vehicles and Operators

This department acknowledges receipt of your memorandum of January 11th asking for an opinion "on the question of whether a corporation organized in Maine operating motor vehicles in interstate traffic, these vehicles being registered in another state, are entitled to the benefits of the Maine reciprocity law in reference to the vehicles so operated."

This question has particular reference "to corporations engaged in interstate transportation by motor truck."

Chapter 342 of the Laws of 1945 provides for reciprocity and exempts from the provisions of Chapter 19 of the Revised Statutes, the registration of motor vehicles, tractors and trailers owned by a non-resident, provided that the owner of such vehicle has complied with the provisions of the law of the state, district or country of his residence relative to the registration of such vehicle. Like provision is made as to a non-resident operator who has been licensed in accordance with the provisions of law of the state, district or country of his residence.

These provisions apply only to the state, district or country that extends and grants like privileges to motor vehicles owned by residents of this state, who have registered the same in accordance with the laws of this state.

Section 3 of this law defines the term "non-resident" as "any person whose legal residence is in some state, district or country other than Maine . . ."

The residence of a corporation is in the state of its creation, although it may carry on business in another state; and in all states other than the state of its creation it is deemed to be a non-resident. The definition of the term "non-resident" as it appears in this law makes it clear that the law is applicable only to persons whose legal residence is in a state, district or country other than Maine. It cannot apply to a domestic corporation, as its "legal residence" is the State of Maine.

I therefore advise you that domestic corporations must register their motor vehicles in this state, and cannot have the advantage of this law by registering their motor vehicles in a foreign state.

ABRAHAM BREITBARD
Deputy Attorney General

January 16, 1946

To Harry H. Gilson, Commissioner of Education

I have your memo of January 8th stating questions raised by Teachers Retirement Board relating to application of amendment by the last legislature found in Chapter 321 of the Public Laws of 1945, which admits to membership teachers serving certain academies, etc.

"1. Can this amendment be interpreted to mean that all teachers, coming under the provisions of this amendment, may be entitled to retroactive membership if they request it and pay up for back service; or does this law limit such membership to the effective date of the act, July 21, 1945?"

*Answer.* In my opinion this amendment limits such membership to the effective date of the act.

"2. May a member who is eligible to either pension plan, but not both, transfer from one to the other at will? How many transfers are allowable?"

My answer to #2 is in the negative. A member who is eligible to either pension plan must elect under the provisions of Section 241 of Chapter 37, R. S. 1944, and once a member has elected, he cannot change from one to the other at his pleasure.

"3. May a member take up back credit having failed to do this when first becoming eligible to membership in Maine Teachers' Retirement Association? How far back, to effective date of law or to date of first service?"

My answer to #3 is also in the negative. He must claim his credits when he elects to come within the plan, under Sections 221-241, inclusive, of Chapter 37, R. S. 1944.

In Question 4 there is an error in the citation and I have inserted Chapter 321, P. L. 1945, instead of R. S. 1944, Section 241 (of Chapter 37). I now recite Question 4 as amended:

"4. Does the new law, P. L. 1945, Chapter 321, pertaining to teachers in academies give teachers the right to the provisions of eligibility under the old and the new retirement law? Either or both?"

My answer to #4 is: They must elect under the provisions of Section 241 of Chapter 37, R. S. 1944.

"5. May teachers, by virtue of having taught prior to July 1, 1924, claim prior-service credit and pay back for as many years as they desire not to exceed the total number of years they have actually taught."

I cannot answer #5, as it seems to be an administrative matter and before giving you any written answer, I should know what the policy of your department has been since the provisions of Sections 221 to 241 of Chapter 37, R. S. 1944, have been effective, where the teachers who were under the old plan elected to come under the new plan when this law was enacted in 1941. That ls, did your department allow prior service credit under the old plan for as many years as they desired, not to exceed the total number of years they had actually taught?

RALPH W. FARRIS
Attorney General

January 22, 1946

To W. E. Bradbury, Deputy Commissioner, Inland Fisheries and Game

The question has arisen whether Section 317 of Chapter 22 (Health and Welfare Laws) of the Revised Statutes of 1944 is still in force or whether it has been repealed by implication by Chapter 374 of the Public Laws of 1945, which relates to Inland Fisheries and Game.

Section 317 provides for free licenses to Indians over 18 years of age of both the Passamaquoddy and Penobscot Tribes, to fish, hunt and trap, upon presentation to the Commissioner of a certificate of the Indian Agent of these respective tribes that the applicant for the license is a member of that tribe.

Provision for free hunting and fishing licenses to members of these tribes is made by Section 32, Subsection 9 of the Inland Fish and Game Laws enacted in 1945 (the Eighth Biennial Revision.)

Doubt as to the right to a free license to trap has arisen because of the omission in the Inland Fish and Game Laws of a free license to trap.

While in the previous biennial revision of the Inland Fish and Game Laws (Laws of 1941 and 1943) the Revisor had incorporated what is now Section 317, it was never considered to be a part of the Inland Fish and Game Laws. It was incorporated in such revisions for reference only.

The repealing clause of Chapter 374, P. L. 1945, which enacted the present laws relating to Inland Fisheries and Game, does not repeal Section 317 of Chapter 22 of the Revision of 1944, either expressly or by implication, and hence that section remains unaffected; and under that section of the statute Indians belonging to either of those tribes and over 18 years of age would be entitled to free trapping licenses, if they meet the other requirements.

ABRAHAM BREITBARD
Deputy Attorney General

January 29, 1946

To Robert B. Dow, Esq.

. . . The paragraph of my letter which you quote is based on Section 1 of the amendment (Chapter 44, P. L. 1945), which provided for revocation of the prior vote to employ a town manager, at any legal special town meeting held at least sixty days before any annual town meeting. Such a vote would rescind and annul the force of a previous vote to hire a town manager; and since the only requirement was that the vote to revoke be held at least sixty days before an annual town meeting, there could be no objection to holding it more than sixty days before such meeting.

The vote abrogating the earlier one would become effective as soon as the result was announced at the town meeting, and the result would be that at the annual meeting following, the selectmen would have no authority to hire a town manager, unless after the insertion of an article in the warrant authorizing the selectmen to hire a town manager and the passing of such vote again at the annual meeting.

It is an endless thing. Answering the last inquiry in paragraph one, I would say that the existing vote authorizing the employment of a town manager now in force would not require any further vote thereon at the annual town meeting; but as to whether the selectmen could with propriety disregard the existing vote on the subject and not employ a town

manager, that is something for which they would be answerable to the inhabitants of the town. They would, in effect, not be carrying out the wishes of the voters of the town, as the result would be the same as though the inhabitants had affirmatively voted for the employment of a town manager and the selectmen had ignored the vote. It is all a question of whether the selectmen can justify their non-action in that respect. . .

ABRAHAM BREITBARD
Deputy Attorney General

January 30, 1946

To Honorable Guy H. Sturgis, Chief Justice

I received your letter of January 28th requesting me to direct you to the authority, if any, for making bonds of clerks of courts payable to the Treasurer of State instead of the State of Maine, which you state in your letter seems to have been the practice of some surety companies and is said to be pursuant to advices from this office.

I an find no authority in the statute for bonds of clerks of courts being payable to the Treasurer of State, and I can find no ruling in this office to the effect that bonds of clerks of courts should be payable to the Treasurer of State instead of the State of Maine.

It seems to me that Chapter 5, P. L. 1945, is the last word on bonds of clerks of court. This provides that they shall each give a surety bond to the State, etc., in amounts and forms approved by the Chief Justice.

It is my opinion that all bonds of clerks of courts should be made out to the State of Maine and deposited with the State Auditor after the amount and form have been approved by the Chief Justice. . . .

RALPH W. FARRIS
Attorney General

February 1, 1946

To Lucius D. Barrows, Chief Engineer, State Highway Commission
Re: Anticipation of Future State Aid Allotments by Towns

I received your memo of January 18th relating to a letter received by you from Frank L. Whitney of Surry, who is interested in the construction of the Newbury Neck road in Surry.

Since I received your memo, Senator Noyes of Franklin and Mr. Whitney have been in my office and I talked with you on the telephone while they were present in my office. I then advised Senator Noyes and Mr. Whitney what my ruling would be in this matter.

You state in your memo: "You will note that Mr. Whitney proposes that the town finance the construction of this road as a state aid highway and then have its notes gradually paid off by reimbursements from the

state aid joint fund as it becomes available annually. The Highway Commission would like to go along with the town on this proposition as they have in the past on similar but less extensive situations."

On this basis the Commission asked my opinion as to whether it would be permissible under the present laws to use State Aid funds to reimburse a town for expenditures made in previous years in constructing a State Aid highway.

My answer to this question is in the negative. You will note the limitation on the consent of the State Highway Commission in Section 109 of Chapter 20, which limits the consent to any time preceding the commencement of the fiscal year for which such appropriation is made. In my opinion this would not run beyond the legislative session. . . .

Mr. Whitney and Senator Noyes seemed to be satisfied with my ruling, and I understand they are going to take the matter up with the legislature, as a basis for post-war planning legislation.

RALPH W. FARRIS
Attorney General

February 1, 1946

To David H. Stevens, State Assessor

Re: Taxation of Horses

I have your memo . . relating to the interpretation of Paragraph 4, Section 13, Chapter 81, R. S. 1944, relating to the taxation of horses located in a town, the owner living in an adjacent town. You state that these horses are located in the adjacent town and remain there until they are sold, and the word "temporary" causes a great deal of worry and trouble in your department and you wish that clarification be made of this.

Primarily, the horses shall be taxed on the first day of April in the town where they are kept; but when the horses are in any other town than that in which the owner or possessor resides, for pasturing or any other temporary purpose, on said first day of April, they shall be taxed to such owner or possessor in the town where he resides. The two words "temporary purpose" should take care of the whole situation, because in this case in your memo the temporary purpose was for the sale of the horses and they should be taxed to the owner or possessor in the town where the owner resides.

RALPH W. FARRIS
Attorney General

February 1, 1946

To John C. Burnham, Administrative Assistant, SHC

I have your memo . . . asking my opinion on the following matters:

1. "In accordance with the provisions of Sec. 18, Chap. 19, R. S. 1944, can a motor vehicle be registered for transporting a load upon the highway if the vehicle and load exceeds 40,000 pounds providing the load is transported under a permit from the State Highway Commission?"

My answer to this question is in the affirmative, and I will call your attention to the last sentence in Section 100 of Chapter 19, which reads as follows:

> "Except that in special cases, special permits for greater gross weights may be granted by the state highway commission or such appropriate commission or official as is duly authorized elsewhere in this chapter."

2. "If such a registration can be issued, can the fee collected exceed $300.00 and if so how should the additional over $300.00 be computed?"

In answer to this question I will say that the Highway Commission does not issue registration, but a permit for a load exceeding 40,000 pounds, and the Commission cannot collect, nor can the Secretary of State collect an additional fee over $300 according to the table provided for in Section 18, Chapter 19, R. S. 1944.

3. "In accordance with the provisions of Sec. 89, Chap. 19, R. S. 1944, has the State Highway Commission legal authority to establish a rate of fees and to collect the same for permits issued under this section?"

In answer to this question I will say that I can find no statutory authority for the Commission to collect fees for permits issued under this section as amended, and I can find no statutory authority for the State Highway Commission to promulgate rules and regulations relating to fees for special permits under this section; so my answer to this question is in the negative.

RALPH W. FARRIS
Attorney General

February 4, 1946

To Earle R. Hayes, Secretary, Employees' Retirement System

This department acknowledges receipt of your memo of January 14th. The inquiry concerns the allowance of prior service credit to former employees of the State at any time during the three years prior to July 1, 1942, who are re-employed at any time prior to July 1, 1945, and who, upon re-employment, become members of the State Employees' Retirement System.

The question is whether an employee who was "laid off" by any department previous to July 1, 1942, and who was re-employed subsequent to July 1, 1945, but who could not take advantage of the provisions of this law because such person was then in the military service and was not discharged from said service until after July 1, 1945, can now receive credit for his prior service.

You ask whether under subsection 2 of Section 4 of Chapter 60, the Board of Trustees may allow prior service credit, though such person did not bring himself within the provisions of this subsection, being prevented from doing so because of the fact that such person was in military service. A subsidiary question arises whether the Board may take into considera-

tion the fact that some of these employees were laid off through no fault of their own and due to the curtailment of the activities of the department involved.

A familiar and fundamental rule of statutory construction is that where a statute is clear and plain, there is no room for interpretation. Consequently, the statute must be interpreted as it is written. There is no ambiguity in the statute. By its plain terms, prior service credit may be allowed only to those who were re-employed prior to July 1, 1945, and who were formerly employed by the State at any time during the period of three years prior to July 1, 1942. We have no right to enlarge the time or consider the question of whether the cessation of employment by the State was due to no fault of the employee.

I feel, however, as no doubt you and the Board of Trustees feel, that returning veterans should not be deprived of the benefits of the act under consideration because they were prevented from becoming re-employed prior to July 1, 1945. I would suggest, therefore, that at the next session of the legislature an amendment be introduced allowing discharged servicemen who become re-employed to have the advantage of prior service credits.

ABRAHAM BREITBARD
Deputy Attorney General

February 6, 1946

To C. P. Bradford, Superintendent, State Park Commission

Re: Tenure of Office

Receipt is acknowledged of your memorandum of the 5th instant, inquiring about the status of two members of the State Park Commission, whose terms expired on February 4th. These two members also acted as chairman and secretary, respectively, of the Commission. The act creating the Park Commission does not provide that the members thereof, who are appointed by the Governor, shall hold over until their successors are appointed and qualified. Notwithstanding, however, the omission of such a provision, they do, in my opinion, hold over until a successor is appointed and qualifies. You are, therefore, advised that they may continue to act as members of the Commission until they are either re-appointed or succeeded by new members.

ABRAHAM BREITBARD
Deputy Attorney General

February 7, 1946

To Harrison C. Greenleaf, Commissioner of Institutional Service

This is in reply to your memo of February 6th, bringing to my attention the fact that .......................... has become eligible for parole . . . by reason of the fact that on writ of error his sentence was reduced to 2½ to 5 years. The original sentence was 4 to 8 years. The reason for the reduction was a defect in the indictment which . . . reduced the crime to simple larceny.

This respondent was charged in that indictment with having broken into a garage . . . and stealing an Oldsmobile sedan of the value of $1300. There was no further description of the building. A garage is not one of the buildings enumerated in the statute. Consequently, the indictment should have alleged "a building where valuable things are kept." . . . The indictment was therefore good only for the theft of the automobile, which made it simple larceny, the maximum for which is 2½ to 5 years.

It has been the practice of Judge Murray to require notice in proceedings brought by writ of error to be given to the Attorney General, although for some time past I have insisted that in addition . . . notice shall also be given to the county attorney of the county in which the prosecution was had. Very often these proceedings arise out of cases in remote parts of the State, of which we have no record, and the only person who would ordinarily have any familiarity with it is the county attorney in the county where the crime was committed.

How the above affects this case may be readily seen from the following. . . This same respondent was at the same time convicted of two other larcenies and of escape from the county jail. In the last case he was given from 1 to 2 years, which ran concurrently with the 4 to 8 year sentence. The other two cases that I have mentioned, larcenies, were, one for the theft of a 1941 Pontiac sedan of the value of $750, in the town of Chelsea, and the other case was breaking and entering in the night time at the store of Ray E. Tillson in Augusta. Both of these cases were placed on file in view of the sentence in the one for which he was imprisoned. Had I known these facts, the sentence of 4 to 8 years would have been justified, because in reality he should have been sentenced as a common thief, for which a maximum of 15 years is provided. The Massachusetts court, some years ago, decided that under the statute prescribing punishment as a common thief (I believe that ours is like the Massachusetts statute verbatim) a several sentence, that is to say, a sentence on each case was not permissible; but where three convictions for larceny were had at the same term of court, the court could only impose a combined sentence as a common thief. (Chapter 119, Section 10.)

I feel that, in the consideration of the parole of a prisoner, he should not have the benefit of immediate parole by reason of the fact that there was a defect in an indictment, where the sentence has been reduced because of such defect, particularly in a case like this, where all his other escapades for which he was indicted and convicted would justify the greater sentence which the court originally imposed. Since the parole of a prisoner is a matter of discretion, I think the Board should take into consideration the other crimes for which he was indicted and convicted at the same term of court. . . I may add that . . . in accordance with the Massachusetts ruling written by Chief Justice Shaw he could not be brought before the court and imprisoned for the offences which were placed on file, if the only sentence which should have been imposed was

a sentence combining the three as a common thief. Judge Murray has ruled . . . that where several sentences are meted out for three distinct larcenies at one term of court, the first sentence is the only valid one and the others have no effect.

ABRAHAM BREITBARD
Deputy Attorney General

February 11, 1946

To R. W. Carter, Chief Accountant, State Highway Commission

I have examined the papers you left with me in regard to .................... who was convicted on a criminal charge for leaving the scene of an accident and was fined $10 and costs, which was not paid, and thus the State Police officer took him from Brunswick, which is the municipal court where the conviction was had, and transported him to the county jail in Portland in execution of the mittimus. The cost of travel and executing the mittimus was $6, and the county commissioners question the payment of this to the State. They doubt the propriety of this payment because, they say, the State Police officer is a salaried officer. I regard the fact that he is a salaried officer of no consequence.

Subsection 29 of Section 166, Chapter 79, provides that sheriffs and their deputies shall receive $1 for service of a mittimus to commit a person to jail and the usual travel with reasonable expenses incurred in the conveyance of such prisoner. By Chapter 13, Section 2, State Police officers are vested with the same powers as sheriffs, and

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

By Chapter 136, Section 44, it is provided that whenever a convict is sentenced to pay a fine and costs and does not pay the same, he shall in default thereof be committed and imprisoned in accordance with law. On payment, however, of the fine and costs he is entitled to be discharged forthwith. The fees for committing and travel and cost of conveyance to the jail, when incurred, become a part of the cost of the prosecution which the prisoner must pay before he can be released.

I am of the opinion that these fees are properly payable by the county commissioners to the treasurer of the State.

ABRAHAM BREITBARD
Deputy Attorney General

February 15, 1946

To J. J. Allen, Controller

This department acknowledges receipt of your memo of February 13th asking for an interpretation of Chapter 122 of the Public Laws of 1945, which provides:

"When for any reason whatsoever a recipient of old age assistance is unable to properly indorse the check for the last payment approved for him prior to his death the department may approve payment by the state of obligations incurred by the recipient for board or medical or nursing services in anticipation of the receipt of such check but not in excess of the amount of the check. . ."

The facts stated are that the recipient died on October 28, 1945, while the check in question was issued on November 9, 1945, and the Department of Health and Welfare approved a payment for medical care which would consume the amount of the check. Your inquiry is whether this statute applies to checks issued after the death of the recipient.

The date of the issuance of the check is of no criterion, because the statute provides that it is the approval of the payment that controls. Thus, if the payment was approved by the department prior to the death of the recipient, the proceeds of that check would be available for the payment of any obligation incurred by the recipient. The purpose, of course, of allowing these claims to be paid out of the proceeds of the check was to avoid the necessity of administration of the estate of the recipient, in case he died before the receipt or cashing of the check. If then, the approval for this payment to the recipient by the department was made prior to October 28, the proceeds of the check issued on November 9th may be used to pay the doctor's bill. If the approval for payment was made after his death, then the proceeds of the check may not be devoted to that purpose.

ABRAHAM BREITBARD
Deputy Attorney General

February 21, 1946

To Harry V. Gilson, Commissioner of Education
Re: Payment of Subsidies—Education of Physically Handicapped Children

Receipt is acknowledged of your memo of February 15th with regard to payment of a subsidy to "local school districts" for the education of physically handicapped children, provided for by an act passed by the present legislature, which became law on July 21, 1945, being Chapter 149 of the Laws of 1945.

The determination of the amount to be paid or apportioned to such districts is on an individual pupil basis, but not at a cost exceeding $200 per school year and in cases where pupils are to be boarded away from their home districts the excess cost is to be then not more than $350 per school year. Excess cost is the "excess cost of such education over and above the average per capita cost of educating normal children in their respective school districts."

This act appropriated $7500 for subsidies for the fiscal year ending June 30, 1946, and $10,000 for the year ending June 30, 1947.

Doubt has arisen as to the time of payment of the subsidies provided under this act, because at the same session by Chapter 350, Section 24, it was provided:

> "Apportionments to be made in December. All apportionments to cities and towns under the provisions of this chapter shall be made annually in December."

This amendment becomes Section 211-A of Chapter 37 and the act first referred to becomes a part of the same chapter. The question is then whether the latter is applicable to the payment of the subsidies provided in the former act.

If it was so determined, the appropriation, it is said, would lapse after the end of this fiscal year unless it was paid before the close thereof.

I am of the opinion that Section 211-A is not applicable to this act. Under this act there was created "a division of special education" within the department of education. In section 180-D it is provided:

> "The excess cost shall be paid to local districts under the direction of the division of special education."

Payment is to be approved by the Commissioner of Education. Section 180-G. The payment is to be computed on a school year. Section 180-D.

In view of these provisions I believe that payment may be made when the division of special education so directs, subject to the approval of the Commissioner, and such subsidies may thus be made on or before June 30, for the fiscal year ending in 1946.

ABRAHAM BREITBARD
Deputy Attorney General

February 27, 1946

To John C. Burnham, Administrative Assistant, SHC

Answering your memo of the 25th of February, it is our opinion on the facts set out therein that a permit may be granted to the operator under the provisions of Chapter 217, P. L. 1945.

This act does not confine the issuance of permits to the owner of the vehicle. Thus it may be issued to the lessee, operating the vehicle.

This is confirmed by Section 93 of Chapter 19, which provides that highway officials may require a bond from the owner or operator to indemnify the State or the municipality for damage to any way or bridge by the vehicle under permit.

ABARAHAM BREITBARD
Deputy Attorney General

February 26, 1946

To Earle R. Hayes, Secretary, Employees' Retirement System

Re: Status of Certain State Employees, If Employed by the Maine Turnpike Authority

I acknowledge receipt of your memorandum of February 13th relating to the above subject matter, in which you propounded the following questions:

"1. Is the Maine Turnpike Authority, as created by Chapter 69 of the Private and Special Laws of 1941, an agency of the State Government as defined in Subsection III of Section 1 of Chapter 60 of the Revised Statutes?"

I am of the opinion, after reading the statement of facts in your memo of February 13th, that the interpretation of Subsection III of Section 1 of Chapter 60, R. S. 1944, would not be of material benefit for the purposes of your memorandum. For that reason I do not give an answer to question 1.

"2. Should any of the employees of the State Highway Commission transfer their employment to the Maine Turnpike Authority, could they maintain their membership and preserve all of their rights under the terms of the Employees' Retirement System Law?"

My answer to question #2 is in the negative for the reason that the legislature has not made any provisions or appropriated any funds for State contributions for the employees of the Maine Turnpike Authority in order that they may become members of the Retirement System.

"3. In the event a person retired under the provisions of the Employees' Retirement Act is employed by the Maine Turnpike Authority, would such employment in any way jeopardize such a person's retirement benefits?"

My answer to question #3 is in the negative. My reason therefor is set forth in the answer to question #2.

You state in the last paragraph of your letter: "It seems hardly reasonable to suppose that the Legislature intended that certain employees of the Highway Department could and should be taken over by the Maine Turnpike Authority and at the same time deprive them of their rights as a State employee under either the Personnel Law or the Employees' Retirement System Law."

In this connection I wish to say that the Turnpike Authority was created by the 90th Legislature at its regular session and the Act was approved April 17, 1941. The Employees' Retirement Act was passed at a special session of the 90th Legislature held in January, 1942, and the Retirement Act became effective January 24, 1942 as to administrative provisions, and effective July 1, 1942 as to the rest of the Act.

Furthermore, the only money that the Turnpike Authority will have for administrative purposes will be from the sale of bonds, and said bonds are not to be deemed a debt of the State of Maine or a pledge of the faith and credit of the State of Maine, and the State of Maine is not obligated to pay the bonds or any interest thereon except from tolls, and the issuance of these Turnpike bonds does not directly or indirectly obligate the State to any form of taxation whatever or to make any appropriation for the payment thereof.

It is my opinion therefore that it was not the intention of the legislature that the Turnpike Authority employees should come within the purview of the Employees' Retirement System Act.

RALPH W. FARRIS
Attorney General

March 7, 1946

To Laurence C. Upton, Chief, Maine State Police

I have your memo of March 6th in regard to the question relating to the penalty for violation of Chapter 306 of the Public Laws of 1945. The penalty under that section is as follows:

> "Whoever is required to make a report as herein provided and fails to do so, or wilfully fails to give correct information. . . shall be deemed answerable to the secretary of state, and the secretary . . . may suspend or revoke the operator's license of such person or the certificate of registration, or both. . "

That is the penalty for violation of Chapter 306. You will note the word "wilfully" is used in the language of this penalty, and of course it is a very severe penalty for the operator or owner of a motor vehicle to have his license and registration certificate revoked. I call your attention to this fact because it indicates that the legislature intended it to be a penalty for the violation of this chapter.

If you will look at Section 136 of Chapter 19, R. S. 1944, which provides the general penalty for violation of the motor vehicle laws where there is no other penalty provided, you will find that it reads as follows:

> "Whoever violates or fails to comply with the provisions of any section of this chapter or any rules or regulations established thereunder, *when no other penalty is specifically provided*, shall be punished by a fine of not more than 90 days, or by both such fine and imprisonment."

You state that at least one court has taken the position that a person who fails to report an accident to the Chief of the State Police, as required by the terms of this statute, cannot be prosecuted in the criminal court, and undoubtedly the judge of this court had in mind that, where a specific penalty is provided, the violator of the provisions of Chapter 306, P. L. 1945, would not come within the provisions of Section 135 of Chapter 19, R. S. 1944, which contains the wording, "when no other penalty is

specifically provided," and I must rule that the revoking of the operator's license and certificate of registration is the penalty, and a person failing to report an accident would not be prosecuted under Section 135 of Chapter 19, R. S. 1944.

RALPH W. FARRIS
Attorney General

March 12, 1946

To Lester E. Brown, Chief Warden, Inland Fisheries and Game

I have your inquiry of March 7th to which is attached a letter inquiring about the legality of a device to attract fish, which the manufacturer calls a decoy device.

Section 51 of our Fish and Game Laws prohibits "advance baiting," and provides punishment for "whoever deposits any meat, bones, dead fish or parts of the same, or other food for fish in any of the inland waters of the state, for the purpose of luring fish." It is the deposit of food that is prohibited. The device which is the subject of the inquiry is not a deposit of food. It involves the submersion of a glass jar with a perforated cover with live minnows in the jar, which would attract the fish to the jar or in the immediate vicinity thereof. I do not believe that the use thereof would, strictly speaking, be a violation of our act.

