

MAINE STATE LEGISLATURE

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STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1910.

AUGUSTA

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in case of a disagreement between the commissioners and the owner or occupant of any dam as to the propriety and safety of the plan submitted, that there is an appeal, but the appeal is only as to the propriety and safety of the plan, not as the necessity of constructing a fish way. And later in the act, you will find that the decision upon the appeal "shall be final as to the plan and location appealed from," again emphasizing the fact that the decision of the commissioners from which the appeal is taken is as to the plan and location and not upon the prior question as to whether any fish way must be located and constructed.

Summarizing, therefore, the situation appears to me to be this: If a river or stream is habitually frequented by salmon, shad, alewives, or landlocked salmon, the owner or occupant of any dam or other artificial construction upon that river or stream, must provide a durable and efficient fish way; as to the form, capacity and location of the fish way, the question is to be passed upon by the commissioners of inland fisheries and game, but they cannot excuse the owner or occupant of the dam or other artificial construction from complying with the law as to the provision of the fish way.

Respectfully yours,

WARREN C. PHILBROOK,
Attorney General.

OFFICE OF THE ATTORNEY GENERAL.

WATERVILLE, ME., NOV. 11, 1910.

Subject: License to corporation to buy, sell and tan
deer skins and other valuable skins.

Hon. J. W. Brackett, Augusta, Me.

DEAR SIR:—Some time ago your department submitted questions relating to R. S., Chap. 32, Sec. 30, as amended by Chap. 226 of the P. L. of 1907 relating to the issuance of licenses to buy and sell or tan deer skins and other valuable skins.

The question or questions submitted by your department were (1) "Can more than one person buy deer skins and the skins of otter, sable and fisher under one license"; (2) "Can a corporation send out more than one of its regular employees

to buy skins under the license issued to a corporation"; (3) "Can a person, not a corporation, to whom one of these licenses has been issued employ agents to buy those skins for him under his license."

I have tried to examine the statute as carefully as possible and while I am of the opinion that a clearer statement of its intention might have been made by the legislature and possibly the incoming legislature may well be asked to remove the ambiguity or doubt by amendment, yet from a reading of the statute as it now stands and from an examination of cases involving similar elements reported in the courts of last resort in other states, I am constrained to answer your questions as follows:

(1). Only one person should be allowed to buy deer skins or skins of otter, sable and fisher under one license. (2). A corporation should not send out more than one of its regular employees to buy such skins, and I am inclined moreover to the opinion that if the employee is sent out by the corporation the license should stand in the name of the employee rather than in the name of the corporation. Of course it naturally follows that other employees of the corporation if also licensed might be properly sent out. (3). That a person not a corporation to whom one of the licenses has been issued may not employ agents to buy those skins for him under the license issued to the employer.

I do not find the precise question involved to have been passed upon by any of the courts of last resort but I do find some cases relating to licenses issued to persons authorizing them to sell and the principle involved between buying and selling seems to be so similar that I am inclined to apply the principles of law to this case which were applied to those cases where the licensee was selling instead of purchasing. Of course the fact that in given states the statute varies from the one under consideration makes some difference in the weight or application of any citations to which I may refer but there seems to be an underlying principle in all, on which we may safely rely.

In *Standard Oil Co. v. Commonwealth* 55 S. W. 8, discussing a Kentucky statute relating to peddling, the court says, "indeed, a license cannot be issued to a corporation to sell, except that license designates some person by name and descrip-

tion to sell." In that particular statute there was a requirement that the person who was licensed to sell should furnish a certain description of himself.

Again, in 88, N. E. 945, we find the following: "A license is a privilege granted to a person or persons and not to inanimate things to pursue some occupation, or to exercise some right, which has been declared unlawful except upon compliance with certain conditions."

In *State v. Morrison* found in 36, S. E. 329, is the discussion of a case where a corporation was granted a license to sell pianos and organs. The corporation sent out several agents each of whom traveled and sold under that one license. A prosecution having been instituted against one of the agents for selling without a license an attempt was made to justify through a license which was held by the corporation. The court declared that the license "authorizes only the person having it in possession to sell under it." Obviously, if there were but one license and that held by the corporation each and all of the various agents could not have it in possession. In the same case the court went further and said, "such has always been the policy of the law, except when the statute authorized the issuance of certified duplicates or copies of the license." It is needless to say that our statute does not authorize such issuance.

Without extending this discussion to a wearisome length I think I have sufficiently indicated the reasons which lead me to the answers which I have given above.

Respectfully yours,

WARREN C. PHILBROOK,

Attorney General.

OFFICE OF THE ATTORNEY GENERAL.

AUGUSTA, MAINE, May 17, 1910.

Subject: Powers of Public Boards of Health in connection with School Property.

Dr. A. G. Young, Augusta, Maine.

SIR:—By your letter of May 12, you ask whether the local board of health has authority to destroy school books believed by them to have been exposed to infection.