However, before we give anyone any advice with regard to the sale of some article, we should consider whether the same violates the spirit of our law and whether it is opposed to good sportsmanship. If it does violate these principles, we should refuse to give them any advice which would encourage them to put the same on the market, as we may want the legislature coming in thereafter to prohibit its use.

ABRAHAM BREITBARD
Deputy Attorney General

March 26, 1946

To Stanton S. Weed, Director, Division of Motor Vehicles

Re: Registration Fees of Motor Vehicles Hired for Operation by the Lessee

Your inquiry of February 26th relates to the registration fees for vehicles which are owned by a so-called truck-leasing corporation and which are hired out to persons desiring to use the same in connection with their own business. It is stated that the lessee under the renting agreement agrees not to carry passengers for hire. Under Section 15 of Chapter 19, Subdivision B., it is provided that motor vehicles "used for livery or hire, (pay) double the above fees." The fees enumerated in Subsection A. are the fees for passenger cars, based on the horsepower of the vehicle.

The information contained in the letter addressed to the Registry of Motor Vehicles by the operator of the truck-leasing corporation under consideration is that the corporation maintains a number of vehicles which it lets under contract, specifying the use which is to be made thereof by the lessee in the course of his business.

Such vehicles clearly come within the provisions of Subsection B., being used by the owner "for livery or hire," and the fees for registration are double the amount for passenger cars of the same horsepower.

This ruling applies to all owners of cars for livery or hire, whether individual, partnership, or corporation.

ABRAHAM BREITBARD
Deputy Attorney General

March 27, 1946

Lt. Francis J. McCabe, Maine State Police
Re: Motor Vehicle Law

Receipt is acknowledged of your memorandum of March 18th, wherein you ask whether a truck with a Massachusetts registration can lawfully transport building material from South Portland, Maine, to Waterville, Maine. This material is removed from structures being wrecked, and it is being transported to Waterville to be used in the erection of other buildings. You say that the work is being done by the government of the United States, although the truck is privately owned.

I am of the opinion that this truck is being illegally operated. Under the Reciprocity Law enacted in 1945, Chapter 342, Subsection IV, a motor vehicle owned by a non-resident and registered in accordance with the laws of the State of his residence, is allowed, without registration under our laws, to transport merchandise and material over our highways from a point in said foreign State to be delivered in our State, or to accept delivery here and transport it to such foreign State. That is not what this foreign registered truck was engaged in doing.

Section 27, Subsection B of Chapter 44, R. S. 1944, is not applicable. The exception there provided for dispenses in those cases with obtaining a certificate from the Public Utilities Commission before commencing operations. It has nothing to do with the registration of the vehicle.

This vehicle could not perform the service it was engaged in doing, without being first registered in this State.

ABRAHAM BREITBARD
Deputy Attorney General

April 4, 1946

To David H. Stevens, State Assessor

This department acknowledges receipt of your memorandum of the 3rd instant relative to an inquiry submitted to your department by the Saco & Biddeford Savings Institute.

We feel that the amount borrowed, and for which government bonds were purchased under a commitment by the bank to purchase bonds in that amount of a specific issue by the U. S. Government, should not be carried in the report which the bank submits for the purposes of taxation, either as a deposit or on the asset side of the report as an investment in these securities to the equivalent amount. While the bank, in the preparation of a financial statement, would necessarily include as a liability the amount that it had borrowed, and the amount of purchased bonds for the equivalent sum as an asset, nevertheless for the purposes of the report upon which the State Tax Assessor is to compute the tax payable by the bank, there is some doubt in the writer's mind as to whether money borrowed by a savings bank can be treated as a deposit within the provisions of the statute, which requires a return of the average amount of its deposits, reserve funds, undivided profits, etc. It seems to me that the act contemplated that U. S. obligations and issues of the State or any of its political subdivisions, etc., owned by it, and the other investments for which partial deductions are allowed, were to be purchased from deposits, reserve funds and undivided profits.

ABRAHAM BREITBARD
Deputy Attorney General

April 12, 1946

To David H. Stevens, State Assessor
Re: Taxation of Telegraph Companies

You have attached to your memorandum a letter dated December 27, 1945, by the tax counsel for the Western Union Telegraph Company, requesting a review of the ruling with regard to the inclusion of the "premium" paid on the transfer of money to ascertain the gross receipts in this State from the telegraph business for the purpose of computing the tax.

Upon looking through our files, I find the ruling by the Attorney General made on October 15, 1942, and again the ruling made on February 16, 1943, by the Deputy Attorney General serving under the same Attorney General who made the first ruling. In each of these the same point raised in the letter above referred to was considered and decided adversely to the contention of the taxpayer. Upon examination of the statute I do not feel that I would be warranted in disturbing the rulings previously made.

ABRAHAM BREITBARD
Deputy Attorney General

April 17, 1946

To Earle R. Hayes, Secretary, Employees' Retirement System
Re: Members over 65 Years of Age, with 35 Years of Service, No Longer Contributing

I have your memo of April 12th, relating to a member over 65 years of age with 35 years of service, who elected not to make any further contributions when he attained the age of 65. You ask whether or not he is entitled to the annuity provided for under the law for the period for which he did not make contributions. You further state that the Actuary of the System is of the opinion that the law does not contemplate the State's paying an annuity for that period of time following the cessation of the contributions, and you ask me whether or not I agree with this point of view.

In reply I will say that I agree with the stand of the Actuary of the System in this matter.

RALPH W. FARRIS
Attorney General

April 17, 1946

To Earle R. Hayes, Secretary, Employees' Retirement System
Re: Status of Employees of Maritime Academy

I received your memo of April 12th, asking my opinion as to the status of the employees of the Maine Maritime Academy at Castine. You ask my opinion specifically as to whether or not the employees of said academy are eligible to become members of the State Employees' Retirement System.

This is a private corporation created by Chapter 37, P&SL 1941, as the Maine Nautical Training School, and the name was changed by Chapter 102 of the P&SL of 1941 to the Maine Maritime Academy, which academy has the same rights and privileges as corporations organized under the general laws. It is my opinion that its employees are not eligible to become members of the State Retirement System without legislative authority.

RALPH W. FARRIS
Attorney General

April 17, 1946

To Earle R. Hayes, Secretary, Employees' Retirement System

I have your memo of April 12th, relating to the provisions of Subsection VI of Section 3 of Chapter 60, R. S. 1944, which provides as follows:

> "Should any member in any period of 5 consecutive years after last becoming a member be absent from service more than 3 years. . ."

You ask whether or not the board has any discretion as to what constitutes an absence of three years; or should a former employee who did

leave his contributions in the System be absent from the service three years and one month, would the board have any discretion in the matter?

My reply to your question is that said statute is mandatory and the board would have no discretion, except in those cases provided for in said section of the statute, which you have not quoted.

RALPH W. FARRIS
Attorney General

April 29, 1946

To Brig. Gen. George M. Carter, Adjutant General

I have your memo of April 23rd relating to the credit to the War Bond Account of the Military Defense Commission of rentals received from the Federal Government and from individuals and municipalities for the use of the State armories; and I note that the former Finance Commissioner, Mr. Mossman, credited the receipts from the rentals of armories to the State's General Fund, rather than to the War Bond Fund of the Commission. You state that you would appreciate a ruling from this office on this matter. . .

It is my opinion, after studying Chapter 308, P. L. 1939, and Chapter 120, P. & S. L. 1939, (the latter chapter providing for a bond issue for military expenses) and in view of the fact that the Finance Department is carrying two accounts, one for the Military Defense Commission called the War Bond Account of the Commission, and the Adjutant General's Account, which is created by appropriations of the legislature, that the proper procedure was followed in crediting the proceeds of the rentals of armories to the General Fund, rather than to the War Bond Fund.

The statute provides that "The proceeds of all bonds issued under the authority of this act shall at all times be kept distinct from other moneys of the State. . . So much of the same as from time to time shall not be needed for current expenses shall be placed at interest and the income derived therefrom, etc."

Section 4 provides as follows: "Proceeds of the sales of such bonds which shall be held by the state treasurer, paid by him upon warrants drawn by the governor and council, are hereby appropriated to be used solely for the purposes set forth in this act."

Section 6 provides that the interest shall be met by money from the State Treasury not otherwise appropriated (which is the General Fund), upon warrants drawn by the Governor and Council therefor.

After studying these two chapters passed at the special session of 1940, I am of the opinion, as I have said, that the proper procedure was followed, as the General Fund is responsible for interest on these bonds, and the appropriation was taken from the General Fund, and the legislature provides an appropriation in your budget each year for the operation of the Adjutant General's Department, and this money from rentals

of armories comes back to the Adjutant General's Department for the operation thereof through legislative appropriations.

Therefore it is my opinion that it was the intent of the legislature not to mingle other moneys with the War Bond Fund. . .

RALPH W. FARRIS
Attorney General

May 2, 1946

To Harrison C. Greenleaf, Commissioner of Institutional Service

I have your memo of May 1st, dealing with the case of Anthony J. Bourgeois, who is now serving a sentence in the Maine State Prison of not less than 5, nor more than 8 years, imposed on March 21, 1942. Your inquiry is whether or not this sentence should have been for a fixed period, rather than an indeterminate sentence, and the Parole Board is in doubt as to the prisoner's being subject to the provisions dealing with parole which are applicable only to indeterminate sentences.

The papers which you have attached to your memo show that the prisoner was indicted by indictment which contained four counts. The first count was for incest; the third and fourth counts for rape, and the second count for a minor offense arising out of the same criminal act. It would appear, although it is not quite clear from the papers submitted, that the prisoner was convicted of the counts charging incest and rape. While the Court might have imposed sentences for each of these crimes, apparently it did not do so, but imposed one sentence.

The crime of incest is punishable under the statute by imprisonment for one to ten years. It is not excluded from the indeterminate sentence provisions. Thus, for that crime an indeterminate sentence may be imposed.

Where, as here, a single sentence was imposed, the same may be applied to any count in the indictment which is good. This sentence, then, could be applied to the count in the indictment which charged the crime of incest.

The prisoner would thus be entitled to the benefits of the provisions of the parole law, and the Parole Board may consider his application.

ABRAHAM BREITBARD
Deputy Attorney General

May 3, 1946

To Hon. A. K. Gardner, Commissioner of Agriculture

Your letter of May 1st at hand, concerning your problem which relates to the administration of Section 127-F of Chapter 153, P. L. 1945, and you ask for a ruling from this office.

As you state in your letter, Section 127-F has to do with the appropriation provided for in the act creating the Seed Potato Board, which defines its powers and duties. This was passed by the legislature of 1945 as an emergency measure and became effective April 5, 1945, when signed by the Governor. The legislature in this act appropriated from the unappropriated surplus of the General Fund the sum of $100,000, to be made available to the Seed Potato Board, said appropriation to constitute an annual revolving fund for the use of the Board in carrying out the purposes of the act. There is, however, a proviso at the end of this appropriation section which reads:

> "Provided, however, that from funds arising from the sale of seed potatoes under this program said seed potato board shall cause to be paid into the state treasury annually a sum which shall, in 10 years, equal the amount of said $100,000 appropriation; and in any year when said board cannot, from the sale of said seed potatoes, pay said amount in full, then the state treasury shall be reimbursed as to the balance of said amount by money taken from, but not larger than 10% of, the total tax collected under the provisions of sections 206 to 217, inclusive, of chapter 14, commonly known as the potato tax."

You state in your letter that the Seed Potato Board will have no income arising from the sale of seed potatoes until the fiscal year ending June 30, 1947, and you therefore feel that the sums of money to be paid back under the provisions of Section 127-F would not have to be paid back until the fiscal year beginning July 1, 1946.

In view of this fact, it is my opinion that that would be a reasonable interpretation of the statute; that the legislature did not intend that the Seed Potato Board should pay into the State Treasury $10,000 until the year when the said Board would receive this amount or more from the sale of said seed potatoes. I feel that it would be reasonable to take the fiscal year beginning July 1, 1946, as the basis of making these payments to the State Treasurer.

RALPH W. FARRIS
Attorney General

May 13, 1946

To Fred W. Hollingdale, Commissioner of the Treasury

I have your memo of May 8th, relating to Section 11 of Chapter 15, R. S. 1944, as amended by Chapter 22, P. L. 1945, in which you state that the question arises as to the authority of the Commissioner of the Treasury with respect to State funds deposited under the exception established in said section 11 of said chapter, which reads as follows:

> "The above restriction shall not apply to deposits subject to immediate withdrawal available to meet the payment of any bonded debts or interest or to pay current bills or expenses of the state."

This exception is to the law which permits the treasurer to deposit moneys including trust funds of the State in any of the banking institutions or trust companies or mutual savings banks organized under the laws of Maine, or any national bank located in this State; or when there is money in the treasury which in his judgment is not needed to meet current obligations, he may with the advice and consent of the Governor and Council invest such amount as he deems advisable in bonds, notes, certificates, etc., provided, however, that no sum exceeding an amount equal to 25% of the capital, surplus and undivided profits of any trust company or national bank, or a sum exceeding an amount equal to 25% of the reserve fund and undivided profit account of a mutual savings bank shall be on deposit therein at any one time.

After considering this statute, you state in your memo that the custom of the treasurer's office for the past several years has been to maintain funds under this exception above cited in accounts in Augusta banks, and this has resulted in large local deposits and has caused criticism from banks in other localities; and you feel that the situation should be corrected, if the Commissioner has authority under this statute to maintain these demand deposits in other banks, and you ask the following questions:

"1. Is the general purpose of the law to diversify the depositaries to the end that large deposits will not be centered in any one financial institution?"

My answer to No. 1 is in the affirmative.

"2. As to demand deposit within the above exception, is the choice of a depositary an administrative matter left to the discretion of the Commissioner?"

My answer to No. 2 is in the affirmative. You will note by the wording of the statute that the word "may" is used, and it is a permissive statute and is an administrative matter.

"3. Would it be within the spirit and intent of the law for the Commissioner of the Treasury to maintain such demand accounts in the larger commercial banks in cities other than Augusta where the funds would be available for immediate withdrawal for the purposes mentioned in the statute and from which the Commissioner could transfer periodically balances to an active account or accounts in Augusta?"

My answer to the third question is in the affirmative, for the reason that your question comes within the purview of the exception to the restriction, which does not apply to deposits subject to immediate withdrawal, available to meet the payments of any bonded debts or interest or to pay any current bills or expenses of the State.

The amendment which you mentioned in your memorandum, Chapter 22, P. L. 1945, does not affect the question which you submit. This amendment has to do only with the deposit for safe keeping of obligations of the United States in banks of this or any other State, with the approval of the Governor and Council.

RALPH W. FARRIS
Attorney General

May 15, 1946

To Guy R. Whitten, Deputy Insurance Commissioner
Re: Individuals Operating as Insurance Agents under a Trade Name

In reply to your inquiry of May 14th:

So far as individuals are concerned, the statute only requires the Insurance Commissioner to issue a license to that individual. In the past, as I understand it, it has been the custom to license the individual by describing him by name and then following that up with the statement that he does business under a trade name.

A partnership is licensed in its firm name, which may be a trade name, and the name of each individual member thereof. In the case of a corporation the license is to be issued to the corporation by its corporate name, and the name of each officer or member thereof authorized to transact business therefor under such license; but individuals holding the two former licenses are authorized to transact business "for and in the name of the firm or corporation only."

Your present inquiry is whether three individuals who represent that they are doing business under the same trade name, in the same locality, and not being in partnership under that trade name, may be licensed in their individual names doing business under the same trade name. My answer is in the negative. Such a practice would lead to utter confusion, because if one insured under the agency by the trade name, the Commissioner would have to determine which of the three persons was the one with whom he was doing business. I do not believe that the statute contemplates any such practice. You would thus be justified in refusing to issue a license to them with any more than their own names.

ABRAHAM BREITBARD
Deputy Attorney General

May 17, 1946

To Earle R. Hayes, Secretary, Employees' Retirement Status
Re: Retirement Status, Secretary, Normal School

Your memorandum of April 10th involves the question whether a secretary employed at a State Normal School is eligible to join the Teachers' Retirement System, or whether the State Employees Retirement System is the only one of which she may become a member.

Reference is made by you to an amendment of the law by which certain school secretaries were included within the definition of the term 'teacher' in the Teachers' Retirement Act.

This refers to Chapter 225 of the Laws of 1941, now paragraph I of Section 221 of Chapter 37, R. S. 1944, whereby 'teacher' was defined to mean "Any teacher, principal, supervisor, school nurse, school secretary, or superintendent employed in any day school within the state; . . ."

The Commissioner of Education advises me that the term 'day school' is not applicable to the State Normal Schools, as the latter are 'resident' schools, which distinguishes them from 'day schools.'

I therefore advise you that secretaries employed at the State Normal Schools are not eligible to become members of the Teachers' Retirement System.

ABRAHAM BREITBARD
Deputy Attorney General

May 21, 1946

To Guy R. Whitten, Deputy Insurance Commissioner

In your memo of May 15th you ask to be advised if a foreign corporation, qualified to transact business in this State by compliance with the statutory provisions of the Corporation Law, may be licensed as an insurance broker under Section 251 of Chapter 56. Your doubt arises from the fact that the officer or member who is to be authorized to transact the business on behalf of the corporation is a resident of the State.

The statute provides that ". . . the license issued to such corporation shall give the corporate name, and the name of each officer or member thereof authorized to transact business therefor under such license, and such licenses shall authorize the persons named therein to transact business for and in the name of the firm or corporation only."

It is quite clear from this provision that the corporation is the principal as well as the licensee, and that the member or officer is merely named as the person authorized to act for it "under such license."

You are therefore advised that the corporation may be licensed as a non-resident broker, notwithstanding the fact that the officer or member designated to act for it is a resident of the State.

ABRAHAM BREITBARD
Deputy Attorney General

May 21, 1946

To Richard E. Reed, Commissioner of Sea and Shore Fisheries

. . . Section 57 will be found under Chapter 33 of the Inland Fish and Game Laws in the back part of the Session Laws of 1945, which prohibits the pollution of streams and inland waters by depositing slabs, edgings, sawdust, chips, bark, mill waste, shavings, or other fibrous materials created in the manufacture of lumber or other wood products. I find nothing in the Sea and Shore Fisheries Law which authorizes you as Commissioner to abate this pollution. I have taken the matter up with Mr. Hale of the Sanitary Water Board and he states that the discharge of this waste began before July 21, 1945, and the Board has authority under the present law to handle only new sources of pollution.

The only relief would be for the citizens below the point where the sawdust is dumped to take action to abate a nuisance, which would not come within your jurisdiction.

RALPH W. FARRIS
Attorney General

May 23, 1946

To Harry V. Gilson, Commissioner of Education
Re: Payment to Private School of Elementary School Tuition, etc.

Consideration and study have been given to your inquiry of April 4th, wherein you asked to be advised whether under Sections 142 and 143 of Chapter 37, R. S. 1944, elementary school tuition may legally be paid to a proposed private school, and, if so, whether in addition thereto transportation or board in full or in part may be paid for such pupils. This has relation to pupils residing in an unorganized township.

You are hereby advised that such tuition and transportation or board are allowed only where the pupil is sent to a "public elementary school in the state," who "shall be entitled to all privileges and benefits and be subject to the same rules and regulations as children residing in the municipality to which they are sent." It is very clear from the language here employed that this cannot relate to a private or parochial school.

ABRAHAM BREITBARD
Deputy Attorney General

May 27,1946

To Alfred W. Perkins, Insurance Commissioner
Re: Consolidated Underwriters

In your memorandum of April 24th, which concerns Chapter 56, Sections. 210-217 inclusive, providing for reciprocal contracts of indemnity, you ask for an opinion as to whether:

"1. If an Inter-insurer were admitted to the State of Maine, would it be entitled to write Workmen's Compensation insurance and Employers' Liability insurance since it is not an insurance company within the meaning of the general insurance laws?

2. If it were permitted to write this coverage, would it be conditioned upon their having to file rates for approval based upon manual classifications?"

Upon the assumption that the documents submitted to you by the applicant would entitle it to be admitted to do business in this State, we answer both questions in the affirmative. While it is true that under Section 210, it is provided that the making of contracts of indemnity thereunder "shall not constitute the business of insurance and shall not be subject to the laws of this state relating to insurance, except as provided in this section and the 7 following sections" (the exceptions therein provided are not pertinent here) nevertheless under Chapter 26, which is our Workmen's Compensation Act, provision is there made requiring that insurance companies issuing industrial accident insurance policies covering the payment of compensation and benefits provided for in that Act shall file with the insurance commissioner a copy of "the form of such policies, and no such policy shall be issued until he has approved said form. It (the insurance company) shall also file its classification of

risks and premium rates relating thereto, and any subsequent proposed classification thereof, none of which shall take effect until the insurance commissioner has approved the same as adequate for the risks to which they respectively apply. He may require the filing of specific rates for workmen's compensation insurance including classification of risks, experience, or any other rating information from insurance companies authorized to transact such business in Maine. . ."

Section 2 of the Act defines the words and phrases therein used. Subsection 5 reads: " 'Industrial Accident Insurance Policy' shall mean a policy in such form as the insurance commissioner approves, issued by a stock or mutual casualty insurance company *or association that may now or hereafter be authorized to do business* in this state. . ." Subsection 6 reads: " 'Insurance Company' shall mean any casualty insurance company *or association authorized to do business in this state. . . .*" I think that the word 'association' would be applicable to reciprocal contracts of indemnity, as in the decided cases the subscribers are sometimes referred to as an association or a group of subscribers who associated themselves to insure one another, including themselves, so that each individual subscriber is both the assured and the insurer.

In writing this memo I have confined myself to the questions put in your memorandum, but in addition thereto I think I ought to say to you that I am not quite clear as to the provisions of our statutes relating to reciprocal contracts of indemnity. For example, all the subscribers appoint an attorney in fact, at whose office the policies are written and exchanged. The form of the policies that have been submitted appears to be the contract of the subscribers through the attorney in fact.

Under Section 211 of Chapter 56, suits may be brought in the county where the property insured is situated, and service of the process is to be made on the Commissioner of Insurance, who is designated by the attorney in fact by an instrument in writing executed by him for said subscribers, agreeing that service of process may be made upon the Insurance Commissioner in any action brought on a policy. The last clause of this section, speaking of the instrument, namely the writing appointing the Commissioner of Insurance to receive service of process, provides that it "shall be binding upon all the subscribers."

What I cannot understand is, who the party defendant is in the suit. There is nothing in the policy or in any other instrument that tells the insured who the subscribers are, or where they are located, or what the extent of their liability is. The statute is not quite clear as to whether the liability is joint or several, or joint and several.

I may also add that in the documents submitted, wherein T. H. Mastin & Company, under that name, by written power of attorney, designates the Insurance Commissioner as attorney upon whom process may be served in this State, the company appears to be a partnership, and this instrument and others are made in the partnership name, "T. H. Mastin & Company." It would seem to me that these powers of attorney should

be made by naming the individuals who comprise the partnership doing business under that name. As the papers are now written, we don't know who the partners are, or the persons composing the firm. All that appears in the documents is the firm name, and they are signed in the firm name by a single member.

I also can't understand where Consolidated Underwriters fit into the picture. A power of attorney is also submitted in that name, and signed in its name by the T. H. Mastin Company, as attorneys in fact. This apparently is the place provided by the attorney in fact to exchange policies by the subscribers. There appears to be nothing in any of the documents submitted to show that the subscribers have associated themselves under that name.

I understand that several of these exchanges have been admitted to do business in this State, writing either fire insurance or casualty, but not Workmen's Compensation. I think that more study should be given by the department to this subject. . . .

ABRAHAM BREITBARD
Deputy Attorney General

May 29, 1946

To Harrison C. Greenleaf, Commissioner of Institutional Service

Answering your memo of May 22nd, concerning the group of boys who in March 20, 1946, escaped from the Reformatory for Men and while at large committed various crimes of the grade of a felony and were sentenced in the Superior Court of Cumberland County and the Superior Court of York County therefor, to terms in the State Prison:

All the boys still had substantial parts to serve of their original sentences. You direct my attention to Section 71 of Chapter 23 of the Revision of 1944, where provision is made that if an inmate of the Reformatory escapes, the superintendent may so certify on the original mittimus and recommend his transfer to the State Prison, and upon approval of the Commissioner of Institutional Service, the inmate shall be transferred to the State Prison to serve the remainder of the term for which he might have been held at the Reformatory; and you say that you intend to invoke the provisions of this chapter, so that these boys will first serve the remainder of the original term at the Reformatory before commencing the prison sentence by the Superior Court.

I advise you that this cannot now be done, for two reasons: 1) I think that Section 71 contemplates that the inmate who escaped has been returned to the Reformatory and it is then that the transfer can be made; I am of the opinion that no effective transfer can be made while the inmate is still at large; 2) the sentences in the Superior Court having been imposed and the mittimus issued, and the boys having been received at the State Prison, the sentences commence to run at once and it is not then in your power to postpone the commencement of these sentences, as that power resides in the sentencing judge only, unless a statute makes provision therefor. Section 71 to which you refer makes no such provision.

There is no legal objection, however, to the boys' being returned to serve the remainder of the term of the Reformatory sentence after they have served the State Prison sentences. Thus, when they become eligible for discharge, the Warden may deliver them to the superintendent of the Reformatory, at which time the transfer may be effected.

There is one exception to this and that is the case of Murtaugh Hughes, who was committed to the State School for Boys for larceny and transferred to the Reformatory for Men under Section 85 of Chapter 23, R. S. 1944. As the period of detention in his case, according to the original commitment was during his minority only, and as at the expiration of his prison sentences he will have reached his majority, he cannot be longer detained on the original commitment.

ABRAHAM BREITBARD
Deputy Attorney General

June 3, 1946

To H. H. Harris, Controller

In your memo of March 11, 1946, you ask for a ruling on the questions therein submitted. Your memo is as follows:

"In December of each year it is the duty of this division to pay to the towns and cities their share of the various subsidies for educational purposes. (See Chapter 37, Section 207, as amended by Chapter 47, P. L. 1945.)

Question 1. Can the State withhold payment by check and use this educational subsidy due the town against what the town and city may owe the State on the state tax?

Question 2. Can the State pay the Dog Tax due towns and cities by crediting the amount due them against any accounts receivable due the State by said town? (See Chapter 88, Section 19, as amended by Chapter 47, P. L. 1945.)

Question 3. As above relative to payments of Railroad and Telegraph Tax due towns and cities. (See Chapter 14, Section 121, R. S.)

"As there seems to be considerable confusion relative to the above three questions we are asking for a definite official ruling from your office."

You are advised that it would be proper to set off against the payment due to the town under the above provisions any indebtedness by law created by the town to the State and send the town a draft for the difference, with a statement showing the credits and the debits.

ABRAHAM BREITBARD
Deputy Attorney General

June 3, 1946

To Earle R. Hayes, Secretary, Employees' Retirement System

Your memo received May 21st, stating that you have checked back through various opinions handed down by the Attorney General and that you have found one written by Clement F. Robinson under date of September 25, 1931, addressed to Richard Small, Esq., attorney on Workmen's Compensation Act cases, in which Mr. Robinson holds that employees working on Third Class Highways must be considered State employees in so far as the Workmen's Compensation Act is concerned, even though their salaries may be paid directly by the towns in which they are employed. You state that you gather that Mr. Robinson based his contention on the fact that the towns reimburse the State for part, if not all, of the salaries paid.

In paragraph 2 of your memo you state that in addition to Third Class Highways, you also have State Aid, Special Resolve and Maintenance work, which is often paid for by town checks. Later the payrolls and receipted bills are submitted to the State, and the State pays for the State's share of the work. You have been considering such employees as being in State employ for the purpose of the Employees' Retirement System, and you inquire if your position in this matter is correct.

In reply I will say that your position is correct in this matter as outlined in the ruling from Attorney General Robinson in 1931. While I was in charge of the State Workmen's Compensation cases, we paid compensation to employees of Third Class Highways, State Aid, and Special Resolve work, for the reason that the State supervised the work and reimbursed the towns for the actual receipted bills which they presented to the State, and they were also required to file their payrolls with the State Highway Commission for approval before they could receive reimbursement from the State.

So I should consider the employees on Third Class Highways and Special Resolve work to be State employees for the purposes of the State Employees' Retirement System, if they see fit to contribute.

RALPH W. FARRIS
Attorney General

June 3, 1946

To the Milk Control Board

In reply to your inquiry dated May 16th, which arrived at this office on May 20th: The facts, which involve an interpretation of the Milk Control Law, are as follows:

A dealer whose principal established place of business is in Bristol, which is within the Rockland area, and who sells milk within the Rockland area to consumers for fluid consumption, receives delivery of this milk at Wiscasset from the company dealer located in the Auburn area;

and the question is whether the company dealer should pay for said milk at the producer price prevailing at Wiscasset or the producer price of the Rockland area, which is higher. The company dealer contends that the delivery of the milk is made at the dealer's premises located in Wiscasset. The fact, however, is that the dealer has no premises located in Wiscasset, nor is he a dealer in that area.

I am of the opinion that the computation should be made on the price fixed in the Rockland area, in view of the prohibition contained in subsection 6 of Section 4 of Chapter 28 of the Revised Statutes of 1944, in the 5th paragraph thereof, which forbids a dealer, store, or other person handling milk in such market to buy or offer to buy, sell or offer to sell milk for prices less than the scheduled minimum applicable to the particular transaction in such market. The retail dispenser to whom I have referred in the above as dealer, as aforesaid, handles the milk in the Rockland area, where his business is located. This section thus prohibits him from buying milk at a price less than the scheduled minimum in that market.

I therefore advise you that computations on these transactions are to be based upon the prices established by the Board for the Rockland area.

ABRAHAM BREITBARD
Deputy Attorney General

June 24, 1946

To H. H. Harris, Acting Controller
Re: Executive Council

I have your memo of June 29th requesting me to advise your office as to the rate of compensation which members of the Executive Council are entitled to receive while in session during special legislative sessions, and calling my attention to Section 3 of Chapter 11, R. S. 1944, which provides:

> "Members of the executive council shall receive the same compensation and travel as a representative to the legislature, for services as a councillor during the session of the council commencing in January and closing immediately after the adjournment of the legislature and for services at other sessions of the council each member shall receive $20 for each session and actual expenses, etc."

In answer to your question I call your attention to the fact that the provision for the same compensation as a Representative to the legislature applies only during the session commencing in January and closing immediately after adjournment of the legislature, and does not apply to special sessions of the legislature.

Section 2 of Chapter 9, R. S. 1944, was amended by Chapter 362, P. L. 1945, which provides that each member of the legislature shall be paid $10 for every day's attendance at a special session. This will be found in Section 3 of Chapter 362 aforesaid, but it has no application to Section

3 of Chapter 11, R. S. 1944, so as to relate to the Executive Council. It is my opinion that the Council should receive $20 for each session of the Council during the special session of the legislature.

In the last paragraph of your memo, you state that you are not certain what should be considered as a session of the Executive Council. It is my opinion that each daily meeting of the Executive Council constitutes a session, whether during a special session of the legislature or at any other time.

RALPH W. FARRIS
Attorney General

June 24, 1946

To R. C. Mudge, Finance Commissioner, and
H. H. Harris, Acting Controller
Re: Permanent Funds Held in Trust by the State of Maine

Referring to your memo of May 22, 1946, to which you attached a copy of your proposed reply to the Controller's request for certain answers in connection with the treatment of permanent funds held in trust by the State, and supplementing conference in my office with you and Mr. Robinson on this matter, I am submitting a joint memo of my opinion to you and Mr. Harris.

1) Under Section 14, Chapter 15, as amended, is it compulsory that all of these miscellaneous trusts be lumped for investment?

My answer is in the negative, as I construe the amendment, which is Chapter 87, P. L. 1945, to be permissive and not mandatory.

2) If all of these are lumped, is it mandatory that the interest be prorated?

My answer to the second question is in the affirmative, because if you lump these investments, you come within the provisions of the amendment, and they should be prorated according to the principal amounts of the several trusts involved. This answer is based upon the assumption that all the trust funds are lumped.

3) If you do prorate the interest, should it be prorated on the principal of the trusts less any impounded accounts?

My answer to the third question is in the negative, as the amendment provides that the earnings of the investments shall be prorated, according to the principal amounts of the several trusts; and the amendment further provides that the identity of each separate trust fund shall be maintained. I am of the opinion that you should not take inactive impounded trust funds and rob the interest-bearing trust funds of their income and add it to the inactive, worthless accounts; but that these impounded accounts should be marked off, upon authorization by the legislature.

4) If some of the trusts are lumped and others are separate, should the income received be prorated only on the participating trusts, and the separate trusts receive only the amount which they individually earned?

My answer to this question is in the negative, because in my opinion, if you are going to operate under the provisions of the amendment in Chapter 87, P. L. 1945, you should lump all the trusts and not part of them. It is my opinion that you should not lump any further trust funds until we ascertain what the legislature wants to do in regard to the reserve funds which we have set up already from the profits of sales of securities in trust funds, and also until we see what they want to do about marking off worthless accounts such as those that have been impounded. Before we begin to operate under the provisions of Chapter 87, P. L. 1945, to quote the suggestion of Mr. Mudge, that it is poor business in his opinion to lump only part of the funds, I wish to add that it is my opinion that the statute contemplates lumping all the trust funds for investment or none.

5) A number of sales have been made and a profit was derived from the sale. Is it permissible to set up the profit in a reserve account to be used to offset losses in the impounded trusts?

In answer to question 5, I will say that it is my opinion that the reserve fund set up from the profit on the sale of trust funds should not be used to offset losses on impounded trusts, but that you should await the action of the next regular session of the legislature. As members of the committee on the investment of trust funds, Mr. Mossman, Mr. Robinson and I voted to set up the profit derived from the sale of certain trust securities for the purpose of waiting to see what the legislature wanted to do about marking off worthless trust fund accounts.

6) If we are to allocate the profits on the sale of securities, should it be added to the principal of the trusts or considered as income?

It is the opinion of this office that the profits on sales of securities from the trust funds should be treated as current income. Of course, when we have had legislative action and can start new in handling these trust funds for investment, that income will be prorated to all the trust funds according to the principal amounts of the several trusts.

It is my opinion, which was agreed to by Mr. Robinson and Mr. Mudge, that we should not lump trust investments until we have word from the legislature at its regular session as to what it desires in the way of handling these separate trust funds, and also what their idea would be as to the reserves which we have set up. It is possible that the legislature will not agree that the profits from the sale of securities in these trust funds should be prorated according to the principal amounts of the several trust funds in the pool. At the time of Mr. Mossman's retirement from the office of Finance Commissioner, he had something in mind along this line to present to the next regular session of the legislature.

RALPH W. FARRIS
Attorney General

June 27, 1946

To Earl Hutchinson, Director of Secondary Education

I have heretofore discussed orally with you the question pertaining to the issuance of high school equivalency certificates for those who have not completed a regular high school course, either to veterans or to civilians who failed to graduate from high school but who may possess the qualifications to entitle them to an equivalency certificate, the latter of which they may now find necessary in order to secure a position which requires some academic education. Your inquiry is whether the Department of Education has a legal right to issue a State high school equivalency certificate based on an examination program and whether the Department could collect legally the necessary fees to defray the expenses of purchasing and conducting such examinations.

It seems to this department that where the proposed program would require an expenditure of money for which there is no provision under existing law, legislation should be had on the subject, which would also authorize the department to fix and collect fees from applicants for the certificates.

I believe the plan is a very worthy one and should have the support of the department.

ABRAHAM BREITBARD
Deputy Attorney General

July 1, 1946

To Harry V. Gilson, Commissioner of Education
Re: Election of Superintendent of Union No. 4

This department acknowledges receipt of your memo of July 1 concerning the election of a superintendent of Union No. 4. To this memo were attached various returns, the minutes of various meetings held, and correspondence. This Union is composed of the City of Biddeford and the Towns of Dayton and North Kennebunkport. The superintending school committee of Biddeford is composed of five members, including the mayor who is an ex officio member. Each of the towns has a superintending school committee consisting of three members. The towns appear to be in utter disagreement with Biddeford on the choice of a school superintendent. It appears that the Towns of Dayton and North Kennebunkport requested that a joint meeting be held for the purpose of electing a joint superintendent, which the statute requires be done on or before June 30th; and not having received any response to their request from C. M. Cheney as chairman of Union No. 4, who is a member of the school committee of the City of Biddeford, these two towns then instructed their secretary to call a meeting, notifying all members of the joint committee, for the 25th of June, 1946. After this meeting was called, the chairman of the Biddeford school committee called a meeting for the 26th at Biddeford. The earlier meeting of June 25th was to be held at Dayton town hall in the town of Dayton.

The reports of these meetings indicate the following: At the meeting called by the Towns of Dayton and North Kennebunkport on June 25th, the members of the school committees of these towns, six in all, were present and they thereupon proceeded to elect a chairman pro tem. and to elect a superintendent for the Union and named Robert H. McCarn and thereupon proceeded to apportion the time to be spent in each town and the amount to be paid by the several towns of the joint union.

On the following day, at the meeting called by C. M. Cheney as chairman, only those members of the Biddeford school committee comprising five in number attended, and they thereupon by vote vetoed the acts of the preceding meeting held the day before, by the following resolution, "Without prejudice and without waiving any rights that the action of the rump meeting called by Mr. Peterson and the acts of that meeting be vetoed." They thereupon proceeded to elect a school superintendent, naming Philip R. Woodworth by casting five ballots for him and thereupon apportioned the time to be spent in the various towns and the amount that each was to pay.

With this brief summary, we proceed to answer your inquiry whether there was a choice at these elections of a school superintendent of the union.

First. Is the legality of the meeting called by the secretary of the union, which was based on the alleged refusal of the chairman, Mr. Cheney, to call a meeting, in doubt?

It does not appear from the papers submitted to me, nor from the records in your office, that Mr. Cheney was ever selected as chairman by the joint union. However, the several parties assumed that he was, as they so addressed him, and perhaps he was selected as chairman; but, as I said, I find no record of it in the papers submitted nor in the file in your office. I think that, where the chairman of a joint union unreasonably refuses to call a meeting, the secretary may do so and if a quorum is present, that the action taken at this meeting would be legal. In making this observation, I do not want it to be understood that I am imputing that the chairman unreasonably neglected to call a meeting. Evidently, the members of the school committees representing the towns so concluded and thus took this means of calling a meeting. Irrespective, however, of the correctness of these observations, the statute requires that the election of a school superintendent shall be subject to the approval of the superintending school committee of the town or city having a majority of the teachers of the towns composing the union and paying not less than one-half of the salary of the superintendent. The City of Biddeford having the greater number of teachers and paying at least four-fifths of the salary, the election of a superintendent of the joint union would thus be subject to the approval of the school committee of that city. This they have not given, so that the action of the Towns of Dayton and North Kennebunkport would not effectively elect a school superintendent.

Second. The meeting called by Mr. Cheney was held on the following day and was attended by the five members comprising the school committee of the City of Biddeford. Any action that this committee took, in so far as the attempt to name a superintendent is concerned, would be ineffective, since five would not constitute a quorum for the transaction of business. The committee being composed of eleven members, any legal action to be taken by this committee would require the attendance of at least a majority of the membership, which is a minimum of six.

Third. The future action, therefore, to be taken by you is to notify the various members composing this joint committee that there was no choice of a superintendent as a result of the meetings that were held on June 25th and June 26th, and, no legal election having been had on or before June 30th, that they should proceed to call a meeting to name an agent, unless they shall elect a superintendent or agree on the naming of a person to act as superintendent and upon all the other terms set out in the statute with relation to time and the proportionate part of the salary that each is to pay.

ABRAHAM BREITBARD
Deputy Attorney General

July 2, 1946

To E. L. Newdick, Chief, Division of Plant Industry

Receipt is acknowledged of your letter of June 28th, relating to the Woodman Potato Company, Presque Isle, which company is now in receivership. You say that the company, prior to the appointment of the receiver, was indebted to the department in the sum of $405.50 for inspection work, but that under the statute the company would be entitled to a rebate of $291.47.

This department advises you that this rebate is to be set off against the indebtedness, which would leave a balance due to the State of $114.03. Since the company is in receivership, this balance cannot be collected in full, unless the operation by the receiver is successful to the end that creditors will be paid in full. Otherwise, the distribution to the creditors will be according to their proportionate share.

You also advise that the receiver has made application for inspection for the current year. The provisions of the law which would deprive a person who had had inspection work while he was indebted to the department, would not apply in this case. The operation of the company is now in the hands of the court through a receiver, and hence, upon application by the receiver, inspection may not be refused because of a previous indebtedness of the company.

I would suggest, however, that you inquire from the receiver whether the court has authorized the receiver to apply for inspection, as the receiver can only obligate himself to the extent that the court allows him to do so. If he has such a court order, the department may proceed to render the inspection services and bill the receiver therefor.

You may also ask him to apply to the department for inspection.

ABRAHAM BREITBARD
Deputy Attorney General

July 3, 1946

To Lucius D. Barrows, Chief Engineer, State Highway Commission

I have your communication of June 27th, stating that the Commission has requested you to ask me if there is any law which authorizes the State Highway Commission to construct cattle passes as part of the construction of state and state aid roads.

The provisions of Chapter 20, R. S. 1944, empower the Commission under its general powers and duties to make rules and regulations in regard to construction and maintenance of all state and state aid highways and to direct the expenditure of all moneys for construction and maintenance of all state and state aid highways, which powers and duties in my opinion are broad enough for the Commission to construct cattle passes as a part of the construction of state and state aid roads. Furthermore, I believe it is the duty of the Commission to do this work as a safety measure, and such construction would be approved by the Public Roads Administration as items of costs in federal aid projects. It is a matter for the judgment of the Commission, to be exercised in each particular case. For instance, where a right of way divides land which is being taken under condemnation proceedings or otherwise, it would reduce the amount of damages for the State Highway Commission to construct a cattle pass under the highway so that cattle could pass to and fro from the pasture.

RALPH W. FARRIS
Attorney General

July 3, 1946

To David H. Stevens, State Assessor
Re: Taxation of Savings Banks

I received your memo of July 1st relating to the tax base under the provisions of Sections 142 and 143 of Chapter 14, R. S. 1944, which provide that savings banks deposits, reserve funds, etc., are part of the base of the tax. You state that for the purpose of taxation your department has considered deposits as any moneys held by the bank which could be invested by the bank to create revenue, as distinguished from securities deposited in the bank for safe keeping, which have been considered as trust funds and not subject, to the intent of the law, in taxing deposits. You ask for a ruling as to whether moneys held by some savings banks in connection with FHA loans should be considered as deposits and subject to taxation. You further state that these FHA loans are mortgage loans, and there is no federal money involved. If, however, the loans are made under a prescribed procedure, the federal government guarantees the bank from any loss connected with the same. You further state that no interest is paid on these balances. The bank is, however, in a position to invest a good part of the total of these balances, the same as any other deposits. You further state that these funds are a good deal like Christmas Club and Vacation Club deposits, which are reduced practically to zero once a year and that the Christmas Club and Vacation Club deposits have always been considered subject to the tax.

It is my opinion that these funds, which are held to take care of FHA loans, are not in the strict legal sense deposits, as our courts have held in many instances that the "deposit of money in a savings bank creates a relation of debtor and creditor between the depositor and the bank, and there is no such relation in the FHA loans, which are held practically in trust to be drawn upon by the borrower as he progresses in building his house or improving his property, according to the conditions of the loan. Borrowers are not allowed to draw any funds from the balances of these accounts. The borrower gives a mortgage, and the bank furnishes the money needed to purchase the property. The borrower makes a monthly payment which has been figured out in advance and over a term of years will be sufficient to apply a certain amount to the loan, pay the interest, insurance and the taxes. This fact does not make the proceeds held in trust for FHA loans deposits under the provisions of Section 142, Chapter 14, R. S. 1944.

I note that you mention in your memo that the Banking Department recommends that the banks hold these FHA loans segregated from the regular mortgage loans; and the payments on these FHA loans are considered to be in escrow, which in my opinion is the proper procedure, because these payments made by the borrowers are really trust funds to be drawn upon as aforesaid. For that reason I do not believe that the proceeds of these FHA loans should be considered as deposits for the purpose of taxation. The deposits in a bank are not loans to the bank, and consequently cannot be investments, the term "deposit" having a well accepted meaning in the banking business, and the money deposited is payable upon demand, there being no difference between a deposit in a checking account and one in a savings account. The controlling consideration in determining whether a fund deposited in a bank is a "deposit" or an "investment" is whether a depositor has an absolute right to withdraw the fund on demand, and not whether the fund is not to draw interest or could be invested by the bank to create revenue.

You can readily see that the funds held to be drawn upon by borrowers as they progress in carrying out their terms of the loan are dissimilar to the Christmas Club and Vacation Club deposits, for the reason that there is a relation of debtor and creditor between the depositor and the bank in the latter case and these should rightly be treated as deposits by your department, as a part of the base of the tax on the total of the deposits in any bank.

In using the word "deposits" in Section 142, I do not believe that it was the intent of the legislature that deposits should be considered as any moneys held by the bank, which could be invested by the bank to create revenue, because a bank deposit is different from an ordinary debt or money held in escrow for a particular purpose in this: that, from its very nature, the deposit is constantly subject to the check of the depositor, and is always payable on demand, which is not the case in FHA funds held by savings banks in Maine.

RALPH W. FARRIS
Attorney General

July 8, 1946

To David H. Stevens, State Assessor

I received your memo of June 26th, enclosing a copy of a letter which you had received from the Colonial Beacon Oil Company and also a copy of a ruling from former Attorney General F. U. Burkett, dated October 25, 1939, relating to this subject matter.

After reading the copy of the letter from the Colonial Beacon Oil Company and the copy of the letter from former Attorney General Burkett, and upon examination of the statute and amendments thereto, I agree with Attorney General Burkett's letter that there is no tax exemption statute in regard to this matter.

RALPH W. FARRIS
Attorney General

July 13, 1946

To Wallace C. Philoon, Administrative Assistant, Executive Department

Receipt is acknowledged of your memorandum of July 11, concerning "The National School Lunch Act," and the file attached thereto.

I can see no harm in inquiring from the Secretary of Agriculture whether that department will not undertake to administer the program until an appropriation is made by our legislature to take care of the staff or personnel necessary to administer the fund.

From a reading of the Bill, it would appear that the policy of the Congress was to impose upon the States the costs of the administration of the program. I have confirmed this with the Commissioner of Education, who attended the conference in Washington and who informs me that that was the deliberate intent of Congress. Hence, where the State Educational Agency had no legal authority and the staff to administer the School Luncheon Program, it was provided that the administration thereof may be conducted by such agency as the Governor shall designate.

Under Section 14 of Chapter 12, there is sufficient authority for the acceptance of these Federal funds and the administering thereof with the consent of the Governor and Council, and under this statute I am of the opinion that where the Department has no available funds in its appropriation for the costs of administering thereof, the Governor and Council may provide such funds by transfer from the contingent funds.

In answer to your second question, it is not my understanding that the costs of administering the fund are matched by the Government or vice versa. It would seem that the entire cost of that is imposed on the State. "Nonfood assistance" under Section 11, Subsection 4, "means equipment used on school premises in storing, preparing or serving food for school children." I am informed by the Commissioner of Education that prior to this act, Public Law 396, the distribution was made by the Production and Marketing Administration of the Department of Agriculture to the

schools directly and they were permitted to deduct or to offset the costs in matching the Government contribution by the equipment and the storing, preparing and serving the lunches. I think that the Department of Education should be able to devise some means of apportioning the costs of administering the program to the various towns and municipalities.

ABRAHAM BREITBARD
Deputy Attorney General

July 15, 1946

To Dr. Leverett D. Bristol, Commissioner, Health and Welfare
Re: Basis for Fair Hearing

I have your memo of July 10th, attaching 1) a memorandum from you to Mr. Haines and Miss Smith of your Bureau of Social Welfare and Public Assistance on the subject of the "basis for fair hearing"; 2) a memorandum from Mr. Haines to you on the subject; and 3) application blank for old age assistance and instructions to applicants in that connection; and by reason of Mr. Haines' suggestion in the last paragraph of his memorandum to you, you are referring this matter to me for a possible decision.

Section 262 of Chapter 22, R. S. 1944, provides that "any person who is denied assistance or who is not satisfied with the amount of the assistance allotted to him, or who is aggrieved by a decision of the department made under any provision of sections 256 to 274, inclusive, shall have the right of appeal to the commissioner, who shall provide the appellant with reasonable notice and opportunity for a fair hearing."

It is my opinion that this statute does not cover delay as a reason for appeal for a fair hearing. An applicant's basis for an appeal must be that he was denied assistance, not satisfied with the amount of assistance allotted to him, or aggrieved by a decision of the department. These are grounds for an appeal to the commissioner, and the law provides that the commissioner shall provide the appellant with reasonable notice and an opportunity for a fair hearing. Then the commissioner can designate a member of the department and authorize him to hear the evidence pertinent in the case and render a decision thereon within a reasonable period after the date of the hearing. The question of a "reasonable period" is one to be applied to each individual case.

There is no provision for appeal from the commissioner's finding, that the applicant did not have a fair hearing.

In regard to Section 260 of Chapter 22, R. S. 1944, as amended by Chapter 251 of the Public Laws of 1945, it has no application to Section 262, which gives the right of appeal, and the wording of Section 260, as amended, "Every person residing in this state shall be entitled to assistance in old age," is subject to the qualifications and restrictions contained in Sections 256 to 274, and any words written in on the application which are not provided for in our Maine law are of no effect, and the Social

Security Board has no power to amend our statutes by writing in the words "or delay" where same were not placed there by the legislature.

I would suggest to the applicant that he base his reason for appeal, 1) he was denied assistance; 2) he was not satisfied with the amount of assistance; 3) he is aggrieved by a decision of the department.

RALPH W. FARRIS
Attorney General

July 17, 1946

To H. H. Harris, Acting Controller

I have your memo of July 15, asking whether, under the provisions of Chapter 79, P. & S. Laws 1941, where authority is given to the Treasurer of State under the direction of the Governor and Council to issue bonds not exceeding $2,000,000 to be used for the purposes stated in that chapter, this authority still holds for the year 1945-46. In answer to this I will say that it is the opinion of this office that the said special law was passed in 1941 under the emergency clause for military purposes, and the emergency for which this authority was created has ceased to exist and that the authority does not hold for the year 1945-46.

Your second question is whether or not under Chapter 104, P. & S. Laws 1941, Special Session Laws, 1942, where authority is given to the Treasurer of State with the approval of the Governor and Council to issue bonds up to $1,000,000 to be used for the purposes stated in that chapter, such authority still exists for the year 1945-46. In answer to this second question I will say that it is the opinion of this office that the purposes for which this bond issue was authorized by the legislature have ceased to exist, as it was passed under emergency legislation and the emergency for which it was passed has ceased to exist and some of the bonds, as I understand it, have been issued and the money available under the act was impliedly to be expended in the fiscal years ending June 30, 1942 and June 30, 1943, and any unexpended balance should not lapse but be carried over to the same account to be used only for the purposes set forth in the act. It is my opinion that this authority does not hold for the year 1945-46.

RALPH W. FARRIS
Attorney General

August 5, 1946

To Harry V. Gilson, Commissioner of Education

I have your memo of August 5th, stating that Kezar Falls Village, which includes parts of the towns of Parsonsfield and Porter, is located on the two sides of the Ossipee River and that both towns maintain schools within the village limits. You further state that the school committees of the two towns have formulated a plan for pooling their school building facilities so that each teacher would have pupils of one grade

under her instruction and the pupils would be assigned to the several buildings irrespective of their residence; and you inquire whether this can be done legally without a vote of approval from each town.

Section 84 of Chapter 37, R. S. 1944, provides:

> "Children living remote from any public school in the town in which they reside may be allowed to attend the public schools, other than a high school. . . in an adjoining town, under such regulations and on such terms as the school committees of said towns agree upon, etc. . ."

It is my opinion that Section 84 does not apply to this situation in the towns of Parsonsfield and Porter, because the children in these towns are not living remote from any public school in the towns in which they reside.

There is another provision under Chapter 37 in Section 28 which reads:

> "Adjoining towns, upon the written recommendation of the school committees of said towns, may by concurrent action maintain union schools for the benefit of parts of said towns or may establish such schools, and shall contribute to their support each in proportion, etc. . . Said schools shall be under the management of the school committee of the town in which their schoolhouses are located."

It is my opinion that Section 28 does not apply to this situation in the towns of Parsonsfield and Porter and that the towns involved in this agreement should secure a vote of approval at town meetings ratifying the action of the school committees, on this agreement which they have entered into, attempting to bind the two towns of Parsonsfield and Porter and pooling their school building facilities.

RALPH W. FARRIS
Attorney General

August 14, 1946

To J. Elliott Hale, Technical Secretary, Sanitary Water Board
Re: Chapter 251, P. L. 1933

I have your memo of August 12th, asking whether or not Chapter 251 of the Public Laws of 1933, entitled, "AN ACT Enabling Cities and Towns to Take Advantage of Reconstruction Finance Corporation Loans for Construction of Sewerage Works," is still in effect.

I have examined the new Revision of the Statutes and find that Chapter 251, P. L. 1933, was exempted from the repealing act passed by the legislature at the special session in September, 1944, called for the adoption of the 1944 Revision of the Statutes. Therefore, it is my opinion that this law is still in force and effect, and the cities and towns can use same for the formation of sewerage districts.

RALPH W. FARRIS
Attorney General

September 4, 1946

To Harrison C. Greenleaf, Commissioner of Institutional Service
Re: MSP 7617

Receipt is acknowledged of your memo of September 3rd, advising that the above subject is an inmate of the Maine State Prison, serving a sentence of 4 to 8 years on a charge of breaking, entering and larceny, and another sentence of 1 to 2 years on a charge of escaping from the county jail, both of which were imposed on June 8, 1943, by the same court, without any reference as to whether the same were to run consecutively or concurrently.

In the matter of *Breton, Petitioner*, 93 Maine 39 at page 42, our Court declared the rule to be as follows:

> "All the authorities agree . . . that in the absence of any statute, if it is not stated in either of two sentences imposed at the same time that one of them shall take effect at the expiration of the other, the two periods of time named will run concurrently, and the two punishments be executed simultaneously. Such Mr. Bishop declares to be the rule of the common law. . . and such has been the unquestioned rule of procedure in this state. It is familiar practice that wherever the court imposing several sentences desires to have one begin on the expiration of another, that fact is expressly stated in the sentence; and whenever the court inadvertently fails to have the sentence recorded in that form, or from leniency intentionally omits to add such a provision, and the convict is committed in pursuance of such sentences, he is either voluntarily released by the jailer, or discharged on habeas corpus at the expiration of the longest term named in either of the sentences."

I therefore advise you that under the rule above stated, the sentences imposed on the subject above named would run concurrently and he would be eligible for parole after having served the minimum of the 4 to 8 year sentence.

ABRAHAM BREITBARD
Deputy Attorney General

September 9, 1946

To E. E. Roderick, Deputy Commissioner of Education
Re: Maine Teachers' Pension Law

This department acknowledges receipt of your memo of September 6th requesting to be advised concerning an applicant for a State teacher's pension, who taught 26 years, from 1895 to 1921, in the City of Portland, but thereafterwards taught in another State.

Under our pension law, Section 212 of Chapter 37, not only must a teacher, in order to qualify for a pension, have been employed for the prescribed number of years, but 20 years of such employment, "including the 15 years immediately preceding retirement, shall have been in this state."

It is quite clear from the above quotation that a teacher must have been employed in this State for the 15 years immediately preceding her retirement in order to qualify for the pension. Under the facts in the case which is the subject of your inquiry, the teacher would not be entitled to a pension.

ABRAHAM BREITBARD
Deputy Attorney General

September 12, 1946

To E. E. Roderick, Deputy Commissioner of Education
Re: Section 218-C, Chapter 239, P. L. 1945

This department acknowledges receipt of your memo of the 10th, asking for an interpretation of the above-mentioned section, which reads as follows:

> "Reinstatement. Any teacher in service prior to July 1, 1924, who shall have withdrawn from service in the public schools of the state, shall, on being reemployed therein, be eligible to receive a pension under the provisions of sections 212 to 218, inclusive, upon payment to the state of an amount equal to 5% of the salary he received during his last year of service as a teacher in the public schools of the state for each year he was absent from such service."

I understand that inquiry has been made by teachers who have left the service prior to July 21, 1945, the effective date of the act, whether they would be eligible for the pension benefits upon being re-employed and paying to the State an amount equal to 5% of the salary received by them during their last year of service for the number of years of their absence from the service.

I am of the opinion that the only persons eligible to the benefits under this section are those who were in the employ prior to July 1, 1924, and who have withdrawn from the service subsequent to July 21, 1945, when the act became effective. This is made quite clear when you consider the chapter as a whole. In the first place the pension benefits were increased by amendments to Sections 212, 213 and 214 of Chapter 37 of the Revised Statutes. Next, to provide the funds for this increase and future pensions, several new sections were added including the one under consideration, which required a contribution of 5% of the teacher's salary, but which was not to exceed $60 a year. This was Section 218-A. Section 218-D provided for the return of such contributions to a teacher who has withdrawn or been dismissed from the service before becoming eligible for retirement under the provisions of Sections 212 to 218 inclusive, or, upon her death, to the spouse, if living, or to her legal representatives. The teacher in 218-C "who shall have withdrawn from service" is referable to Section 218-B and relates to a teacher who has made contributions under the act and has withdrawn from the service.

The purpose of Section 218-C was to protect the teacher who was employed prior to July 1, 1924, and who continued in such employment after the effective date of this act and then withdrew before she became eligible to a pension. Upon her re-employment and upon making the contributions during the period she was absent, including the contributions withdrawn, she could then qualify for any of the pensions provided she accumulated the years of service to make her eligible for such pension.

I believe this to be the clear intention of the legislature. To rule otherwise would be to hold that the State was embarking on the annuity insurance business on a premium basis, rather than creating a pension system as a reward for services rendered to the State for the prescribed periods of 25, 30 and 35 years.

I therefore advise you that no teacher is eligible under this section for a pension other than one who was in the service prior to July 1, 1924, and withdrew from the service subsequent to July 21, 1945.

ABRAHAM BREITBARD
Deputy Attorney General

September 26, 1946

To Lucius D. Barrows, Chief Engineer, State Highway Commission

In reply to your memo of September 23rd, this department advises you that the liability of the State for damages in connection with the construction or repair of highways is prescribed by statute and the limits thereof are fixed by Chapter 20, Section 15, which allows the assessment of damages for any injury to the owner of adjoining land, where such damage is caused by the altering, widening, or change of grade, and the procedure for assessing the damages is prescribed.

Evidently, Mr. Berman was under the impression that funds are allocated by the Federal and State Governments to take care of such damage as he describes, namely, the interruption of business, spoilage of food, loss of profit, payment of rent, etc., by the owner of a diner located adjacent to the highway under construction.

These items are not an element of damage under the statute. . .

ABRAHAM BREITBARD
Deputy Attorney General

October 1, 1946

To Laurence C. Upton, Chief, Maine State Police
Re: Maine Turnpike Authority

I have your memo of September 24th, calling my attention to the provisions of Section 11 of Chapter 69, P. & S. L. 1941, relating to the Maine Turnpike Authority. You state in your memo that you understand that at least a part of this toll highway will be open for travel during the next two years, and that you have accordingly made provision in the State

Police budget for what you consider sufficient money to provide men to police this road. However, you feel that there is one question which the budget committee is sure to ask and that is whether or not the Turnpike Authority will be required to reimburse the State for the police services, and you ask my opinion as to whether the expenses for policing the turnpike are to be borne by the State or by the Turnpike Authority.

I quote from the last paragraph of Section 11, subsection (a):

> "The Authority may utilize the services of the state police to enforce the rules and regulations of the Authority with respect to tolls, volume, weight and speed of traffic, and with respect to such other matters of enforcement as it may in its discretion require."

From the language of this statute just quoted, it is not mandatory upon the Authority to utilize the services of the State Police; and in view of the fact that all charges and costs for other services by the State Highway Commission are to be paid by the Authority, I am of the opinion that it was the intent of the legislature that the State Police should be reimbursed by the Turnpike Authority for any services which it may in its discretion require of the State Police.

RALPH W. FARRIS
Attorney General

October 1, 1946

To W. C. Philoon, Administrative Assistant, Executive Department

The creation of municipal corporations and the manner of administering the same, the officers to be chosen to administer the affairs of the corporations, and all the other details necessary to run the affairs of the corporations are the subject of legislative action.

The Governor of the State is not vested with power to set up a system of government for municipal corporations.

ABRAHAM BREITBARD
Deputy Attorney General

October 2, 1946

To the State Highway Commission

Mr. Church left some correspondence here with relation to dead trees on the Rogers Road in the town of Kittery. Evidently the selectmen of that town are of the impression that the duty devolves on the State Highway Commission to remove these trees.

It seems to me, however, that this situation is governed by Section 22 of Chapter 84, which imposes the duty on towns and the abutting owner.

ABRAHAM BREITBARD
Deputy Attorney General

October 3, 1946

To Alfred W. Perkins, Insurance Commissioner

Receipt is acknowledged of your memo of September 26th. The subject of your inquiry is whether the assignee of a fire insurance policy in a mutual company where the insured has given a premium note in accordance with Section 77 of Chapter 56, R. S. 1944, should be required on transfer of the policy to execute his own note in accordance with the above section.

The specimen policy which you have submitted is the statutory form of fire policy and contains on the back thereof an assignment whereby the interest of the insured in the policy, as owner of the property insured, is transferred to the assignee whose name is to be written in the blank space immediately followed by this clause: "who assumes all the obligations of the insured." In the lefthand corner appear the printed words, "Assented to:" but it is not quite clear whether that refers to the insurance company or the assignee, although it would seem that these words refer to the secretary signing on behalf of the company, as there is no line underneath these words for the assignee to sign. Without the written assent of the assignee, any assumption of the obligations of the insured that would arise would have to be implied from his acceptance of the policy.

I feel that a strict compliance with the statute would require that he execute his own note, since Section 77 above referred to provides, "The insured, before receiving his policy, shall deposit his note. . ."

The assent to the transfer to the assignee is a new contract with him. Consequently, the provision of the statute requiring the deposit of the note is applicable to him, as he would be then receiving the policy which is the contract between himself and the company.

ABRAHAM BREITBARD
Deputy Attorney General

October 8, 1946

To George J. Stobie, Commissioner of Inland Fisheries and Game
Re: Gift of Land

Your memo of September 27th received. This relates to an offer by Owen C. Mann, who desires to make a gift to the State of 400 acres of timberland. This, you say, would be desirable land as a game management area, and you refer to the Eighth Biennial Revision of the Fish and Game Laws, Chapter 33, Section 14, which authorizes the Commissioner to accept, by gift or devise for the benefit of the State, land to be used as a game management area.

It is our opinion that if you decide that this land is desirable as a game management area, you would have a right to accept the gift under the section above referred to, although I would suggest that you submit the

matter for approval to the Governor and Council, in view of Section 15 of Chapter 12, which provides that the Governor with the advice and consent of the Council is authorized to accept in the name of the State any and all gifts, grants or conveyances to the State of Maine.

The gift under consideration being to the State of Maine, of course, I think it would be proper to have the approval of the Governor and Council in accordance with this provision.

ABRAHAM BREITBARD
Deputy Attorney General

October 28, 1946

To Hon. Horace Hildreth, Governor of Maine

In regard to the situation relating to the disability of one of your Executive Council, there is nothing that can be done about same.

The Constitution provides that the Council shall be chosen biennially the first Wednesday of January, by joint ballot of the Senators and Representatives in convention; and vacancies which shall afterward happen shall be filled by the Governor with the advice and consent of the Council within thirty days from said vacancy, and he must be from the same district in which the vacancy occurs, and the oath of office shall be administered by the Governor, and the new Councillor shall hold office until the next convening of the legislature.

Inasmuch as there is no vacancy on the Council and there is no provision in the Constitution providing for the taking care of the disability of a Councillor, there is nothing that you can do except await the convening of the next legislature for a new Council.

In case Mr............. should resign, you could exercise your constitutional authority and appoint a Councillor from his district to serve until the next legislature convenes.

RALPH W. FARRIS
Attorney General

October 28, 1946

To David H. Stevens, State Assessor

I have your memo of October 22nd relating to the interpretation of the second sentence of Section 143 of Chapter 14, R. S. 1944, as amended, which reads as follows: "from the average amount of deposits, reserve fund, and undivided profits so returned by each bank there shall in each case be deducted an amount equal to the value so determined of United States obligations, all bonds, notes, and other obligations issued after the 1st day of February, 1909, . . ." etc. You state in said memo that some banks have made FHA loans. It is the practice of the banks to have the borrower give a mortgage and pay a certain fixed amount each month to the bank. These payments are credited to the borrower's escrow account, which account is charged: once a month, the amount to be applied to the loan and the month's interest on the unpaid balance; once a year for the taxes, and once every two or three years for the insurance.

You state that it is the contention of some banks that the total of these escrow accounts and credit balances should not be included as part of the tax base,—in other words, as part of the banks' deposits. This contention is agreed to, as these credit balances are not deposits but moneys held in trust.

You further state that on the six months' return each bank gives a list of its investments, the amount of its cash on hand, the amount of money on deposit within the State, and the amount of money on deposit out of the State.

You also state in your memo that the moneys which make up the total of the credit balances of the escrow accounts is included in the grand total of the above assets, either as cash on hand, cash on deposit, or as part of the investments.

You further state that it is the contention of one bank that the deduction should not be made from the cash on hand or from the cash on deposit within the State, even though under the provisions of Section 143 of Chapter 14, R. S. 1944, the amount of the tax is reduced.

You ask the following question: "Granted that the escrow credit balances should not be included in the taxable base (deposits, reserve funds and undivided profits), should the bank expect to include the total of these escrow balances among the exemptions?"

*Answer.* It is my opinion that the bank should not expect to include the total of these balances among the exemptions, unless they were included in the taxable base. In other words, they should not deduct items from the tax base which were not included in it at the outset.

I do not want to pass upon the law as to the right of the bank to invest these escrow funds which they have on hand as a result of making FHA loans, as that is a matter which, I presume, is regulated by the FHA Act.

RALPH W. FARRIS
Attorney General

October 28, 1946

To David H. Stevens, State Assessor

I have your memo of October 22nd relating to Section 143 of Chapter 14, R. S. 1944, as amended by Section 22 of Chapter 42, P. L. 1945, which provides that investments in such notes and bonds secured by mortgages on real estate in this State as are exempt from taxation in the hands of individuals, and the assessed value of real estate owned by the bank, and also an amount equal to 3/5 of the value so determined of such other assets, loans, and investments as by such statement appear to be loans to persons resident or corporations located and doing business in this state, securities of this state, public or private, bonds issued by corporations located and doing business in this state and guaranteed by such cor-

porations, provided, the corporations issuing such bonds be operated by and physically connected with such guaranteeing corporations, and also an amount equal to 3/5 of the cash on hand and cash deposited within the state. . .

You further state that in checking the franchise tax returns of savings banks it has been found that bonds of certain corporations are guaranteed by a mortgage not only upon real estate, but also upon certain personal items, and you propound the following question: If a bond is guaranteed by a mortgage on real estate, which mortgage includes the personal property, is it to be considered as being in the group for which the bank can claim 100% exemption or 3/5 exemption?

*Answer.* In my opinion, after a careful reading of Section 143 of the statute above quoted, where a bond is secured by a mortgage partly on real estate and partly on personal property, the bank would be entitled to only 3/5 exemption on such bond or security.

I feel that the answer to the first question takes care of your second question, because the statute does not provide for any percentage in the 3/5 exemption class, separating the statute as follows: "Investments in such notes and bonds secured by mortgages on real estate in this state are exempt from taxation, . ." That means 100% exemption and I quote the statute farther as follows, " . . and also an amount equal to 3/5 of the value so determined of such other assets, loans and investments as by such statement appear to be loans to persons resident or corporations located and doing business in this state. . ." It seems to me it is quite apparent upon reading this language, that if the bond owned by the bank is not secured by mortgage on real estate in toto, it comes within the 3/5 exemption instead of the 100% exemption.

RALPH W. FARRIS
Attorney General

October 30, 1946

To Harry V. Gilson, Commissioner of Education

I received your memo of October 25th yesterday, inquiring in regard to the provisions of Section 96 of Chapter 37, R. S. 1944, as amended by Chapter 216, P. L. 1945, relating to the trustees of Thornton Academy and the superintending school committee of the City of Saco forming a joint committee for administering certain phases of the academy's educational program.

You call my attention to an act, which is Chapter 500, P. & S. L. 1885, which authorized the City of Saco and the trustees of the Academy to contract for the tuition of scholars, and you inquire whether or not this special law takes the place of the provisions of Section 96, Chapter 37, R. S., so that the conditions of that section do not hold in this particular case.

In reply to your question: When the Private and Special Act of 1885 was enacted, it referred to Sections 28 to 33 of Chapter 11 of the Revised Statutes of 1883, which related to free high schools of the day. The statute has been revised many times since the 1883 Revision, and the provisions of Sections 28-33 inclusive of Chapter 11 have been materially amended by various later acts; and the provisions of Section 96 of Chapter 37, as amended by the Public Laws of 1945, refer specifically to statutes contemplated by Section 89 of Chapter 37, R. S., which classifies free high schools, academies, and seminaries.

It is my opinion that the provisions of Section 96 of said Chapter 37 and the provisions of Section 89 of Chapter 37, relating to this subject, and the amendment in Chapter 216, P. L. 1945, impliedly repealed Chapter 500, P. &. S. L. 1885, and that a joint committee can be formed, and when the amount to be paid under the contract shall equal or exceed the income of the Academy for the preceding year, exclusive of sums paid such academy by the contracting town, it is mandatory that a joint committee be formed. The action of the legislature in Chapter 321, P. L. 1945, would further indicate that it was the intention of the legislature that the provisions of any special act would be superseded by the public laws which are brought up to date in the new Revision and the amendments of 1945.

RALPH W. FARRIS
Attorney General

October 30, 1946

To Guy R. Whitten, Deputy Insurance Commissioner

Referring to your memo of October 21st and considering proposed legislation in the coming legislature, you say that the Insurance Commissioner is giving attention to certain phases of the tax law and you call my attention to the action of the 1945 legislature in taking all discriminatory tax laws from our statutes, thereby putting our house in order according to a late decision of the U. S. Supreme Court, so that there would be no protest payments of taxes and no costly litigation. You enclosed a copy of an opinion from the U. S. Supreme Court involving the case of the *Prudential Insurance Company vs. Benjamin*, as Insurance Commissioner of the State of South Carolina. I have already received this decision in my Advance Sheets of the U. S. Supreme Court Reporter, and I am not in a position to say that it decides anything definitely upon the subject to which you refer.

For this reason it is my opinion that the Insurance Department of this State should not change its laws every time the U. S. Supreme Court hands down a decision on insurance matters.

You state that you would include in your proposed legislation at the coming legislature an amendment which would put our tax laws back on the same basis as they were at the time of the last legislative enactment. In other words, you propose a tax of 2% on the gross direct premiums of foreign companies and 1% on the domestic companies.

If you will recall, considerable pressure was brought to bear on my office by you as Acting Commissioner and I assigned an Assistant to your office to assist and advise you in preparing a bill that would eliminate all discriminatory features in our insurance tax laws, because many foreign companies had advised you that they would not pay their taxes in 1945 and would raise the question of discriminatory law, basing their action on the U. S. Supreme Court decision in the Southeastern Underwriters case. You and the members of your department are fully aware of the resolutions passed by Congress, giving the several States an opportunity to put their houses in order, before passing any federal legislation relating to the taxing of insurance companies by the several States. In view of the fact that we have conflicting opinions from the U. S. Supreme Court touching on this subject matter and going all around the subject matter wherever possible, and that some of them are contained in dissenting opinions of non-concurrence of Justices, it is my advice to you to leave the tax laws on insurance companies alone at this session of the legislature and see what Congress or the U. S. Supreme Court does next. We had no trouble collecting our taxes and we avoided litigation; and if you go tinkering with the statute again, you will open up many avenues of litigation which I can see ahead, in view of the unsettled condition of the question whether or not the insurance business in the several States comes within the Interstate Commerce clause of the United States Constitution.

RALPH W. FARRIS
Attorney General

October 31, 1946

To E. E. Roderick, Deputy Commissioner of Education

In your memo of October 17, 1946, you inquire whether a teacher's pension would be affected if she, at the insistence of the Director of Education for Handicapped Children, agreed to teach part time, a total of 10 hours per week. I understand that this type of work requires individual instruction in the home of the pupil where the teacher calls. The pay is by the hour and rather small. Such employment would not be very attractive, except perhaps to retired teachers.

The statute provides that ". . The payment of any pension shall be suspended whenever the person to whom said pension has been granted resumes teaching in any private or public school. . ." Section 216 of Chapter 37, R. S. 1944.

I think that resumption of teaching as it is here used refers to full time instruction in the usual and customary manner as the teacher engaged in before retiring. The evident purpose was not to pay a teacher a pension and at the same time a full salary for teaching, thus suspension of the pension was provided for during such period of employment. It would not in my opinion apply to the facts here under consideration.

I therefore advise you that pensioned teachers may be employed for this type of instruction, without impairing their pension payments.

ABRAHAM BREITBARD
Deputy Attorney General

November 5, 1946

To W. C. Philoon, Administrative Assistant, Executive Department

I have examined the various quitclaim deeds drafted by the Highway Commission for the Governor and Council to sign, conveying certain land heretofore acquired by the Commission for highway purposes.

The statute, Section 13 of Chapter 20, provides:

> "The governor and council on recommendation of the commission may sell and convey on behalf of the state the interests of the state in property taken or acquired by purchase under this section and deemed no longer necessary for the purposes hereof. . ."

While a council order does not seem strictly essential, since the deeds are signed by the Governor and all the members of the Council or a majority thereof, nevertheless before they act, they should have a recommendation signed by either the Commission or the chairman thereof, that they deem the land no longer necessary for highway purposes and thus recommend its sale.

ABRAHAM BREITBARD
Deputy Attorney General

November 6, 1946

To H. V. Gilson, Commissioner of Education
Re. Fees Charged for Attending State-subsidized Evening Schools;
Sections 32, 35, and 166, Chapter 37, R. S. 1944.

I have your memo of October 31st, asking the following questions:

"Is it permissible for towns or cities which maintain evening schools through local taxation, and which towns are reimbursed from state funds, legally to require the payment of tuition or registration fees for attendance therein by citizens of the community?"

My answer to that question is in the negative, as Section 32 provides for the admission of persons over 16 years of age to evening schools under the direction and supervision of the superintending school committee.

Your next question is the same except "By citizens of other communities?"

My answer to that question is in the affirmative, to make a reasonable charge to citizens from other communities.

Your next question is: "If in your opinion such charges by the town are legal, is there any limitation on the extent or size of fee which a town may charge?"

*Answer.* This is a matter for the superintending school committee and the Commissioner of Education to work out. I do not feel that the town should realize any financial profit from these tuition and registration fees charged.

The next question is as follows: "In respect to evening schools, can a superintending school committee, after a vote of the town to raise funds for this purpose, contract with an academy located within the town to furnish said evening school education?"

*Answer.* With the permission of the Commissioner of Education, under the provisions of Section 166 this can be done, and it would be construed to be under the direction and supervision of the superintending school committee, if it meets with the approval of the Commissioner of Education in regard to the qualifications of instructors, length of term, class attendance, and subjects offered.

Your next question is: "If such contracting is possible, may the state reimburse the town for 2/3 of the cost of instruction?"

My answer to this question is in the affirmative. I do not believe it would be good policy for the academy to make a profit on the evening students.

In regard to Section 35, there is an error in the Revision of the Statutes, 1944, in that it refers to Sections 32-34, inclusive. It should refer only to Section 34, which has to do with manual training. My reason for saying this is that upon examination of Chapter 11, P. L. 1935, which amended Section 25 of Chapter 18, R. S. 1930, and Section 167 of said chapter, which took care of this situation, and there is no amendment of legislature that includes the provisions of Section 32, R. S. 1944, as to limiting the age to 21 years.

Upon checking the notes in the Revisor's office, I find that Section 32 was included in Section 35, which has to do with evening schools and should not properly be in said Section 35; but the same was adopted by the legislature in September, 1944. It should be eliminated at the next session of the legislature.

RALPH W. FARRIS
Attorney General

November 13, 1946

To E. E. Roderick, Deputy Commissioner of Education

In your memo of November 12th to this department, you wish to be advised to whom payment should be made of contributions on decease of a member of the Teachers' Retirement System, before he became eligible to retirement, and who had withdrawn from service shortly prior to his death. In his application he designated his mother as "beneficiary" to receive these contributions in the event of his death. Upon his decease it appears he left a wife surviving.

Section 233 of Chapter 37, so far as here pertinent, is as follows:

> "I. Any member of the retirement association withdrawing from service in the public schools of the state, by resignation or dismissal, before becoming eligible to retirement under the provisions of sections

221 to 241, inclusive, shall be entitled to receive from the annuity fund all amounts contributed thereto as assessments together with such interest as has accrued thereon.

"II. In case of the death of such member under the circumstances above set forth, the several amounts to which he would be entitled, if living, shall be paid to a surviving husband or wife, or to the legal representatives of such deceased member, as may be elected, subject to the rules and regulations of the retirement board."

It is quite plain that neither of these persons is entitled to this fund, but the same is to be paid to his executor or administrator. While the member may elect to whom payment shall be made in the event of his death, such election is however limited to "a surviving husband or wife, or to the legal representatives of such deceased member. . ."

Under our statutes no testamentary disposition of property can be made except by a will duly executed in accordance with statutory formalities. An exception has been made by the statute above quoted, which allows the refund of contributions with interest to be paid to a surviving spouse at his election. The designation of the mother in his application would not comply with this act.

I therefore advise you that payment is to be made only to his administrator or executor, duly appointed by the Probate Court.

ABRAHAM BREITBARD
Deputy Attorney General

November 14, 1946

To Employees' Retirement Board

I have given considerable thought to the subject concerning the right of employees of a participating local district to retire and receive the benefits provided for in the second paragraph of Subsection 3 of Section 3 of Chapter 60, R. S. 1944, as amended by Chapter 291, P. L. 1945.

I have heretofore expressed my doubts as to the applicability of this section to employees of a participating local district, but I did not so rule in view of the representations by the secretary of the Board that by the amendment in 1945 it was his understanding that all employees were to be included, although no specific mention was made of employees of a participating local district at the time the amendment was under consideration by the legislature. But after careful study I am of the opinion that the provisions of this subsection apply only to a particular group of State employees, who can qualify thereunder. All others receive the benefits under Section 5 and these are the only benefits that employees of a participating local district may participate in. This is very clear from a study of the history of the legislation relative to the group who were to be protected by this provision.

Prior to the enactment of the "Jointly Contributory Retirement System" in 1941, pensions were provided for State employees by P. L. 1933, Chapter 1, Sections 227-233. Employees in the service 25 years or more, or those who have attained the age of 70 years after 20 years of service, upon recommendation of a department head or a superintendent of an institution, might be retired and the Governor and Council were authorized to fix the pension in an amount not to exceed 1/2 of the average wage or salary the employee was receiving for the 5 years previous to his retirement.

By P. L. 1941, Chapter 328, Sections 227-233 of Chapter 1 of the Public Laws of 1933 were repealed and in place thereof twenty new sections to be numbered 227-A to 227-T, inclusive, were substituted for them and are the "Jointly Contributory Retirement System for State Employees," above referred to. In Section 227-C thereof, subsection 3, provision, however, was made to preserve the benefits to those employees who were eligible or had acquired certain privileges thereunder, by the following:

> "Notwithstanding the repeal of sections 227 to 233, inclusive, of chapter 1 of the public laws of 1933, any employee who is eligible for a pension under the provisions of such sections on the effective date of this act, or who would have become so eligible on or before July 1, 1945, shall under the terms of this act, retain the same rights and benefits as were granted to him under such sections, excepting that any employee who has attained age 70 shall be retired forthwith, or upon the attainment of such age. . ."

It is to be noted that included were those who would have become eligible to the benefits on or before July 1, 1945; thus these rights were preserved to those only who might be eligible on the effective date of the act, which was July 1, 1942, or those who became eligible on or before July 1, 1945.

I am informed that certain State employees, particularly those who would be cut off from these benefits by lack of a year's service or less were responsible for the amendment to this section in 1943, by Chapter 329, Section 1, and thus the section above referred to was repealed, and in place thereof was enacted what is now Subsection 3 of Section 3 of Chapter 60, the first paragraph of which related to employees who became members prior to July 1, 1943, and who had total prior service credit of at least 13 years, and the second paragraph made provision for those who became members prior to July 1, 1943, and who had a total prior credit of at least 22 years and were entitled to a total retirement allowance of 1/2 their average final compensation, provided they were still members and had creditable service of at least 25 years on retirement. The amendment to this paragraph, it is to be noted, extended the period to be eligible under this section another year. In other words, where the prior act provided for eligibility to retirement in order to receive these benefits, on or prior to July 1, 1945, this amendment extended the time to July 1, 1946.

I am therefore of the opinion that the benefits under Subsection 3 apply to State employees only and are not applicable to employees of a participating local district.

While under Section 15 of Chapter 60, employees of a participating local district have the same benefits as State employees for which contributions are made and accrued liability is paid by the participating district for prior service credit, such benefits are those provided by Section 5 of said act, which are the retirement benefits to all State employees except those for whom specific provision was made under Subsection 3 of Section 3.

Since I have ruled that these provisions are applicable to a specific group of State employees, it becomes unnecessary to consider the effect of the amendment thereto by P. L. 1945, Chapter 291. However, in order that there be no misunderstanding about this amendment, I desire to point out that it applies only to State employees who elected not to become members of the System by filing a waiver under Subsection 2 of Section 3, and who prior to this amendment had one year after the establishment of the system, or, to be specific, until July 1, 1943, in which to join, notwithstanding the waiver, in order to receive prior service credit. The amendment extended that time to 4 years and correspondingly changed paragraph 2 of Subsection 3, allowing, in that case, that back contributions be paid for the period to July 1, 1946.

There is no similar provision as to waiver with regard to employees of a participating local district. Membership of existing employees is optional, except that in order to receive prior service credit, they must elect to join within 1 year after the local district becomes a participant in this system (Subsection 2, Section 15).

However, as to those who become employees after the local district joins, membership is compulsory.

It was otherwise with State employees. Membership was compulsory as to those who were employed at the time the act took effect, unless within 30 days thereafter they elected, in writing, to waive all present and prospective benefits (Subsection 2 of Section 3).

ABRAHAM BREITBARD
Deputy Attorney General

November 14, 1946

To Minnie E. Hanley, Factory Inspector

In your memo of November 5th you ask to be advised whether: "Under the Maine law can the Superintendent of Schools at Kittery issue a work permit to a minor under 15 to be employed in a Bowling Alley in Portsmouth, New Hampshire, after school hours?"

The child in the case under consideration, you inform me, is 14 years of age.

Section 17 of Chapter 25, as amended by P. L. 1945, Chapters 277-1 and 309, prohibits employment of a child under 15 years of age in a bowling alley; and except as provided in the following section no child between the ages of 15 and 16 years shall be so employed during school hours without a permit from the school superintendent of the city or town in which the child resides.

As to a child under 15 the prohibition is absolute and such employment is prohibited during and after school hours. The superintendent thus was without authority to issue a permit at all.

I desire, however, to call to your attention the fact that our laws have no extraterritorial force. The child's employment in New Hampshire, and whether the law was violated, would depend on the laws of that State. Our statute is directed against employers within the State and penalizes only them. The superintendent of schools, however, in any case could not issue a permit to a minor authorizing his employment outside the State.

ABRAHAM BREITBARD
Deputy Attorney General

November 14, 1946

To Paul A. MacDonald, Deputy Secretary of State

Your inquiry concerns .................. who on January 24, 1945, was convicted of driving under the influence of intoxicating liquor and sentenced to pay a fine of $100 and costs and was thereupon committed in default of payment, according to the record forwarded to you by the Judge of the Houlton Municipal Court. His license to operate was thereupon revoked, in accordance with the mandatory provision of the statute.

On September 11, 1945, while the revocation was still in force, he was arraigned in the Bangor Municipal Court, charged with operating while under the influence of intoxicating liquor. To this charge he pleaded guilty and he was thereupon sentenced to pay a fine of $200 and costs and in addition to serve three months in the county jail. The jail sentence was probated on condition that he pay the fine and costs. He appealed to the Superior Court. At the September Term, 1946, the case was filed. The record does not show that the plea of guilty in the court below was withdrawn, by leave of the presiding justice in the appellate court.

The question is whether on the record the respondent stands convicted as a second offender, so that his right to operate a motor vehicle should be revoked for a period of 5 years.

Our court has not had occasion to pass on the question whether after a plea of guilty in a municipal court and appeal, the respondent may without leave withdraw a guilty plea and plead not guilty and have a jury trial on the respondent's guilt or innocence. The precise question

has, however, been passed on in Massachusetts. In *Commonwealth vs. Mahoney*, 115 Mass, 151-152, the court said per Gray, C. J.:

> "A defendant in a criminal case, who has once pleaded to the charge against him, has no right to withdraw his plea, but is confined to the issues of law or fact thereby raised or left open, unless the court in which the case is pending sees fit to exercise the discretion of allowing him to withdraw it and plead anew. If he appeals from a judgment against him in the court in which his plea is first made, the appeal indeed vacates the judgment, but it does not multiply his grounds of defence or enlarge the issue once joined between the Commonwealth and himself. The same defences are open to him in the appellate court as in the court below, and no other. *Commonwealth v. Blake*, 12 Allen, 188. If he pleads guilty upon his first arraignment, and his plea is received by the court and recorded, it is an admission of all facts well charged in the indictment or complaint, and a waiver of his right of trial by jury thereon, and, unless withdrawn by special leave of court, or a motion is interposed in arrest of judgment for legal defects apparent on the record, leaves nothing to be done but to pass sentence."

Under our statutes relating to appeals from the municipal court, it seems that an appeal may be taken from the sentence and this would justify my holding that the above ruling is applicable here.

Section 21 of Chapter 133 provides:

> "Any person aggrieved at the decision or sentence of such magistrate may, within 5 days after such decision or sentence is imposed . . . appeal therefrom."

In *State v. Corkrey*, 64 Maine 521-523, our Court said:

> "The record of the municipal court in this case shows that the respondent filed a plea of misnomer, and that the decision was against her upon that plea; and that, thereupon, judgment was rendered against her. By thus electing to go to trial solely upon the plea of misnomer in the municipal court, the respondent waived her right to plead anew in the appellate court and go to trial on the merits."

The appeal therefore after a plea of guilty in the court below was from the sentence only, unless the presiding justice in the appellate court allowed a withdrawal of the plea and permitted the respondent to plead anew.

On the record as it now appears, the respondent stands convicted on his plea of guilty in the municipal court with the case on file in the appellate court.

Under the provisions of Sections 121 and 122 of Chapter 19 providing for the revocation of licenses or the right to operate after a conviction, the last sentence of Section 122 is as follows:

> "For the purposes of this section and of section 121, a person shall be deemed to have been convicted if he pleaded guilty or nolo con-

tendere or was adjudged or found guilty by a court of competent jurisdiction, whether or not he was placed on probation without sentence or under a suspended sentence or the case was placed on file or on special docket."

The respondent's right to operate is therefore subject to revocation on this record, as upon a second conviction, and I so advise you.

ABRAHAM BREITBARD
Deputy Attorney General

November 18, 1946

To Guy R. Whitten, Deputy Commissioner, Insurance

In your memo of November 14th you wish to be advised about the computation of the 45-day period during which fire insurance companies are prohibited from paying a loss. Your question is as follows:

"Will you kindly advise me if a policyholder executed a complete and properly notarized statement of loss, that this document is sufficient to mark the beginning of the 45-day statutory waiting period (Section 103, Chapter 56, R. S. 1944) even though a loss was subsequently adjusted at a figure materially different from that set up in the original statement either by compromise or by award of referees and if the situation is changed if in confirmation of the final adjustment a corrected proof of loss is accepted from the assured."

So much of the statute as is pertinent reads (Section 103 of Chapter 56, R. S. 1944):

"In case of physical loss by fire to property insured by any company transacting insurance business in this state, said company or its representative shall begin adjustment of such loss within 20 days after the receipt of the notice provided for by section 97; but no fire insurance company shall pay any loss or damage until after the expiration of 45 days from the date when the statement of loss referred to in said section 97 is filed with the company; . . ."

The statement of loss referred to in this provision is the sworn detailed statement in writing which the insured is required to furnish within a reasonable time after the loss, in accordance with the statutory fire insurance policy, the standard provisions of which are contained in Section 97. When this is filed with the companies, the 45-day period begins to run and payment may be made after such period has expired, notwithstanding the fact that subsequent to such filing, adjustments were made by which the amount of the loss was arrived at by compromise or award of referees and amended proofs filed, if such is required, by the insurance carriers.

The statutory period runs from the first filing and not from any subsequent filing by way of amendment.

I may add that I do not find anything in the standard policy or in the statutes which does more than require the insured to file the written statement under oath above referred to. There would therefore be no obligation to file another statement on either an adjustment of the loss or the award by referees, although this is presumably done in the case of an adjustment.

ABRAHAM BREITBARD
Deputy Attorney General

November 20, 1946

To E. E. Roderick, Deputy Commissioner of Education

I have your memo of November 14th concerning a teacher who had served 29 and 13/18ths years and retired on a pension, which service lacked 45 days of teaching to entitle her to a 30-year pension. You advise me that she afterward made up these 45 days by substituting a day or two at a time upon the "urgent request" of the superintendent of schools. You state that while rendering this substitute service, she was at the same time receiving the pension.

I do not think that that would in and of itself preclude her from having these extra days of service tacked on to her previous service. The question is not free from doubt, but I think that in all fairness this doubt should be resolved in her favor, and thus I advise you that you could properly allow her a pension based on 30 full years of service credit.

ABRAHAM BREITBARD
Deputy Attorney General

November 27, 1946

To Homer E. Robinson, Bank Commissioner
Re: Federal Employees' Credit Union—Examination Fee

The question has been raised whether the above named credit union is subject to the payment of the examination fee to be paid to the bank commissioner under the provisions of Section 3 of Chapter 273 of the Public Laws of 1945, which enacted a new Chapter 51 for the same Chapter in the Revision of 1944, which is repealed by this new amendment

The Federal Employees' Credit Union was organized in 1931 under a Private and Special Law and is Chapter 11. In Section 8 of that act the corporation is subject to examination, supervision and control by the bank commissioner, and the provisions of Sections 47 to 55 inclusive of Chapter 57 of the Revised Statutes of 1930 are made applicable to this corporation. These sections are found in the chapter dealing with the management of savings banks and the annual examinations by the bank commissioner of their books and records. We thus have here a provision for supervision and examination by the bank commissioner; and the performance of that duty is in accordance with the sections of the savings bank law. It is unlike the provisions contained in the enactment of the

new Chapter 51 aforesaid, which authorizes the organization of credit unions under the general law, thus dispensing with the necessity of having the same created by private and special laws. This new enactment, by Section 30, provides:

> "No part of this chapter shall be construed as repealing, modifying, or amending the provisions of any private and special acts authorizing the organization and defining the purposes of corporations of similar nature."

This limitation placed by the legislature upon the provisions of this new act would make the same inapplicable to this Employees' Credit Union. Any attempt to charge them with an examination fee under this new enactment could result only from a declaration that the provisions of Section 3 are incorporated in the special act creating the Federal Employees' Credit Union. This is contrary to Section 30 and the limitation thereon by the legislature, which by its express terms provides that no part thereof shall be so construed. Furthermore, Section 3 of Chapter 273 is in direct conflict with Section 8 of the special act creating the Federal Employees' Credit Union.

I therefore advise you that they are not subject to Section 3 aforesaid.

ABRAHAM BREITBARD
Deputy Attorney General

December 4, 1946

To A. W. Perkins, Insurance Commissioner
Re: Company Examinations

I have considered your memorandum of November 27th and I am thoroughly in accord with the view expressed by you that payment to outside firms employed to make the biennial examination of domestic insurance companies, under Section 9 of Chapter 56, should be made by the Insurance Department, direct.

You inform me that in the past the insurance company paid the examining firm employed by the State, and the amount so paid was then refunded to the company. I agree with you that the proper practice would be to have the insurance department billed directly by the examining firm and payment thereof made to it by the State Treasurer.

As to your inquiry whether a council order is necessary to make such payment, I have taken this question up with the Bureau of Accounts and Control, and they feel that, where in the past such has been the practice, it would be better to continue such procedure.

It is not quite clear from the statute (Chapter 118, P. L. 1945, Section 6) whether the Controller would be authorized to draw the warrant without specific direction from the Governor and Council. This statute, so far as here pertinent, provides that all the fees collected by the commissioner

> "... shall be used solely to defray administrative charges and salaries and examination required by law and for examining and auditing filed annual statements. . ."

While this text provides that the fees payable to the commissioner of insurance shall be devoted to that purpose, payment for the services of an independent firm is not a salary paid by the department, nor, strictly speaking, an administrative charge such as the Controller can recognize as his authority for issuing the warrant. The reason, you inform me, that the State employs an outside firm is that the department does not employ examiners to make these examinations, and while you are undoubtedly justified in the practice, because the annual cost is less to the State than if the department employed a permanent staff of examiners on the payroll of the State, such practice, although it has great merit, would not, the Controller feels, justify him in issuing the warrant for a substantial sum of money.

Under the circumstances I would advise you to continue obtaining council orders authorizing the payment of bills incurred for these examinations.

ABRAHAM BREITBARD
Deputy Attorney General

December 11, 1946

To R. C. Mudge, Finance Commissioner, and
H. H. Harris, Controller

Agreeably to my conversation with you in my office this morning relating to the council order for $175,000 to complete the construction of two fish hatcheries for which bids were accepted by the Governor and Council on behalf of the Inland Fisheries and Game Commissioner, it is my opinion that under the provisions of Section 63, Subsection V of Chapter 33 of the Revised Statutes as revised July 21, 1945, which reads as follows:

> "V. The funds collected by agents and the commissioner shall constitute a fund to be expended under the direction of the commission for the propagation and protection of wild birds, fish and animals. The fund shall not lapse from year to year but any funds collected in any one year may be used for that year and any succeeding year for said purpose."

broad powers are delegated to the commissioner to expend money from this fund for the propagation of fish, and these hatcheries are being built for that purpose. It is my opinion that the Commissioner of Inland Fisheries and Game is well within his legal rights in his request to the Governor and Council to provide funds for the completion of the two fish hatcheries which are now under construction on two contracts accepted by the State under the provisions of a Resolve passed at a special session of the legislature September, 1944, which said Resolve provided $200,000 for this purpose, and said $200,000, according to your statement, has been

expended in part performance of these two contracts aforesaid. The remainder of the contracts remains to be done, and the State has obligated itself through the commissioner and the Governor and Council to carry out the terms of this contract.

RALPH W. FARRIS
Attorney General

December 12, 1946

To Maine State Boxing Commission

This department acknowledges receipt of your letter of December 12th in which you ask the following question:

"Is it necessary for a boxing promoter to obtain a permit from the local city or town government where he intends to promote boxing exhibitions for the public, in addition to his license as granted for that locality by this Commission? In this particular instance, the location in question is the City of Rockland."

On October 23rd this department, upon inquiry from the city solicitor of another municipality involving this same question, ruled as follows:

> "It is my opinion that Section 7 of Chapter 78, R. S. 1944, which was enacted in Chapter 282, Section 8 of the Public Laws of 1939 and which gave the Boxing Commission sole direction, control and jurisdiction over all boxing contests and empowered it to promulgate rules and regulations necessary therefor, impliedly repealed whatever authority the City of .............. may have had prior to 1939. . ."

ABRAHAM BREITBARD
Deputy Attorney General

December 12, 1946

To Hon. Horace Hildreth, Governor of Maine
Re: Resignation of a Member of the House of Representatives

With relation to the communication addressed to Your Excellency under date of December 6th and received by you on December 9th from James R. Pratt, Representative-elect of the class district of Harrison, Otisfield and Windham, stating that he declines the office and also tenders his resignation as a member of the 92nd Legislature:

Since his term in the 92nd Legislature expires on December 31st, it is unnecessary to take any action on that.

As to his membership in the 93rd Legislature, I think he may resign his seat, thereby creating a vacancy. As framed, the letter merely expresses a desire to resign, but I think we may well treat it as a resignation of the seat in the Legislature to be assembled on January 1st.

In addition to tendering his resignation to the Governor, he should also tender it to the selectmen of the Town of Windham, as that is the oldest town in this representative district and its municipal officers fix the date of the election and notify the selectmen of the other towns in that district.

Under the statute, Chapter 5, Section 74, the selectmen of the oldest town of the representative class, when notified that the seat has been vacated, appoint a day for a special election and then notify the selectmen of the other towns accordingly.

Under Chapter 4, Section 47, when a special election is to be held to fill an office that has been vacated, a primary election may be ordered by the Governor; or, if the time for that purpose is insufficient, the nominations may be supplied as in Section 48 of this chapter.

Section 45 provides that vacancies may be filled by a convention of delegates or appropriate caucuses; or, if the time is insufficient, by the regularly elected State, Congressional District, county, city, town, plantation or representative class committee, as the case may be.

It would thus appear that the calling of a special primary election by the Governor may be dispensed with and nominations for the office made in the manner set forth in the preceding paragraph. The Secretary of State will assist in the procedure to be adopted if they desire instruction as to the manner of nominating a new representative, fixing the date of the election, etc. The ballots will also be prepared by the Secretary of State when he is notified of the nominations.

ABRAHAM BREITBARD
Deputy Attorney General

December 16, 1946

To J. Elliott Hale, Technical Secretary, Sanitary Water Board
Re: Sebasticook Lake

I have your memo of December 9th stating that the Sebasticook Fish and Game Association is particularly concerned with the pollution of Sebasticook Lake and that your survey completed in 1945 indicated that there are several towns which discharge raw sewage into the river, together with the industrial waste from several woolen mills, etc. You inquire whether or not it is possible for you to proceed under the provisions of Section 1 of Chapter 124, R. S. 1944, against the Eastland Woolen Mill at Corinna for dumping into the stream, according to their own figures, 25,000 gallons per day of spent dye liquors and 800,000 gallons per day of wash and rinse water, together with sanitary sewage.

It is my opinion that the statute is not broad enough for you to proceed, unless the waters of the lake or river are used for domestic purposes.

In this connection I call your attention to Section 57 of Chapter 33 of the Revised Statutes, as enacted by the last legislature, which will be found in the back of the Laws of 1945. It might be well to strengthen Section 57 of Chapter 33 so as to cover such cases as the Sebasticook River. You will note in reading said section the words "mill waste," but in the main the provision deals with pollution of inland waters by depositing on the banks thereof slabs, edgings, sawdust, etc., which would seem

to apply to lumber companies operating sawmills on inland waters of the State. This is a matter that the Sebasticook Fish and Game Association might look into, inasmuch as they are particularly concerned with the pollution of Sebasticook Lake.

RALPH W. FARRIS
Attorney General

December 18, 1946

To A. W. Perkins, Insurance Commissioner
Re: Retirement Allowance Payable in Month of Death, Employees' Retirement System

. . . The section which you cite, namely Subsection 18 of Section 1 of Chapter 60, speaks for itself, and I do not see how any uncertainty could have arisen with regard to its interpretation. Where a statute is clear, there is no room for interpretation and its meaning is controlled by the language as written.

This section, which defines the meaning of "retirement allowance" as the sum of the annuity and the pension, provides that such allowance shall be payable in equal monthly instalments which shall cease with the last payment prior to death. Thus, it is clear that the payment of the retirement benefits ceases with the last monthly instalment prior to death and there can be no partial instalment paid, based upon an apportionment between the date of the last monthly payment and the date of death. .

ABRAHAM BREITBARD
Deputy Attorney General

December 18, 1946

To H. G. Hawes, Department of Agriculture
Re: Agricultural Societies

In answer to your inquiry of December 12th, the department advises you as follows:

1. Section 15 of Chapter 27, R. S. 1944, which provides that county and local agricultural societies may take and hold real and personal property the annual income of which shall not exceed $3000. to be applied to the purposes provided in their charters, is a limitation on the extent of income-producing property that such a society may hold.

2. The above provision has nothing to do with the following section which provides for a stipend to be paid annually to such societies in a sum not in excess of $3000. This stipend would be payable to such society if it was eligible for such payment under the statute, irrespective of its income from the real and personal property, and such income is not to be taken into consideration in paying such stipend.

3. The limit on the stipend to $3000 applies to a payment from the fund which is apportioned to the societies, which fund is derived from an appropriation of money not to exceed 2c per inhabitant of the State and from pari-mutuel pools, as provided by Chapter 361, P. L. 1945.

4. Chapter 87 of the Public Laws of 1943 provided: "This act shall cease to be effective 6 months after the cessation of hostilities."

We believe that this language is not the equivalent of the limitations in other acts which provide that the act shall be effective for the duration of the war or during the war, or for the duration and six months thereafter. The courts as to the latter have said that the war does not end with the cessation of hostilities or actual combat, but when the peace treaties are ratified by the Senate and appropriate proclamation made by the President.

We advise you that this act is no longer in effect.

ABRAHAM BREITBARD
Deputy Attorney General

December 18, 1946

To David H. Stevens, State Tax Assessor

I have been studying your memo of November 15th, together with copies of letters attached, relating to the question of when the Use Fuel Tax Act is applicable to a public highway.

I have read the opinion of former Attorney General Cowan to former State Tax Assessor George E. Hill, dated January 28, 1942, in which he renders his opinion that for the purposes of the Use Fuel Tax Act a highway location shall be regarded as a highway from the time of the taking of the land by the State Highway Commission for highway purposes; and I am inclined to agree at the present time with the opinion of former Attorney General Cowan, for the reason that the definition of public highways in the Use Fuel Tax Act reads as follows:

> " 'Public highways' shall mean and include every way or place of whatever nature generally open to the use of the public as a matter of right for the purposes of vehicular travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair."

You will note in the letter of November 7th from the C. C. Smith Company, Inc., addressed to the Bureau of Taxation, that the company did not quote the entire definition of highway, but only this part of same:

> " 'Public highway' shall mean and include every place or way generally open to the use of the public as a matter of right, or for the purpose of vehicular traffic."

RALPH W. FARRIS
Attorney General

December 23, 1946

To Harry V. Gilson, Commissioner of Education
Re: Authority of Commissioner to establish maximum pupil enrollment per teacher

I have your memo of December 13th relating to the above entitled subject matter. You state that various conditions, including an increased birth rate, a shortage of teachers and increased costs of maintenance, are causing various communities throughout the State to maintain badly overcrowded classes, both from the standpoint of classroom space and the number of pupils under the supervision of one teacher, 70 to 80 pupils, in some cases, being served by one teacher in a classroom. Numerous complaints have been received from parents whose children are attending schools under such conditions.

In the second paragraph of your said memo you call my attention to paragraph XII, Section 3 of Chapter 37, which provides that it shall be the Commissioner's duty "to cause an inspection to be made and to report to the school committee his findings and recommendations whenever the superintending school committee or the superintendent of schools of any town, or any 3 citizens thereof, shall petition him to make an inspection of the schools of said town; and to prepare a list of standards of buildings, equipment, organization, and instruction and to give such ratings upon such list of standards to any schools that are inspected under the provisions of this paragraph as their general condition, equipment, and grade of efficiency may entitle them."

On the basis of the statement of facts contained in paragraph one and the law cited in paragraph two of your said memo, you ask whether it is correct to assume that the Commissioner of Education may prescribe the maximum per pupil-teacher ratio which the schools of a town shall not exceed without risking the forfeiture of State school moneys.

In answer to your query I will say that it is my opinion that under the law quoted in paragraph 3, the Commissioner of Education, if he finds upon inspection that the instruction per pupil is insufficient, may prescribe the maximum per pupil-teacher ratio which the schools of a town shall not exceed without risking the forfeiture of State school moneys.

RALPH W. FARRIS
Attorney General

December 23, 1946

To Harry V. Gilson, Commissioner of Education
Re: Paragraph 2, Section 204, Chapter 37, R. S. 1944

I have your memo of December 13th relating to the above entitled subject matter, in which you state that when amendments to Section 204 of Chapter 37 were prepared for consideration by the 1945 legislature, to permit increased subsidies to towns and the establishment of a minimum salary of $1000, a specific provision was included to make the in-

creased subsidy available to towns which, during the previous year, met the requirements on the minimum salary then in effect. You state that this provision (Chapter 151, P. L. 1945) reads as follows: "The distribution of state school funds to towns on account of teaching positions in December, **1945,** shall be based upon the minimum program as established by section 204;" and you further state that such provision was necessary for upwards of 40% of the communities of the State, whose local abilities would not permit an increase in the minimum salaries of teachers from $720 to $1000 until additional State aid under the provisions of this section was made available. You state in paragraph 2 of your memo: "Unfortunately, however, the sponsor of this measure added to this statement the provision, 'provided, however, that no town shall be apportioned more than $100 for any teaching position for which the town pays an annual salary of less than $1000,' thus making this sentence in the law utterly contradictory, since it required in the first part a minimum of $720 and in the second part a minimum of $1000. This action on the part of Representative McKinnon resulted from his failure to understand that the $1000 minimum salary requirement was insured in a previous part of the paragraph."

You state in your third paragraph that when this ambiguity was discovered, a conference was held in my office, attended by Representative McKinnon and Senator Noyes of the legislature; Mr. Ladd, Mr. Kenney and yourself of the Department of Education; Mr. Breitbard and myself deciding, on the grounds that it was the obvious intent of the legislature, that increased subsidies should be made available in 1945 on a basis of the provisions of Section 204, in effect as of July 1st of that year; and I instructed you orally to proceed with the allocation of the subsidy on that basis.

On the statement of facts contained in the foregoing paragraphs you state that the State Auditor requested you to secure a memorandum from the Attorney General confirming the interpretation given at the conference above described.

I recall the conference in this office in the closing days of the 92nd Legislature and that it was agreed at that time that you would be justified in proceeding with the allocation of State subsidies in December of 1945 on the basis of this amendment in Chapter 151 of the Public Laws of 1945, as it was agreed that that was the intent of the legislature, by the sponsors of the bill providing for the amendment.

RALPH W. FARRIS
Attorney General

December 23, 1946

To David H. Stevens, State Assessor

I received your memo of December 17th relating to the taxation of telephone and telegraph companies under the provisions of Sections 120 and 126 of Chapter 14, R. S. 1944, which provide that the tax base is

on the gross receipts collected by the companies within the State of Maine. You further state that in compliance with the regulations of the F. C. C. the revenue, which I presume is the gross receipts, is broken down into various classifications, and according to a ruling of the Attorney General's Department in 1942, the revenues from most of these classifications are subject to the tax.

You further state that the F. C. C. has allowed the American Telephone and its subsidiaries to change their system of accounting, and that under the present method all revenue of the New England Tel. & Tel. Company goes into one pot. From the money in the pot each central office is given credit for its annual expenses. The balance is divided among the several central offices according to the ratio which the investment of each office bears to the total investment of the entire company.

For the year 1946, you say, the figure submitted by the N. E. Tel. & Tel. Co., as subject to the tax, was the total of its expenses within the State, plus the total of the division of the gross profit as explained above.

You further state that, to satisfy your department, for practical purposes, that this method produced at least as much tax, the Boston office of the New England Telephone Company was asked to furnish the operating expenses per phone in Maine as compared with the other New England States, and also the average investment per phone in Maine as compared with the other New England States; and a tabulation has been furnished you by the New England Telephone Company. A copy of the same, attached to your memo, indicates that on this basis of figuring the gross receipts of the New England Telephone Company and the American Telephone Company, the State of Maine is collecting more tax than would have been collected under the old system of accounting.

On the basis of the foregoing statements, you ask whether it is permissible for your department to accept a return of the New England Tel. & Tel. Co. showing gross receipts collected in Maine, based on the computation as outlined above.

After studying the tabulation and your explanation of the old system of accounting and the reason for the change of accounting under the jurisdiction of the F. C. C., I am of the opinion that it is permissible for you to accept the returns of the New England Tel. & Tel. Co. and the American Telephone Company on the regulation form which you are now using, showing the gross receipts based on the computation, which is a division of the five New England States, Connecticut being excepted. As I understand that this is the only system that the New England Telephone Company has at this time upon which to compute its gross receipts collected within the State of Maine, and inasmuch as the State is receiving more revenue, it would be practical for you to have an understanding with the telephone companies involved that you will accept their returns, showing the gross receipts on the computations as authorized by the F. C. C., showing as nearly as possible the amount collected in gross revenue from the State of Maine.

RALPH W. FARRIS
Attorney General

December 23, 1946

To Harry V. Gilson, Commissioner of Education
Re: Authority of Commissioner of Education to require that local school systems operate a minimum of hours on each school day

I have your memo of December 13th relating to the above entitled subject matter.

You state that as a result of the heavy influx of war workers into certain communities of the State at the beginning of World War II, school housing facilities in some communities were overtaxed to the point that the school day was reduced from minima of five or more hours to three or four per day to permit the operation of double sessions. This situation was tolerated by your department until emergency school facilities could be provided in these communities; but as a result there has been an increasing tendency on the part of other communities throughout the State to reduce school privileges to children in terms of the length of the school day, as one means of meeting problems resulting from increased enrollments, inadequate housing, lack of teachers and increased costs of maintenance. This tendency, you say, is assuming epidemic proportions, with the result that the educational opportunities of many children are threatened with serious curtailment, when the need is for expansion; and you call my attention to the provision of statute that schools be maintained a minimum of 32 weeks per year, 4 weeks per month and 5 days per week, though "school day" is not specifically defined. However, the legislature, has definitely distinguished between a full day of school and a half-day, in this connection (Section 83, Chapter 37): "Absence . . . of 1/2 day or more shall be deemed a violation. . ." etc.

Your inquiry, based upon the above statement of facts, is whether you are correct in assuming that a community which limits any of its pupils to half a day of school attendance, totaling less than five hours is failing to comply with the laws pertaining to the operation of schools.

In answer to this inquiry, I will say that the Commissioner of Education is correct in his assumption.

RALPH W. FARRIS
Attorney General

December 31, 1946

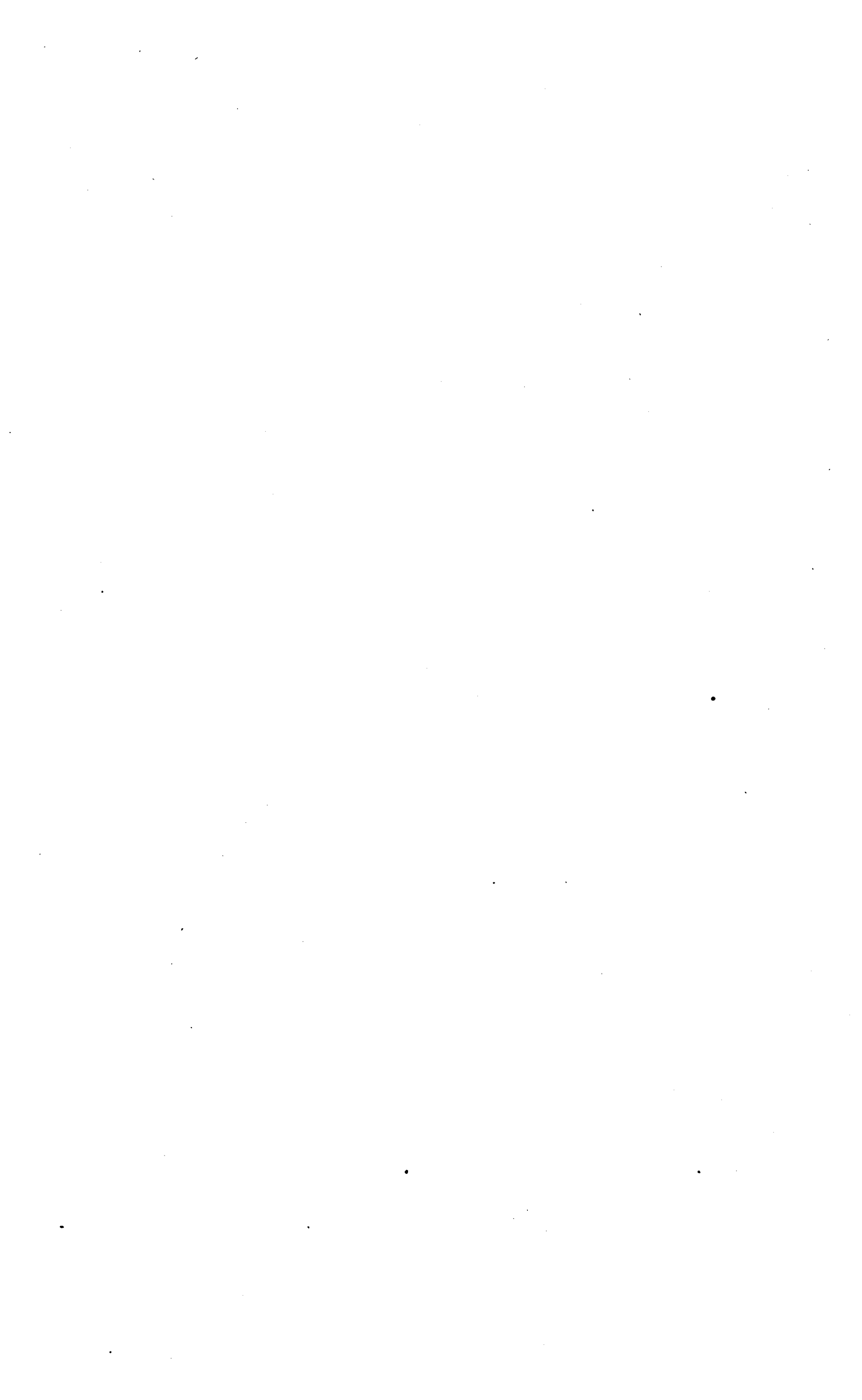
To Earle R. Hayes, Secretary, Employees' Retirement System

I have your memo of December 27th, requesting information in the case of a retired employee, on the strength of the policy of your department that persons who have retired as State employees may engage in any business they choose after retiring, provided such employment is not with the State. You state a specific case where a retired State employee is doing some teaching and wants to know if there is anything in the law to prevent his teaching in the Washington Academy, which is a private institution located at East Machias.

There is no law prohibiting such employment. You are right in your understanding that Washington Academy is primarily a private institution, though under our present law, the teachers may come under the Teachers' Retirement System, if they so desire, if the school is receiving any State aid.

In case Washington Academy should come under the Retirement System, there might be some question raised of the feasibility of a retired teacher's receiving the benefits of the Act and deducting 5% from his salary.

RALPH W. FARRIS
Attorney General



# Statistics for the Years 1945-1946

# MAINE CRIMINAL STATISTICS FOR THE YEARS BEGINNING NOVEMBER 1, 1944, AND ENDING NOVEMBER 1, 1946

The following pages contain the criminal statistics for the years beginning November 1, 1944 and ending November 1, 1946.

I am following a system for making up tables of criminal statistics 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 the 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."

# 1945

## 1945 ALL COUNTIES — TOTAL INDICTMENTS AND APPEALS

| Dispositions | Total (a) | Nol pross. 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) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Plea guilty | Plea not guilty (c) | | | | | |
| Totals | 1689 | 632 | 46 | 741 | 65 | 8 | 180 | 246 | 372 | 205 |
| Murder | 8 | 5 | 2 | 1 | — | — | — | — | 1 | — |
| Manslaughter | 19 | 4 | 3 | 9 | 3 | — | — | 5 | 7 | — |
| Rape | 25 | 4 | 1 | 13 | 1 | — | — | 1 | 13 | 6 |
| Arson | 25 | 10 | 4 | 10 | — | — | — | — | 10 | 1 |
| Robbery | 19 | 2 | — | 12 | 3 | — | 5 | — | 10 | 2 |
| Felonious Assault | 38 | 15 | 3 | 15 | 2 | — | 2 | 1 | 14 | 3 |
| Assault and Battery | 86 | 42 | 1 | 29 | 5 | — | 7 | 13 | 14 | 9 |
| Breaking, Entering and Larceny | 262 | 100 | 1 | 110 | 4 | 3 | 38 | 10 | 63 | 47 |
| Forgery | 71 | 32 | — | 29 | — | — | 10 | — | 19 | 10 |
| Larceny | 269 | 108 | 3 | 123 | 6 | 3 | 27 | 10 | 89 | 29 |
| Sex | 195 | 63 | 9 | 98 | 8 | — | 39 | 11 | 56 | 17 |
| Non-Support | 21 | 9 | — | 6 | — | — | 4 | — | 2 | 6 |
| Liquor | 19 | 9 | 1 | 8 | — | — | 2 | 4 | 2 | 1 |
| Drunken Driving | 201 | 56 | 10 | 90 | 13 | — | 8 | 85 | 10 | 32 |
| Intoxication | 120 | 25 | — | 79 | 7 | — | 16 | 34 | 36 | 9 |
| Motor Vehicle | 104 | 44 | 5 | 43 | — | — | 3 | 35 | 5 | 12 |
| Juvenile Delinquency | 11 | 3 | — | 4 | — | — | 1 | — | 3 | 4 |
| Miscellaneous | 196 | 101 | 3 | 62 | 13 | 2 | 18 | 37 | 18 | 17 |

## 1945 MURDER — INDICTMENTS AND APPEALS

| | (a) | (b) | Acquitted | Plea guilty | (c) | (d) | (e) | (f) | (g) | (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 8 | 5 | 2 | 1 | — | — | — | — | 1 | — |
| Androscoggin | 1 | — | — | 1 | — | — | — | — | 1 | — |
| Cumberland | 1 | — | 1* | — | — | — | — | — | — | — |
| Kennebec | 1 | — | 1* | — | — | — | — | — | — | — |
| Washington | 5 | 5 | — | — | — | — | — | — | — | — |

*By reason of insanity

## 1945 MANSLAUGHTER — INDICTMENTS AND APPEALS

| | (a) | (b) | Acquitted | Plea guilty | (c) | (d) | (e) | (f) | (g) | (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 19 | 4 | 3 | 9 | 3 | — | — | 5 | 7 | — |
| Androscoggin | 1 | — | — | 1 | — | — | — | — | 1 | — |
| Aroostook | 1 | — | — | — | 1 | — | — | — | 1 | — |
| Cumberland | 2 | — | — | 2 | — | — | — | 1 | 1 | — |
| Hancock | 1 | — | — | — | 1 | — | — | — | 1 | — |
| Kennebec | 2 | — | — | 2 | — | — | — | 1 | 1 | — |
| Knox | 1 | — | — | 1 | — | — | — | — | 1 | — |
| Oxford | 3 | 2 | — | — | 1 | — | — | — | 1 | — |
| Penobscot | 4 | — | 1 | 3 | — | — | — | 3 | — | — |
| Somerset | 2 | 1 | 1 | — | — | — | — | — | — | — |
| Washington | 1 | 1 | — | — | — | — | — | — | — | — |
| York | 1 | — | 1 | — | — | — | — | — | — | — |

## 1945 RAPE — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol-pross. 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) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Plea guilty | Plea not guilty (c) | | | | | |
| Totals | 25 | 4 | 1 | 13 | 1 | — | — | 1 | 13 | 6 |
| Androscoggin | 3 | — | — | 2 | — | — | — | 1 | 1 | 1 |
| Cumberland | 3 | 1 | — | — | 1 | — | — | — | 1 | 1 |
| Kennebec | 4 | — | — | 3 | — | — | — | — | 3 | 1 |
| Oxford | 3 | 1 | — | 1 | — | — | — | — | 1 | 1 |
| Penobscot | 4 | 1 | 1 | 2 | — | — | — | — | 2 | — |
| Sagadahoc | 1 | — | — | 1 | — | — | — | — | 1 | — |
| Washington | 2 | 1 | — | 1 | — | — | — | — | 1 | — |
| York | 5 | — | — | 3 | — | — | — | — | 3 | 2 |

## 1945 ARSON — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol-pross. etc. (b) | Ac-quit-ted | Plea guilty | Plea not guilty (c) | Con-tinued for sen-tence (d) | Proba-tion (e) | Fine (f) | Im-prison-ment (g) | Pend-ing at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 25 | 10 | 4 | 10 | — | — | — | — | 10 | 1 |
| Cumberland | 3 | — | — | 3 | — | — | — | — | 3 | — |
| Hancock | 6 | 3 | 1 | 1 | — | — | — | — | 1 | 1 |
| Kennebec | 5 | 4 | — | 1 | — | — | — | — | 1 | — |
| Penobscot | 4 | — | 2* | 2 | — | — | — | — | 2 | — |
| Sagadahoc | 1 | — | 1 | — | — | — | — | — | — | — |
| Washington | 6 | 3 | — | 3 | — | — | — | — | 3 | — |

*By reason of insanity

## 1945 ROBBERY — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol-pross. etc. (b) | Ac-quit-ted | Plea guilty | Plea not guilty (c) | Con-tinued for sen-tence (d) | Proba-tion (e) | Fine (f) | Im-prison-ment (g) | Pend-ing at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 19 | 2 | — | 12 | 3 | — | 5 | — | 10 | 2 |
| Androscoggin | 2 | — | — | 2 | — | — | — | — | 2 | — |
| Cumberland | 7 | 1 | — | 4 | 2 | — | — | — | 6 | — |
| Kennebec | 5 | — | — | 5 | — | — | 4 | — | 1 | — |
| Penobscot | 2 | — | — | — | — | — | — | — | — | 2 |
| Somerset | 1 | — | — | — | 1 | — | — | — | 1 | — |
| Waldo | 2 | 1 | — | 1 | — | — | 1 | — | — | — |

## 1945 FELONIOUS ASSAULT — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol pross. 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) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Plea guilty | Plea not guilty (c) | | | | | |
| Totals | 38 | 15 | 3 | 15 | 2 | — | 2 | 1 | 14 | 3 |
| Aroostook | 2 | 2 | — | — | — | — | — | — | — | — |
| Cumberland | 13 | 9 | — | 4 | — | — | 1 | — | 3 | — |
| Kennebec | 3 | 1 | 1 | 1 | — | — | — | — | 1 | — |
| Knox | 2 | — | — | 2 | — | — | 1 | — | 1 | — |
| Lincoln | 2 | — | — | — | 1 | — | — | — | 1 | 1 |
| Oxford | 2 | 2 | — | — | — | — | — | — | — | — |
| Penobscot | 3 | 1 | — | 2 | — | — | — | 1 | 1 | — |
| Sagadahoc | 2 | — | — | 2 | — | — | — | — | 2 | — |
| Somerset | 5 | — | 1* | 1 | 1 | — | — | — | 2 | 2 |
| Waldo | 1 | — | — | 1 | — | — | — | — | 1 | — |
| Washington | 1 | — | 1 | — | — | — | — | — | — | — |
| York | 2 | — | — | 2 | — | — | — | — | 2 | — |

*By reason of insanity

## 1945 ASSAULT AND BATTERY — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol pross. etc. (b) | Ac-quit-ted | Plea guilty | Plea not guilty (c) | Con-tinued for sen-tence (d) | Proba-tion (e) | Fine (f) | Im-prison-ment (g) | Pend-ing at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 86 | 42 | 1 | 29 | 5 | — | 7 | 13 | 14 | 9 |
| Androscoggin | 6 | 6 | — | — | — | — | — | — | — | — |
| Aroostook | 7 | 4 | — | 3 | — | — | — | 1 | 2 | — |
| Cumberland | 16 | 8 | — | 5 | — | — | 1 | 2 | 2 | 3 |
| Hancock | 2 | — | — | — | 1 | — | — | — | 1 | 1 |
| Kennebec | 2 | 1 | — | 1 | — | — | — | — | 1 | — |
| Knox | 2 | — | — | 1 | — | — | 1 | — | — | 1 |
| Oxford | 4 | 2 | — | 1 | — | — | 1 | — | — | 1 |
| Penobscot | 15 | 3 | 1 | 10 | — | — | 1 | 5 | 4 | 1 |
| Piscataquis | 3 | 1 | — | 2 | — | — | — | 1 | 1 | — |
| Sagadahoc | 3 | 1 | — | — | — | — | — | — | — | 2 |
| Somerset | 3 | 2 | — | — | 1 | — | — | — | 1 | — |
| Waldo | 3 | 2 | — | 1 | — | — | 1 | — | — | — |
| Washington | 9 | 4 | — | 3 | 2 | — | 2 | 1 | 2 | — |
| York | 11 | 8 | — | 2 | 1 | — | — | 3 | — | — |

# 1945 BREAKING, ENTERING AND LARCENY — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol-pross. 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) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Plea guilty | Plea not guilty (c) | | | | | |
| Totals | 262 | 100 | 1 | 110 | 4 | 3 | 38 | 10 | 63 | 47 |
| Androscoggin | 25 | 10 | — | 7 | — | — | — | — | 7 | 8 |
| Aroostook | 9 | — | — | 7 | — | — | — | — | 7 | 2 |
| Cumberland | 25 | 13 | — | 10 | 2 | — | — | — | 12 | — |
| Franklin | 12 | — | — | 6 | — | — | 4 | 1 | 1 | 6 |
| Hancock | 12 | 8 | — | 4 | — | — | — | 1 | 3 | — |
| Kennebec | 13 | 4 | — | 9 | — | — | 8 | — | 1 | — |
| Knox | 7 | 7 | — | — | — | — | — | — | — | — |
| Lincoln | 3 | 3 | — | — | — | — | — | — | — | — |
| Oxford | 27 | 10 | — | 10 | — | — | 3 | 2 | 5 | 7 |
| Penobscot | 56 | 26 | — | 13 | 1 | — | 3 | 2 | 9 | 16 |
| Piscataquis | 1 | — | — | 1 | — | — | — | — | 1 | — |
| Sagadahoc | 15 | 9 | — | 6 | — | — | 6 | — | — | — |
| Somerset | 10 | 3 | — | 7 | — | 1 | 2 | 4 | — | — |
| Waldo | 22 | 2 | — | 20 | — | — | 10 | — | 10 | — |
| Washington | 3 | — | — | 2 | — | — | 2 | — | — | 1 |
| York | 22 | 5 | 1 | 8 | 1 | 2 | — | — | 7 | 7 |

# 1945 FORGERY — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol-pross. etc. (b) | Ac-quit-ted | Plea guilty | Plea not guilty (c) | Con-tinued for sen-tence (d) | Proba-tion (e) | Fine (f) | Im-prison-ment (g) | Pend-ing at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 71 | 32 | — | 29 | — | — | 10 | — | 19 | 10 |
| Androscoggin | 14 | 10 | — | 1 | — | — | — | — | 1 | 3 |
| Aroostook | 9 | 2 | — | 6 | — | — | — | — | 6 | 1 |
| Cumberland | 13 | 9 | — | 4 | — | — | 2 | — | 2 | — |
| Franklin | 2 | — | — | 2 | — | — | 2 | — | — | — |
| Hancock | 2 | — | — | 2 | — | — | — | — | 2 | — |
| Kennebec | 8 | — | — | 5 | — | — | 3 | — | 2 | 3 |
| Knox | 1 | 1 | — | — | — | — | — | — | — | — |
| Oxford | 6 | 1 | — | 4 | — | — | 2 | — | 2 | 1 |
| Penobscot | 8 | 4 | — | 4 | — | — | 1 | — | 3 | — |
| Somerset | 3 | 2 | — | 1 | — | — | — | — | 1 | — |
| Waldo | 1 | 1 | — | — | — | — | — | — | — | — |
| Washington | 4 | 2 | — | — | — | — | — | — | — | 2 |

## 1945 LARCENY — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol pross. etc. (b) | Ac-quit-ted | Convicted Plea guilty | Convicted Plea not guilty (c) | Con-tinued for sen-tence (d) | Proba-tion (e) | Fine (f) | Im-prison-ment (g) | Pend-ing at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 269 | 108 | 3 | 123 | 6 | 3 | 27 | 10 | 89 | 29 |
| Androscoggin | 23 | 9 | — | 7 | — | — | — | — | 7 | 7 |
| Aroostook | 21 | 10 | — | 9 | — | — | — | 1 | 8 | 2 |
| Cumberland | 52 | 22 | — | 23 | 2 | — | 6 | — | 19 | 5 |
| Franklin | 2 | 2 | — | — | — | — | — | — | — | — |
| Hancock | 1 | — | — | 1 | — | — | — | — | 1 | — |
| Kennebec | 19 | 3 | — | 16 | — | — | 9 | — | 7 | — |
| Knox | 6 | 4 | — | 2 | — | — | 1 | — | 1 | — |
| Lincoln | 2 | — | — | 2 | — | — | — | — | 2 | — |
| Oxford | 12 | 6 | — | 3 | — | — | 2 | — | 1 | 3 |
| Penobscot | 46 | 17 | 1 | 25 | 1 | — | 4 | 7 | 15 | 2 |
| Piscataquis | 3 | 1 | — | — | — | — | — | — | — | 2 |
| Sagadahoc | 5 | 2 | — | 3 | — | — | — | — | 3 | — |
| Somerset | 23 | 5 | 1 | 12 | 3 | 1 | 2 | 2 | 10 | 2 |
| Waldo | 3 | 2 | — | 1 | — | — | — | — | 1 | — |
| Washington | 22 | 12 | 1 | 9 | — | — | 2 | — | 7 | — |
| York | 29 | 13 | — | 10 | — | 2 | 1 | — | 7 | 6 |

## 1945 SEX OFFENSES — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol pross. etc. (b) | Ac-quit-ted | Convicted Plea guilty | Convicted Plea not guilty (c) | Con-tinued for sen-tence (d) | Proba-tion (e) | Fine (f) | Im-prison-ment (g) | Pend-ing at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 195 | 63 | 9 | 98 | 8 | — | 39 | 11 | 56 | 17 |
| Androscoggin | 18 | 10 | — | 4 | — | — | — | 2 | 2 | 4 |
| Aroostook | 27 | 12 | — | 13 | 2 | — | 7 | 3 | 5 | — |
| Cumberland | 28 | 9 | 2 | 14 | 2 | — | 1 | 2 | 13 | 1 |
| Franklin | 11 | 4 | — | 4 | — | — | 1 | 1 | 2 | 3 |
| Hancock | 3 | — | — | 3 | — | — | — | — | 3 | — |
| Kennebec | 17 | 3 | 1* | 11 | 1 | — | 7 | — | 5 | 1 |
| Knox | 6 | 4 | — | 2 | — | — | — | — | 2 | — |
| Lincoln | 4 | 1 | — | 2 | 1 | — | 2 | — | 1 | — |
| Oxford | 18 | 5 | — | 10 | — | — | 6 | — | 4 | 3 |
| Penobscot | 31 | 10 | — | 18 | 1 | — | 6 | 2 | 11 | 2 |
| Piscataquis | 1 | — | — | — | — | — | — | — | — | 1 |
| Sagadahoc | 2 | — | 2* | — | — | — | — | — | — | — |
| Somerset | 7 | 2 | 1 | 4 | — | — | 1 | — | 3 | — |
| Waldo | 4 | 1 | — | 3 | — | — | 3 | — | — | — |
| Washington | 5 | — | 2 | 2 | 1 | — | 1 | 1 | 1 | — |
| York | 13 | 2 | 1* | 8 | — | — | 4 | — | 4 | 2 |

*By reason of insanity

## 1945 NON-SUPPORT — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol-pross. etc. (b) | Ac-quit-ted | Convicted: Plea guilty | Convicted: Plea not guilty (c) | Con-tinued for sen-tence (d) | Proba-tion (e) | Fine (f) | Im-prison-ment (g) | Pend-ing at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 21 | 9 | — | 6 | — | — | 4 | — | 2 | 6 |
| Androscoggin | 4 | 1 | — | 1 | — | — | — | — | 1 | 2 |
| Aroostook | 2 | 1 | — | — | — | — | — | — | — | 1 |
| Cumberland | 4 | 2 | — | 2 | — | — | 2 | — | — | — |
| Kennebec | 2 | 1 | — | 1 | — | — | — | — | 1 | — |
| Knox | 4 | 2 | — | 1 | — | — | 1 | — | — | 1 |
| Penobscot | 3 | — | — | 1 | — | — | 1 | — | — | 2 |
| Somerset | 1 | 1 | — | — | — | — | — | — | — | — |
| Waldo | 1 | 1 | — | — | — | — | — | — | — | — |

## 1945 LIQUOR OFFENSES — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol-pross. etc. (b) | Ac-quit-ted | Convicted: Plea guilty | Convicted: Plea not guilty (c) | Con-tinued for sen-tence (d) | Proba-tion (e) | Fine (f) | Im-prison-ment (g) | Pend-ing at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 19 | 9 | 1 | 8 | — | — | 2 | 4 | 2 | 1 |
| Androscoggin | 4 | 2 | — | 1 | — | — | — | 1 | — | 1 |
| Aroostook | 2 | — | — | 2 | — | — | 2 | — | — | — |
| Cumberland | 2 | — | — | 2 | — | — | — | 2 | — | — |
| Kennebec | 2 | 1 | — | 1 | — | — | — | — | 1 | — |
| Oxford | 1 | 1 | — | — | — | — | — | — | — | — |
| Piscataquis | 2 | 1 | — | 1 | — | — | — | 1 | — | — |
| York | 6 | 4 | 1 | 1 | — | — | — | — | 1 | — |

## 1945 DRUNKEN DRIVING — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol-pross. etc. (b) | Ac-quit-ted | Convicted: Plea guilty | Convicted: Plea not guilty (c) | Con-tinued for sen-tence (d) | Proba-tion (e) | Fine (f) | Im-prison-ment (g) | Pend-ing at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 201 | 56 | 10 | 90 | 13 | — | 8 | 85 | 10 | 32 |
| Androscoggin | 38 | 11 | — | 18 | 1 | — | — | 18 | 1 | 8 |
| Aroostook | 45 | 14 | 4 | 18 | 4 | — | 3 | 17 | 2 | 5 |
| Cumberland | 45 | 9 | 1 | 26 | 3 | — | 1 | 28 | — | 6 |
| Franklin | 2 | — | 1 | 1 | — | — | 1 | — | — | — |
| Hancock | 4 | 1 | 1 | — | — | — | — | — | — | 2 |
| Kennebec | 7 | 2 | 1 | 1 | 1 | — | — | 1 | 1 | 2 |
| Knox | 10 | 6 | 1 | 2 | — | — | — | 2 | — | 1 |
| Oxford | 1 | — | — | — | — | — | — | — | — | 1 |
| Penobscot | 12 | 2 | — | 8 | — | — | 1 | 5 | 2 | 2 |
| Piscataquis | 3 | 2 | — | 1 | — | — | 1 | — | — | — |
| Sagadahoc | 2 | — | — | 1 | 1 | — | — | 2 | — | — |
| Somerset | 7 | 1 | — | 5 | — | — | 1 | 2 | 2 | 1 |
| Waldo | 4 | 1* | — | 2 | — | — | — | 1 | 1 | 1 |
| Washington | 6 | 2 | — | 1 | 3 | — | — | 4 | — | — |
| York | 15 | 5 | 1 | 6 | — | — | — | 5 | 1 | 3 |

*Respondent died

## 1945 INTOXICATION — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol pross. 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) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Plea guilty | Plea not guilty (c) | | | | | |
| Totals | 120 | 25 | — | 79 | 7 | — | 16 | 34 | 36 | 9 |
| Androscoggin | 11 | 4 | — | 7 | — | — | — | 5 | 2 | — |
| Aroostook | 20 | 6 | — | 12 | 1 | — | 5 | 3 | 5 | 1 |
| Cumberland | 13 | 5 | — | 6 | 1 | — | 2 | 2 | 3 | 1 |
| Franklin | 1 | 1 | — | — | — | — | — | — | — | — |
| Hancock | 1 | — | — | 1 | — | — | — | 1 | — | — |
| Kennebec | 12 | 1 | — | 9 | 1 | — | 6 | — | 4 | 1 |
| Knox | 2 | 2 | — | — | — | — | — | — | — | — |
| Oxford | 1 | — | — | 1 | — | — | 1 | — | — | — |
| Penobscot | 24 | 1 | — | 18 | 3 | — | — | 16 | 5 | 2 |
| Sagadahoc | 15 | 2 | — | 13 | — | — | 1 | 1 | 11 | — |
| Somerset | 3 | 2 | — | 1 | — | — | — | — | 1 | — |
| Waldo | 10 | — | — | 7 | 1 | — | 1 | 3 | 4 | 2 |
| Washington | 1 | — | — | 1 | — | — | — | — | 1 | — |
| York | 6 | 1 | — | 3 | — | — | — | 3 | — | 2 |

## 1945 MOTOR VEHICLE — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol pross. etc. (b) | Ac-quit-ted | Plea guilty | Plea not guilty (c) | Con-tinued for sen-tence (d) | Proba-tion (e) | Fine (f) | Im-prison-ment (g) | Pend-ing at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 104 | 44 | 5 | 43 | — | — | 3 | 35 | 5 | 12 |
| Androscoggin | 19 | 11 | — | 5 | — | — | — | 5 | — | 3 |
| Aroostook | 13 | 5 | — | 7 | — | — | 1 | 6 | — | 1 |
| Cumberland | 21 | 10 | — | 10 | — | — | — | 9 | 1 | 1 |
| Franklin | 6 | 4 | — | 2 | — | — | — | — | 2 | — |
| Hancock | 3 | 2 | 1 | — | — | — | — | — | — | — |
| Kennebec | 4 | — | — | 3 | — | — | 1 | 2 | — | 1 |
| Knox | 2 | 2 | — | — | — | — | — | — | — | — |
| Lincoln | 2 | 1 | — | 1 | — | — | — | 1 | — | — |
| Oxford | 2 | — | — | — | — | — | — | — | — | 2 |
| Penobscot | 9 | 2 | 2 | 4 | — | — | — | 4 | — | 1 |
| Sagadahoc | 3 | 1 | — | 1 | — | — | — | — | 1 | 1 |
| Somerset | 7 | 1 | — | 5 | — | — | 1 | 3 | 1 | 1 |
| Waldo | 3 | — | — | 3 | — | — | — | 3 | — | — |
| Washington | 6 | 4 | 2 | — | — | — | — | — | — | — |
| York | 4 | 1 | — | 2 | — | — | — | 2 | — | 1 |

## 1945 JUVENILE DELINQUENCY — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol-pross. 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) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Plea guilty | Plea not guilty (c) | | | | | |
| **Totals** | 11 | 3 | — | 4 | — | — | 1 | — | 3 | 4 |
| **Androscoggin** | 2 | — | — | — | — | — | — | — | — | 2 |
| **Aroostook** | 1 | 1 | — | — | — | — | — | — | — | — |
| **Penobscot** | 7 | 2 | — | 4 | — | — | 1 | — | 3 | 1 |
| **Piscataquis** | 1 | — | — | — | — | — | — | — | — | 1 |

## 1945 MISCELLANEOUS — INDICTMENTS AND APPEALS

| **Totals** | 196 | 101 | 3 | 62 | 13 | 2 | 18 | 37 | 18 | 17 |
|---|---|---|---|---|---|---|---|---|---|---|
| **Androscoggin** | 15 | 6 | — | 3 | — | — | — | 2 | 1 | 6 |
| **Aroostook** | 25 | 18 | 2 | 4 | — | — | 3 | — | 1 | 1 |
| **Cumberland** | 33 | 13 | — | 19 | — | — | 5 | 6 | 8 | 1 |
| **Franklin** | 3 | 1 | — | — | 1 | — | — | 1 | — | 1 |
| **Hancock** | 7 | 2 | — | 2 | 1 | — | — | 2 | 1 | 2 |
| **Kennebec** | 32 | 7 | — | 15 | 9 | 2 | 3 | 15 | 4 | 1 |
| **Knox** | 6 | 4 | — | 1 | — | — | — | — | 1 | 1 |
| **Lincoln** | 1 | 1 | — | — | — | — | — | — | — | — |
| **Oxford** | 7 | 6 | — | — | — | — | — | — | — | 1 |
| **Penobscot** | 21 | 14 | — | 6 | — | — | — | 6 | — | 1 |
| **Piscataquis** | 1 | — | — | 1 | — | — | — | — | 1 | — |
| **Sagadahoc** | 2 | 2 | — | — | — | — | — | — | — | — |
| **Somerset** | 14 | 13 | — | — | — | — | — | — | — | 1 |
| **Waldo** | 7 | 2 | — | 5 | — | — | 4 | — | 1 | — |
| **Washington** | 12 | 6 | 1 | 3 | 2 | — | 3 | 2 | — | — |
| **York** | 10 | 6 | — | 3 | — | — | — | 3 | — | 1 |

# 1945 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 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Androscoggin | 30 | $18,500.00 | | — | | — | | — | | — | — |
| Aroostook | 7 | 4,025.00 | 1 | $300.00 | | — | 1 | $70.00 | | — | — |
| Kennebec | 1 | 25.00 | | — | | — | | — | | — | $25.00 |
| Penobscot | 7 | 1,050.00 | 5 | 950.00 | 5 | $1,350.00 | 4 | 64.87 | 5 | $950.00 | — |
| Somerset | 1 | 2,000.00 | 1 | 2,000.00 | 1 | 2,000.00 | | — | 1 | 2,000.00 | — |
| Washington | 3 | 750.00 | | — | | — | | — | | — | $750.00 |
| Totals | 49 | $26,350.00 | 7 | $3,250.00 | 6 | $3,350.00 | 5 | $134.87 | 6 | $2,950.00 | $775.00 |

## 1945 LAW COURT CASES

| County | Name of Case | Outcome |
|---|---|---|
| Aroostook | Thomas A. Cormier | Judgment for State |
| | Carl Wagner | Argued, October Term |
| Kennebec | Louis Pooler | Judgment for State |
| | Paul J. Caron | " " " |
| | Louis Pooler | " " " |
| | Louis Pooler | " " " |
| | Louis Pooler | " " " |
| | Paul J. Caron | " " " |
| | Louis Pooler | " " " |
| | Paul J. Caron | " " " |
| | Louis Pooler | " " " |
| | Paul J. Caron | " " " |
| | Ralph Labbe | " " " |
| | Paul Caron | " " " |
| | Ralph Labbe | " " " |
| | Paul Caron | " " " |
| | Royden V. Brown | Continued |
| Oxford | George Bragg | Judgment for State |
| Penobscot | Bainbridge L. Baker | Withdrawn |
| Sagadahoc | William B. McKrachern | Judgment for State |

## FINANCIAL STATISTICS, YEAR ENDING NOVEMBER 1, 1945

| COUNTIES | Cost of Prosecution Sup. and S.J.C. | Paid for Prisoners in Jail | Paid Grand Jurors | Paid Traverse Jurors | Fines, etc. Imposed Sup. and S.J.C. | Fine etc. Collected Sup. and S.J.C |
|---|---|---|---|---|---|---|
| Androscoggin | $ 4,952.42 | $19,763.82 | $ 1,271.90 | $ 2,278.00 | $ 2,620.49 | $ 2,620.49 |
| Aroostook | 1,455.92 | 9,859.61 | 595.18 | 1,602.70 | 3,903.53 | 3,903.53 |
| Cumberland | 19,958.97 | 44,981.94 | 1,006.44 | 2,116.02 | 4,650.92 | 4,650.92 |
| Franklin | 733.19 | 4,167.24 | 238.80 | 145.72 | 222.00 | 222.00 |
| Hancock | 692.16 | 3,633.69 | 474.10 | 1,243.30 | 369.90 | 369.90 |
| Kennebec | 3,385.18 | 11,944.53 | 718.96 | 1,665.12 | 2,229.28 | 2,229.28 |
| Knox | 389.27 | 3,087.44 | 262.76 | 64.00 | 434.70 | 434.70 |
| Lincoln | 452.20 | 13.00 | 163.84 | 347.24 | ........ | ........ |
| Oxford | 3,081.09 | 3,514.31 | 894.96 | 1,239.78 | 185.57 | 185.57 |
| Penobscot | 3,747.58 | 12,845.45 | 1,125.76 | 2,904.58 | 3,381.98 | 3,367.75 |
| Piscataquis | 241.45 | 1,994.35 | 234.70 | 241.20 | 845.58 | 845.58 |
| Sagadahoc | 676.86 | 2,891.13 | 326.92 | 1,586.84 | 16.47 | 16.47 |
| Somerset | 2,333.54 | 4,411.13 | 887.92 | 2,062.72 | 539.30 | 539.30 |
| Waldo | 332.87 | 8,405.10 | 419.96 | 452.36 | 285.76 | 285.76 |
| Washington | 7,420.99 | 4,875.54 | 760.06 | 2,280.48 | 2,222.27 | 1,472.27 |
| York | 2,100.53 | 10,545.93 | 1,608.60 | 950.67 | 2,238.90 | 2,136.40 |
| Totals | $51,954.22 | $146,934.21 | $10,990.86 | $21,180.73 | $24,146.65 | $23,279.92 |

Law Court—None

# 1946

# 1946 ALL COUNTIES — TOTAL INDICTMENTS AND APPEALS

| Dispositions | Total (a) | Nol pross. 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) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Plea guilty | Plea not guilty (c) | | | | | |
| Totals | 1821 | 626 | 52 | 853 | 70 | 21 | 155 | 346 | 401 | 220 |
| Murder | 8 | — | 3* | 5 | — | — | — | — | 5 | — |
| Manslaughter | 20 | 3 | 5 | 8 | 1 | 1 | — | 4 | 4 | 3 |
| Rape | 23 | 4 | 6 | 9 | 2 | — | — | — | 11 | 2 |
| Arson | 11 | 7 | — | 3 | — | — | 1 | — | 2 | 1 |
| Robbery | 24 | 8 | — | 16 | — | 1 | 2 | — | 13 | — |
| Feloniuus Assault | 52 | 21 | 2 | 19 | 5 | — | 1 | 2 | 21 | 5 |
| Assault and Battery | 145 | 57 | 3 | 69 | 4 | — | 14 | 35 | 24 | 12 |
| Breaking, Entering and Larceny | 210 | 83 | 3 | 88 | 5 | 1 | 26 | 5 | 61 | 31 |
| Forgery | 84 | 27 | — | 41 | 1 | 6 | 10 | — | 26 | 15 |
| Larceny | 333 | 110 | 3 | 171 | 1 | 3 | 50 | 17 | 102 | 48 |
| Sex | 145 | 37 | 5 | 80 | 4 | 5 | 23 | 10 | 46 | 19 |
| Non-Support | 14 | 4 | — | 1 | — | — | 1 | — | — | 9 |
| Liquor | 26 | 9 | — | 12 | 1 | — | 2 | 9 | 2 | 4 |
| Drunken Driving | 278 | 77 | 11 | 143 | 13 | 1 | 1 | 146 | 8 | 34 |
| Intoxication | 148 | 37 | — | 79 | 28 | 1 | 13 | 44 | 49 | 4 |
| Motor Vehicle | 117 | 58 | — | 44 | 2 | — | 1 | 42 | 3 | 13 |
| Juvenile Delinquency | 8 | 3 | — | 3 | — | — | 2 | — | 1 | 2 |
| Miscellaneous | 175 | 81 | 11 | 62 | 3 | 2 | 8 | 32 | 23 | 18 |

*By reason of insanity

## 1946 MURDER — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol-pross. 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) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Plea guilty | Plea not guilty (c) | | | | | |
| Totals | 8 | — | 3 | 5 | — | — | — | — | 5 | — |
| Kennebec | 1 | — | — | 1 | — | — | — | — | 1 | — |
| Oxford | 1 | — | — | 1 | — | — | — | — | 1 | — |
| Penobscot | 2 | — | 1* | 1 | — | — | — | — | 1 | — |
| Piscataquis | 3 | — | 1* | 2 | — | — | — | — | 2 | — |
| York | 1 | — | 1* | — | — | — | — | — | — | — |

*By reason of insanity

## 1946 MANSLAUGHTER — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol-pross. etc. (b) | Ac-quit-ted | Plea guilty | Plea not guilty (c) | Con-tinued for sen-tence (d) | Proba-tion (e) | Fine (f) | Im-prison-ment (g) | Pend-ing at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 20 | 3 | 5 | 8 | 1 | 1 | — | 4 | 4 | 3 |
| Aroostook | 3 | 1 | 1 | 1 | — | 1 | — | — | — | — |
| Cumberland | 2 | — | 2 | — | — | — | — | — | — | — |
| Kennebec | 1 | — | — | 1 | — | — | — | 1 | — | — |
| Penobscot | 9 | 1 | 2 | 4 | — | — | — | 3 | 1 | 2 |
| Sagadahoc | 1 | — | — | — | 1 | — | — | — | 1 | — |
| Waldo | 1 | — | — | 1 | — | — | — | — | 1 | — |
| Washington | 2 | 1 | — | 1 | — | — | — | — | 1 | — |
| York | 1 | — | — | — | — | — | — | — | — | 1 |

## 1946 RAPE — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol pross. etc. (b) | Ac-quit-ted | Convicted Plea guilty | Convicted Plea not guilty (c) | Con-tinued for sen-tence (d) | Proba-tion (e) | Fine (f) | Im-prison-ment (g) | Pend-ing at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 23 | 4 | 6 | 9 | 2 | — | — | — | 11 | 2 |
| Androscoggin | 2 | — | — | 2 | — | — | — | — | 2 | — |
| Cumberland | 5 | 1 | 4 | — | — | — | — | — | — | — |
| Hancock | 1 | — | — | 1 | — | — | — | — | 1 | — |
| Kennebec | 3 | 1 | 1 | 1 | — | — | — | — | 1 | — |
| Oxford | 4 | 2 | 1 | 1 | — | — | — | — | 1 | — |
| Penobscot | 2 | — | — | 2 | — | — | — | — | 2 | — |
| Sagadahoc | 2 | — | — | 1 | 1 | — | — | — | 2 | — |
| Waldo | 2 | — | — | 1 | 1 | — | — | — | 2 | — |
| York | 2 | — | — | — | — | — | — | — | — | 2 |

## 1946 ROBBERY — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol pross. etc. (b) | Ac-quit-ted | Convicted Plea guilty | Convicted Plea not guilty (c) | Con-tinued for sen-tence (d) | Proba-tion (e) | Fine (f) | Im-prison-ment (g) | Pend-ing at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 24 | 8 | — | 16 | — | 1 | 2 | — | 13 | — |
| Aroostook | 2 | 1 | — | 1 | — | 1 | — | — | — | — |
| Cumberland | 9 | 4 | — | 5 | — | — | — | — | 5 | — |
| Kennebec | 2 | 1 | — | 1 | — | — | 1 | — | — | — |
| Penobscot | 7 | 2 | — | 5 | — | — | — | — | 5 | — |
| Piscataquis | 2 | — | — | 2 | — | — | — | — | 2 | — |
| Somerset | 1 | — | — | 1 | — | — | 1 | — | — | — |
| York | 1 | — | — | 1 | — | — | — | — | 1 | — |

## 1946 ARSON — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol pross. etc. (b) | Ac-quit-ted | Convicted Plea guilty | Convicted Plea not guilty (c) | Con-tinued for sen-tence (d) | Proba-tion (e) | Fine (f) | Im-prison-ment (g) | Pend-ing at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 11 | 7 | — | 3 | — | — | 1 | — | 2 | 1 |
| Androscoggin | 1 | 1 | — | — | — | — | — | — | — | — |
| Hancock | 1 | — | — | — | — | — | — | — | — | 1 |
| Kennebec | 5 | 4 | — | 1 | — | — | — | — | 1 | — |
| Oxford | 1 | — | — | 1 | — | — | — | — | 1 | — |
| Penobscot | 1 | 1* | — | — | — | — | — | — | — | — |
| Somerset | 2 | 1 | — | 1 | — | — | 1 | — | — | — |

*By reason of insanity

## 1946 FELONIOUS ASSAULT — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol-pross. etc. (b) | Ac-quit-ted | Convicted: Plea guilty | Convicted: Plea not guilty (c) | Con-tinued for sen-tence (d) | Proba-tion (e) | Fine (f) | Im-prison-ment (g) | Pend-ing at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 52 | 21 | 2 | 19 | 5 | — | 1 | 2 | 21 | 5 |
| Aroostook | 1 | — | — | 1 | — | — | — | — | 1 | — |
| Cumberland | 19 | 14 | — | 3 | 2 | — | — | — | 5 | — |
| Knox | 4 | 3 | — | 1 | — | — | — | — | 1 | — |
| Lincoln | 2 | 1 | 1 | — | — | — | — | — | — | — |
| Oxford | 4 | 1 | — | 3 | — | — | 1 | — | 2 | — |
| Penobscot | 5 | 1 | — | 2 | 2 | — | — | 1 | 3 | — |
| Somerset | 3 | 1 | 1 | — | 1 | — | — | — | 1 | — |
| Waldo | 2 | — | — | 2 | — | — | — | 1 | 1 | — |
| York | 12 | — | — | 7 | — | — | — | — | 7 | 5 |

## 1946 ASSAULT AND BATTERY — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol-pross. etc. (b) | Ac-quit-ted | Convicted: Plea guilty | Convicted: Plea not guilty (c) | Con-tinued for sen-tence (d) | Proba-tion (e) | Fine (f) | Im-prison-ment (g) | Pend-ing at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 145 | 57 | 3 | 69 | 4 | — | 14 | 35 | 24 | 12 |
| Androscoggin | 11 | 7 | — | — | — | — | — | — | — | 4 |
| Aroostook | 15 | 4 | — | 11 | — | — | 2 | 6 | 3 | — |
| Cumberland | 24 | 16 | — | 8 | — | — | 4 | 1 | 3 | — |
| Franklin | 1 | — | — | 1 | — | — | — | — | 1 | — |
| Hancock | 3 | — | — | 2 | — | — | — | — | 2 | 1 |
| Kennebec | 7 | 3 | — | 3 | 1 | — | 2 | 1 | 1 | — |
| Knox | 16 | 5 | 1 | 9 | — | — | — | 4 | 5 | 1 |
| Lincoln | 6 | 4 | — | 2 | — | — | — | 2 | — | — |
| Oxford | 6 | 2 | — | 3 | — | — | — | — | 3 | 1 |
| Penobscot | 20 | 6 | — | 13 | 1 | — | 2 | 9 | 3 | — |
| Piscataquis | 1 | — | — | 1 | — | — | 1 | — | — | — |
| Sagadahoc | 1 | 1 | — | — | — | — | — | — | — | — |
| Somerset | 6 | 3 | — | 1 | 2 | — | 2 | — | 1 | — |
| Waldo | 5 | 3 | 1 | 1 | — | — | — | 1 | — | — |
| Washington | 11 | 1 | 1 | 9 | — | — | 1 | 8 | — | — |
| York | 12 | 2 | — | 5 | — | — | — | 3 | 2 | 5 |

## 1946 BREAKING, ENTERING AND LARCENY — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol pross. 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) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Plea guilty | Plea not guilty (c) | | | | | |
| Totals | 210 | 83 | 3 | 88 | 5 | 1 | 26 | 5 | 61 | 31 |
| Androscoggin | 21 | 18 | — | 1 | — | — | — | — | 1 | 2 |
| Aroostook | 16 | 3 | — | 10 | — | — | 6 | — | 4 | 3 |
| Cumberland | 30 | 9 | — | 20 | 1 | — | 2 | — | 19 | — |
| Franklin | 5 | 2 | — | 3 | — | — | — | 3 | — | — |
| Hancock | 8 | 1 | — | 4 | — | — | 3 | — | 1 | 3 |
| Kennebec | 8 | 4 | — | 2 | 2 | — | — | — | 4 | — |
| Knox | 8 | 3 | — | 5 | — | — | 4 | — | 1 | — |
| Lincoln | 6 | — | — | 4 | — | — | 1 | 1 | 2 | 2 |
| Oxford | 21 | 14 | — | 6 | — | — | 2 | 1 | 3 | 1 |
| Penobscot | 37 | 21 | 2* | 10 | — | — | 3 | — | 7 | 4 |
| Sagadahoc | 4 | — | 1 | 2 | — | — | 1 | — | 1 | 1 |
| Somerset | 6 | — | — | 5 | 1 | 1 | 3 | — | 2 | — |
| Waldo | 20 | — | — | 7 | 1 | — | 1 | — | 7 | 12 |
| Washington | 1 | 1 | — | — | — | — | — | — | — | — |
| York | 19 | 7 | — | 9 | — | — | — | — | 9 | 3 |

*By reason of insanity

## 1946 FORGERY — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol pross. etc. (b) | Ac-quit-ted | Plea guilty | Plea not guilty (c) | Con-tinued for sen-tence (d) | Proba-tion (e) | Fine (f) | Im-prison-ment (g) | Pend-ing at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 84 | 27 | — | 41 | 1 | 6 | 10 | — | 26 | 15 |
| Androscoggin | 21 | 5 | — | 2 | 1 | — | — | — | 3 | 13 |
| Aroostook | 17 | 5 | — | 12 | — | — | 8 | — | 4 | — |
| Cumberland | 14 | 6 | — | 8 | — | — | 2 | — | 6 | — |
| Hancock | 1 | — | — | 1 | — | — | — | — | 1 | — |
| Kennebec | 2 | — | — | 2 | — | — | — | — | 2 | — |
| Oxford | 6 | 4 | — | 2 | — | — | — | — | 2 | — |
| Penobscot | 9 | 4 | — | 5 | — | — | — | — | 5 | — |
| Sagadahoc | 1 | — | — | 1 | — | — | — | — | 1 | — |
| Somerset | 8 | 2 | — | 6 | — | 6 | — | — | — | — |
| Waldo | 3 | 1 | — | 2 | — | — | — | — | 2 | — |
| York | 2 | — | — | — | — | — | — | — | — | 2 |

## 1946 LARCENY — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol-pross. etc. (b) | Acquitted | Convicted | | Continued for sentence (d) | Probation (e) | Fine (f) | Imprisonment (g) | Pending at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Plea guilty | Plea not guilty (c) | | | | | |
| Totals | 333 | 110 | 3 | 171 | 1 | 3 | 50 | 17 | 102 | 48 |
| Androscoggin | 34 | 5 | — | 4 | — | — | — | 2 | 2 | 25 |
| Aroostook | 34 | 8 | 1* | 23 | — | 1 | 7 | 2 | 13 | 2 |
| Cumberland | 48 | 23 | — | 25 | — | — | 4 | — | 21 | — |
| Franklin | 8 | 8 | — | — | — | — | — | — | — | — |
| Hancock | 7 | — | — | 7 | — | — | 6 | — | 1 | — |
| Kennebec | 22 | 8 | — | 11 | — | — | 2 | — | 9 | 3 |
| Knox | 6 | 3 | — | 3 | — | — | — | — | 3 | — |
| Lincoln | 4 | — | — | 4 | — | — | — | 1 | 3 | — |
| Oxford | 41 | 20 | — | 17 | — | — | 6 | — | 11 | 4 |
| Penobscot | 39 | 5 | — | 28 | — | — | 9 | 4 | 15 | 6 |
| Piscataquis | 2 | — | — | 2 | — | — | — | — | 2 | — |
| Sagadahoc | 6 | — | — | 6 | — | — | 5 | — | 1 | — |
| Somerset | 24 | 9 | 1 | 12 | — | — | 9 | — | 3 | 2 |
| Waldo | 13 | 2 | 1 | 10 | — | — | 2 | 2 | 6 | — |
| Washington | 26 | 13 | — | 13 | — | 2 | — | 3 | 8 | — |
| York | 19 | 6 | — | 6 | 1 | — | — | 3 | 4 | 6 |

*By reason of insanity

## 1946 SEX OFFENSES — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol-pross. etc. (b) | Acquitted | Plea guilty | Plea not guilty (c) | Continued for sentence (d) | Probation (e) | Fine (f) | Imprisonment (g) | Pending at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 145 | 37 | 5 | 80 | 4 | 5 | 23 | 10 | 46 | 19 |
| Androscoggin | 26 | 7 | — | 6 | — | — | — | 1 | 5 | 13 |
| Aroostook | 38 | 13 | 1 | 21 | 2 | 3 | 3 | 8 | 9 | 1 |
| Cumberland | 15 | 5 | 1 | 9 | — | — | 1 | — | 8 | — |
| Franklin | 1 | 1 | — | — | — | — | — | — | — | — |
| Hancock | 2 | — | — | 1 | — | — | 1 | — | — | 1 |
| Kennebec | 12 | 2 | — | 10 | — | — | 4 | — | 6 | — |
| Oxford | 4 | 3 | — | 1 | — | — | — | — | 1 | — |
| Penobscot | 29 | 4 | 2 | 22 | — | 2 | 11 | 1 | 8 | 1 |
| Piscataquis | 2 | — | — | 1 | 1 | — | — | — | 2 | — |
| Sagadahoc | 4 | 1 | — | 3 | — | — | 2 | — | 1 | — |
| Somerset | 5 | — | 1 | 4 | — | — | 1 | — | 3 | — |
| Washington | 1 | — | — | 1 | — | — | — | — | 1 | — |
| York | 6 | 1 | — | 1 | 1 | — | — | — | 2 | 3 |

## 1946 NON-SUPPORT — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol pross. etc (b) | Acquitted | Convicted | | Continued for sentence (d) | Probation (e) | Fine (f) | Imprisonment (g) | Pending at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Plea guilty | Plea not guilty (c) | | | | | |
| Totals | 14 | 4 | — | 1 | — | — | 1 | — | — | 9 |
| Androscoggin | 6 | 1 | — | — | — | — | — | — | — | 5 |
| Aroostook | 1 | 1 | — | — | — | — | — | — | — | — |
| Kennebec | 1 | — | — | 1 | — | — | 1 | — | — | — |
| Knox | 1 | 1 | — | — | — | — | — | — | — | — |
| Penobscot | 3 | 1 | — | — | — | — | — | — | — | 2 |
| York | 2 | — | — | — | — | — | — | — | — | 2 |

## 1946 LIQUOR OFFENSES — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol pross. etc (b) | Acquitted | Plea guilty | Plea not guilty (c) | Continued for sentence (d) | Probation (e) | Fine (f) | Imprisonment (g) | Pending at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 26 | 9 | — | 12 | 1 | — | 2 | 9 | 2 | 4 |
| Androscoggin | 16 | 7 | — | 5 | — | — | — | 4 | 1 | 4 |
| Aroostook | 1 | — | — | — | 1 | — | — | — | 1 | — |
| Cumberland | 1 | — | — | 1 | — | — | — | 1 | — | — |
| Hancock | 2 | — | — | 2 | — | — | 1 | 1 | — | — |
| Penobscot | 2 | 1 | — | 1 | — | — | — | 1 | — | — |
| Piscataquis | 1 | — | — | 1 | — | — | 1 | — | — | — |
| York | 3 | 1 | — | 2 | — | — | — | 2 | — | — |

## 1946 DRUNKEN DRIVING — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol pross. etc (b) | Acquitted | Plea guilty | Plea not guilty (c) | Continued for sentence (d) | Probation (e) | Fine (f) | Imprisonment (g) | Pending at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 278 | 77 | 11 | 143 | 13 | 1 | 1 | 146 | 8 | 34 |
| Androscoggin | 61 | 14 | 1 | 28 | 1 | — | — | 26 | 3 | 17 |
| Aroostook | 53 | 12 | 2 | 31 | 2 | — | — | 30 | 3 | 6 |
| Cumberland | 49 | 17 | 2 | 27 | 3 | — | 1 | 29 | — | — |
| Franklin | 1 | 1 | — | — | — | — | — | — | — | — |
| Hancock | 1 | — | — | 1 | — | — | — | 1 | — | — |
| Kennebec | 14 | 1 | 1 | 8 | 1 | — | — | 9 | — | 3 |
| Knox | 10 | 3 | 2 | 3 | 1 | — | — | 4 | — | 1 |
| Lincoln | 2 | 1 | 1 | — | — | — | — | — | — | — |
| Oxford | 4 | 1 | — | 2 | — | — | — | 2 | — | 1 |
| Penobscot | 38 | 10 | 1 | 24 | 3 | — | — | 27 | — | — |
| Piscataquis | 1 | — | — | 1 | — | — | — | 1 | — | — |
| Sagadahoc | 3 | 1 | — | 2 | — | — | — | 2 | — | — |
| Somerset | 12 | 5 | — | 5 | 2 | 1 | — | 5 | 1 | — |
| Waldo | 5 | — | — | 5 | — | — | — | 4 | 1 | — |
| Washington | 3 | 1 | 1 | — | — | — | — | — | — | 1 |
| York | 21 | 10 | — | 6 | — | — | — | 6 | — | 5 |

## 1946 INTOXICATION — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol-pross. 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) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Plea guilty | Plea not guilty (c) | | | | | |
| Totals | 148 | 37 | — | 79 | 28 | 1 | 13 | 44 | 49 | 4 |
| Androscoggin | 14 | 6 | — | 6 | — | — | — | 1 | 5 | 2 |
| Aroostook | 39 | 4 | — | 21 | 12 | — | 1 | 17 | 15 | 2 |
| Cumberland | 19 | 5 | — | — | 14 | — | 4 | 4 | 6 | — |
| Kennebec | 6 | 2 | — | 4 | — | — | 1 | 1 | 2 | — |
| Knox | 4 | 3 | — | — | 1 | — | — | — | 1 | — |
| Lincoln | 1 | 1 | — | — | — | — | — | — | — | — |
| Oxford | 2 | 1 | — | 1 | — | — | — | 1 | — | — |
| Penobscot | 29 | 12 | — | 16 | 1 | — | 1 | 13 | 3 | — |
| Sagadahoc | 4 | 1 | — | 3 | — | — | 1 | 1 | 1 | — |
| Somerset | 5 | — | — | 5 | — | 1 | 1 | — | 3 | — |
| Waldo | 18 | — | — | 18 | — | — | 3 | 2 | 13 | — |
| Washington | 5 | 1 | — | 4 | — | — | 1 | 3 | — | — |
| York | 2 | 1 | — | 1 | — | — | — | 1 | — | — |

## 1946 MOTOR VEHICLE — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol-pross. etc. (b) | Ac-quit-ted | Plea guilty | Plea not guilty (c) | Con-tinued for sen-tence (d) | Proba-tion (e) | Fine (f) | Im-prison-ment (g) | Pend-ing at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 117 | 58 | 1 | 44 | 2 | — | 1 | 42 | 3 | 13 |
| Androscoggin | 23 | 13 | — | 8 | — | — | — | 8 | — | 2 |
| Aroostook | 20 | 7 | — | 10 | 1 | — | — | 11 | — | 2 |
| Cumberland | 19 | 11 | — | 8 | — | — | — | 7 | 1 | — |
| Franklin | 4 | 4 | — | — | — | — | — | — | — | — |
| Kennebec | 2 | 1 | — | 1 | — | — | — | — | 1 | — |
| Knox | 2 | 1 | — | — | — | — | — | — | — | 1 |
| Lincoln | 3 | 1 | 1 | 1 | — | — | — | 1 | — | — |
| Oxford | 2 | 1 | — | 1 | — | — | — | 1 | — | — |
| Penobscot | 12 | 6 | — | 5 | 1 | — | 1 | 5 | — | — |
| Piscataquis | 1 | 1 | — | — | — | — | — | — | — | — |
| Sagadahoc | 2 | 1 | — | — | — | — | — | — | — | 1 |
| Somerset | 4 | 2 | — | 1 | — | — | — | 1 | — | 1 |
| Waldo | 3 | — | — | 2 | — | — | — | 2 | — | 1 |
| Washington | 4 | 2 | — | 2 | — | — | — | 2 | — | — |
| York | 17 | 7 | — | 5 | — | — | — | 4 | 1 | 5 |

## 1946 JUVENILE DELINQUENCY — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol pross. 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) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Plea guilty | Plea not guilty (c) | | | | | |
| Totals | 8 | 3 | — | 3 | — | — | 2 | — | 1 | 2 |
| Androscoggin | 2 | — | — | — | — | — | — | — | — | 2 |
| Kennebec | 1 | — | — | 1 | — | — | 1 | — | — | — |
| Penobscot | 3 | 2 | — | 1 | — | — | — | — | 1 | — |
| Piscataquis | 1 | 1 | — | — | — | — | — | — | — | — |
| Waldo | 1 | — | — | 1 | — | — | 1 | — | — | — |

## 1946 MISCELLANEOUS — INDICTMENTS AND APPEALS

| Counties | Total (a) | Nol pross. etc. (b) | Ac-quit-ted | Plea guilty | Plea not guilty (c) | Con-tinued for sen-tence (d) | Proba-tion (e) | Fine (f) | Im-prison-ment (g) | Pend-ing at end of year (h) |
|---|---|---|---|---|---|---|---|---|---|---|
| Totals | 175 | 81 | 11 | 62 | 3 | 2 | 8 | 32 | 23 | 18 |
| Androscoggin | 14 | 7 | 1 | 2 | — | — | — | 2 | — | 4 |
| Aroostook | 17 | 5 | 2 | 6 | — | 1 | — | 5 | — | 4 |
| Cumberland | 37 | 15 | 4 | 17 | 1 | — | 4 | — | 14 | — |
| Franklin | 2 | 2 | — | — | — | — | — | — | — | — |
| Hancock | 1 | 1 | — | — | — | — | — | — | — | — |
| Kennebec | 5 | 3 | — | 2 | — | — | 1 | — | 1 | — |
| Knox | 11 | 7 | — | 4 | — | — | — | 1 | 3 | — |
| Lincoln | 5 | 3 | 1 | 1 | — | — | — | — | 1 | — |
| Oxford | 10 | 4 | — | 1 | — | — | 1 | — | — | 5 |
| Penobscot | 14 | 6 | — | 7 | — | — | — | 7 | — | 1 |
| Piscataquis | 7 | 3 | 1 | 3 | — | — | — | 2 | 1 | — |
| Sagadahoc | 9 | 5 | — | 4 | — | — | — | 4 | — | — |
| Somerset | 10 | 1 | 2 | 4 | 2 | 1 | — | 3 | 2 | 1 |
| Waldo | 2 | 1 | — | 1 | — | — | — | 1 | — | — |
| Washington | 9 | 6 | — | 3 | — | — | 2 | 1 | — | — |
| York | 22 | 12 | — | 7 | — | — | — | 6 | 1 | 3 |

# 1946 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 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Aroostook | | — | | — | | — | | — | | — | $100.00 |
| Kennebec | 3 | $225.00 | | — | | — | | — | | — | 25.00 |
| Penobscot | 1 | 100.00 | 3 | $650.00 | 5 | $900.00 | 2 | $550.00 | 2 | $600.00 | — |
| Somerset | 1 | 1,000.00 | 1 | 1,000.00 | 1 | 1,000.00 | 1 | 189.25 | 1 | 189.25 | — |
| Waldo | 1 | 500.00 | | — | | — | | — | | — | 500.00 |
| Washington | 1 | 100.00 | | — | | — | | — | | — | 100.00 |
| Totals | 7 | $1,925.00 | 4 | $1,650.00 | 6 | $1,900.00 | 3 | $739.25 | 3 | $789.25 | $725.00 |

# 1946 LAW COURT CASES

| County | Name of Case | Outcome |
|---|---|---|
| Cumberland .... | Annie Manchester | Judgment for State |
| | Walter Osbourne | Pending |
| | Ernest Hudon | Pending |
| Kennebec ...... | Royden V. Brown | Judgment for State |
| Knox.......... | Herman Hoffses | Pending |
| Oxford......... | Frank Morton | Pending |

# FINANCIAL STATISTICS, YEAR ENDING NOVEMBER 1, 1946

| COUNTIES | Amount Paid Costs. of Pros. Superior Court | Amount Paid Bills of Cost allowed by County Com'rs | Amount Paid to Grand Jurors | Amount Paid to Traverse Jurors | Amt. Received from Mag. etc. Superior Court | Amt. Received from Mag., etc. all other courts |
|---|---|---|---|---|---|---|
| Androscoggin | $10,786.87 | $20,241.56 | $1,855.92 | $3,875.16 | $3,832.91 | $22,214.69 |
| Aroostook | 2,273.47 | 14,234.27 | 998.04 | 2,621.04 | 8,916.54 | 73,689.55 |
| Cumberland | 24,718.62 | 64,939.55 | 1,134.42 | 4,315.44 | 4,220.53 | 75,404.70 |
| Franklin | 1,061.67 | 4,142.37 | 268.14 | ........ | 660.50 | 10,510.17 |
| Hancock | 367.41 | 2,585.72 | 572.80 | 1,501.70 | 1,297.34 | 14,186.22 |
| Kennebec | 3,408.39 | 11,568.71 | 763.28 | 3,665.20 | 4,109.12 | 28,233.28 |
| Knox | 326.79 | 3,328.11 | 487.32 | 177.00 | 616.54 | 7,664.09 |
| Lincoln | 1,203.22 | 169.75 | 550.78 | 163.93 | 207.10 | 1,127.70 |
| Oxford | 3,215.07 | 4,362.60 | 1,199.46 | 1,913.54 | 740.07 | 13,548.69 |
| Penobscot | 6,649.17 | 11,850.14 | 1,289.50 | 6,245.83 | 8,034.44 | 55,046.80 |
| Piscataquis | 1,499.65 | 2,546.97 | 382.92 | 620.52 | 729.14 | 6,813.70 |
| Sagadahoc | 828.73 | 4,101.06 | 380.88 | 2,784.12 | 336.30 | 15,221.27 |
| Somerset | 1,233.23 | 5,091.97 | 1,217.16 | 3,406.56 | 1,834.30 | 16,968.95 |
| Waldo | 615.72 | 10,646.85 | 500.88 | 2,243.64 | 1,033.05 | 10,694.13 |
| Washington | 5,603.42 | 6,948.68 | 1,135.38 | 1,209.72 | 2,077.00 | 16,877.26 |
| York | 1,996.42 | 17,547.10 | 1,981.20 | 3,997.80 | 2,906.88 | 41,776.90 |
| Totals | $65,787.85 | $184,305.41 | $14,718.08 | $38,741.20 | $41,551.76 | $409,978.10 |

# INDEX


| | Date | Page |
|---|---|---|
| Accounts receivable, prompt certification of | 6/22/45 | 44 |
| Agricultural Societies | 12/18/46 | 143 |
| Agriculture—potato inspection, payment due for | 7/ 2/46 | 113 |
| —seed potatoes | 5/ 3/46 | 98 |
| —sweet corn, tax on | 8/21/45 | 55 |
| | 11/20/45 | 71 |
| Armories, rentals of | 4/29/46 | 97 |
| Armory, Stevens Avenue, fire loss | 3/ 7/45 | 26 |
| Assessment of overlay, in towns | 7/18/45 | 50 |
| Audit—agencies of State | 2/ 6/45 | 18 |
| —corporations not subject to | 2/ 6/45 | 18 |
| —limitations | 9/ 5/45 | 62 |
| —probate cases | 1/25/45 | 17 |
| Auditor, State, to report delinquents | 2/ 6/45 | 17 |
| Bar Examiners, not subject to audit | 2/15/45 | 22 |
| Barbers and hairdressers | 4/25/45 | 33 |
| Birth certificates, illegitimate children | 6/27/45 | 45 |
| Bonds—clerks of courts | 1/30/46 | 83 |
| —lapsed authority for issue | 7/17/46 | 118 |
| Boxing exhibition, license for | 12/12/46 | 141 |
| Bus terminal, Lewiston | 7/25/45 | 52 |
| Cattle, condemned, payments for | 2/13/45 | 21 |
| , control during shipment | 7/18/45 | 51 |
| Child labor | 11/14/46 | 134 |
| Cigarettes, free distribution of | 12/27/45 | 79 |
| Clams, shipment by agent of licensee | 2/12/45 | 19 |
| Council, compensation and travel of members of | 6/24/46 | 108 |
| , disability of member of | 10/28/46 | 125 |
| County attorneys, salary increase | 6/12/45 | 43 |
| Education—adjoining towns, schools in | 8/ 5/46 | 118 |
| —equivalency certificates | 6/27/46 | 111 |
| —evening schools | 11/ 6/46 | 130 |
| —federal grants | 4/26/45 | 33 |
| —maximum pupil enrollment | 12/23/46 | 145 |
| —minimum hours | 12/23/46 | 148 |
| —minimum salaries | 12/23/46 | 145 |
| —National School Lunch Act | 7/13/46 | 116 |
| —physically handicapped children | 10/17/45 | 64 |
| | 2/21/46 | 89 |
| —private cars, liability | 10/18/45 | 66 |
| —Thornton Academy | 10/30/46 | 127 |
| —tuition, other towns | 10/17/45 | 65 |
| , private elementary schools | 5/23/46 | 103 |
| —union superintendent, election of | 7/ 1/46 | 111 |
| —vocational education, N.Y.A. machinery | 8/24/45 | 56 |
| —withholding State funds | 7/ 2/45 | 47 |

| | Date | Page |
|---|---|---|
| Eligibility to office | 7/ 2/45 | 47 |
| Employees, State, hourly basis | 6/21/45 | 44 |
| Employees' Retirement System: | | |
| Absence for 3 years | 4/17/46 | 96 |
| Cost at University of Maine | 3/ 6/45 | 25 |
| Employees over 65, no longer contributing | 4/17/46 | 96 |
| Highways, 3d class, employees on | 6/ 3/46 | 107 |
| Last payment | 12/18/46 | 143 |
| Local districts | 7/26/45 | 53 |
| | 11/14/46 | 132 |
| Maine Maritime Academy | 4/17/46 | 96 |
| Normal schools | 5/17/46 | 101 |
| Quasi-municipal corporations | 12/12/45 | 77 |
| Re-employment | 2/ 4/46 | 85 |
| Refund, on death | 8/24/45 | 56 |
| Retired employees, outside employment | 12/31/46 | 148 |
| Teachers | 8/14/45 | 54 |
| Teachers in academies | 1/16/46 | 80 |
| Temporary employees | 4/18/45 | 32 |
| University of Maine, cost at | 3/ 6/45 | 25 |
| , rights | 4/30/45 | 35 |
| Federal Employees Credit Union | 11/27/46 | 138 |
| Fines and costs—mittimus and travel | 5/ 9/45 | 37 |
| —State Police | 2/12/45 | 19 |
| | 2/11/46 | 88 |
| Fish and Game—taking up licenses | 10/31/45 | 69 |
| Fish hatcheries, construction | 12/11/46 | 140 |
| Fishing, free licenses to soldiers | 7/25/45 | 52 |
| , glass decoys for fish | 3/12/46 | 93 |
| Funds—Capital reserve, towns and counties | 4/10/45 | 31 |
| —deposits subject to immediate withdrawal | 5/13/46 | 99 |
| —Ministerial and school, interest on | 4/30/45 | 35 |
| —Trust, investment of | 2/20/45 | 22 |
| , lump Investments | 6/24/46 | 109 |
| Game Management Area | 10/ 8/46 | 124 |
| Gifts to the State, acceptance of | 3/23/45 | 27 |
| , game management area | 10/ 8/46 | 124 |
| Governor, no power to alter municipal corporations | 10/ 1/46 | 123 |
| Highways—anticipation of aid | 2/ 1/46 | 83 |
| —cattle passes | 7/ 3/46 | 114 |
| —damages | 9/26/46 | 122 |
| —Minot Corner bridge | 8/29/45 | 60 |
| —parking on | 9/20/45 | 63 |
| —reimbursement, overdraft | 12/27/45 | 79 |
| —sales of land | 11/ 5/46 | 130 |
| —town road improvement fund | 5/ 8/45 | 37 |
| —trees, removal of | 10/ 2/46 | 123 |
| Indians, free licenses to fish, hunt and trap | 1/22/46 | 81 |

| | Date | Page |
|---|---|---|
| Institutions—appointment of heads of | 7/10/45 | 48 |
| —Escapees, Reformatory, prison sentences | 5/29/46 | 105 |
| —State charges in sanatoria | 8/27/45 | 57 |
| —transfers to State Hospitals | 8/29/45 | 61 |
| Insurance—company examinations | 12/ 4/46 | 139 |
| —fire loss, time of payment | 11/18/46 | 137 |
| —franchise tax | 10/30/46 | 128 |
| —license—trade names | 5/15/46 | 101 |
| | 5/21/46 | 102 |
| —premium notes | 10/ 3/46 | 124 |
| —Stevens Avenue armory | 3/ 7/45 | 26 |
| —Workmen's Compensation | 5/27/46 | 103 |
| Larceny, classes of | 5/21/45 | 38 |
| Legislature, resignation of member-elect | 12/12/46 | 141 |
| Lewiston bus terminal | 7/25/45 | 52 |
| Loans by corporations other than banks | 3/27/45 | 27 |
| Lobsters, air transportation of | 11/16/45 | 70 |
| Maine Port Authority | 10/19/45 | 67 |
| Maine Turnpike Authority: | | |
| Retirement status, State employees | 2/26/46 | 91 |
| State Police | 10/ 1/46 | 122 |
| Military Defense Commission, rentals | 4/29/46 | 97 |
| Military leave for manoeuvres | 5/ 1/45 | 36 |
| Milk, price where sold at retail | 6/ 3/36 | 107 |
| Motor Vehicles: | | |
| —Accident, failure to report | 3/ 7/46 | 92 |
| —Agent or lessee, permit to | 2/27/46 | 90 |
| —Appeal on 3d revocation of license | 11/14/46 | 135 |
| —Financial responsibility | 6/22/45 | 44 |
| —Intrastate transportation by out-of-State truck | 3/27/46 | 94 |
| —Length | 2/ 8/45 | 18 |
| —Reciprocity | 7/ 6/45 | 48 |
| | 1/16/46 | 79 |
| —Registration by lessee | 3/26/46 | 93 |
| —Transfer fee | 6/ 5/45 | 42 |
| —Weight | 2/ 1/46 | 84 |
| —Zone privilege number plates | 2/27/45 | 24 |
| Old Age Assistance—fair hearing | 7/15/46 | 117 |
| —last check | 2/15/46 | 88 |
| Pardon—Application for | 12/27/45 | 78 |
| Park—Lapsing of funds illegal | 7/15/45 | 49 |
| | 7/18/45 | 50 |
| —Police authority | 4/26/45 | 34 |
| —Tenure of commissioners | 2/ 6/46 | 86 |
| Parole, See Prison | | |
| Passamaquoddy District Authority | 12/ 5/45 | 74 |
| Pollution—by sawdust, etc. | 5/21/46 | 102 |
| —by sewage | 12/16/46 | 142 |

| | Date | Page |
|---|---|---|
| Pownal State School, transfer of inmates | 4/ 9/45 | 29 |
| Prison—parole, eligibility for | 5/ 2/46 | 98 |
| —parolee from | 5/24/45 | 39 |
| | 2/ 7/46 | 86 |
| —sentences concurrent | 9/ 4/46 | 120 |
| Probate—audit of records in | 1/25/45 | 17 |
| —filing fees | 7/26/45 | 53 |
| Public Utilities Commission, tenure | 12/ 6/45 | 75 |
| Racing associations, etc., not subject to audit | 2/22/45 | 23 |
| Redemption following land sales | 6/ 1/45 | 41 |
| Sewerage Districts | 8/14/46 | 119 |
| Sewers, assessment of costs of | 8/ 2/45 | 54 |
| Tax—Abatement, land sold to State agency | 4/ 5/45 | 29 |
| —Banks, general: Escrow accounts | 10/28/46 | 125 |
| mortgages held by | 10/28/46 | 126 |
| , savings: debentures | 11/21/45 | 73 |
| FHA loans | 7/ 3/46 | 114 |
| real estate | 11/20/45 | 72 |
| undivided profits | 11/20/45 | 72 |
| United States bonds | 4/ 4/46 | 95 |
| —Boston & Maine R. R. | 4/18/45 | 32 |
| —gasoline | 7/ 8/46 | 116 |
| —horses | 2/ 1/46 | 84 |
| —Loan & Building Associations | 10/23/45 | 68 |
| —sales, proceeds | 6/ 1/45 | 41 |
| , " , distribution of | 2/12/45 | 20 |
| , Medford (deorganized town) | 8/27/45 | 59 |
| —sweet corn | 8/21/45 | 55 |
| | 11/20/45 | 71 |
| —telegraph and telephone companies | 4/12/46 | 95 |
| | 12/23/46 | 146 |
| —Use Fuel | 12/18/46 | 144 |
| Tax exemption, none, widows, men killed in action | 10/18/45 | 67 |
| , veterans | 10/24/45 | 69 |
| Taxes, payments in lieu of (Lanham Act) | 2/26/45 | 23 |
| | 2/28/45 | 25 |
| Teachers' Pensions | 8/14/45 | 54 |
| | 9/ 9/46 | 120 |
| | 9/12/46 | 121 |
| Beneficiaries | 11/13/46 | 131 |
| Part time teaching | 10/31/46 | 129 |
| Time made up by substituting | 11/20/46 | 138 |
| See also Employees' Retirement System | | |
| Town manager, employment of | 1/29/46 | 82 |
| Towns—amounts due from deductible from subsidies | 6/ 3/46 | 106 |
| , deorganized—road tax | 4/ 5/45 | 29 |
| , " —tax sales, Medford | 8/27/45 | 59 |

| | Date | Page |
|---|---|---|
| Trust funds—investment of | 2/20/45 | 22 |
| —lump investment | 6/24/46 | 109 |
| —ministerial and school, interest | 4/30/45 | 35 |
| University of Maine—pension costs | 3/ 6/45 | 25 |
| —trust funds | 9/20/45 | 63 |
| —trustees | 12/ 5/45 | 75 |
| | 12/10/45 | 76 |
| Veterans' Graves Registration Service | 4/ 9/45 | 30 |
| "War Time" ended | 9/13/45 | 62 |
| Workmen's Compensation or sick leave | 10/ 8/45 | 64 |