

MAINE STATE LEGISLATURE

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October 27, 1916

To Hon. William Brennan, Commissioner of Sea and Shore Fisheries
Re: Suit on Bond

I have been over the LeBlanc case briefly but quite fully with Mr. Micherson and Mr. Powell. I have also re-read the opinion of Judge Cornish in State vs. LeBlanc so as to have the matter fresh in my mind. There is no doubt under Judge Cornish's ruling but what you would have a right to bring a civil suit against LeBlanc and his sureties claiming a forfeiture of the bond. Whether such suit could be successfully prosecuted or not would be a very serious question. The case is open to a good many defenses and, if fought out, would not be settled in the Maine Courts, because it would involve certain constitutional questions which could only be finally settled in the Supreme Court at Washington, if parties desired carrying it that far.

It might be advisable at some time to make a test case under the statute and go far enough to get a final and permanent decision. It does not seem to me that it is advisable to do that in this case, but the State ought, in justice to the parties interested, pursue one course or the other. It ought to bring suit or else it ought to notify Mr. LeBlanc's sureties that it does not intend to do so and that no claim for forfeiture of the bond will be made. It is hardly fair toward the parties interested to refrain from suing the bond and at the same time compel them to leave their money in the hands of the surety company.

Personally, I should not advise bringing suit in this case. If your department deems it advisable to get a test of the law, provided, of course, that the incoming legislature does not materially change its provisions, . . . I would take up a new case by agreement with some lobster concern which would co-operate with you in getting the earliest possible final decision with the least possible expense. . . I have no doubt but that it could be arranged, because I presume the lobster men are just as anxious to know their legal rights as you are, but such an arrangement would involve a case which was entirely uncomplicated as to facts. In other words, everything should be agreed upon except the bare legal question involved. You understand, of course, that the position of the defense would be that the bond was given under duress and that the requiring of such a license as the law designates was an unconstitutional interference with the rights of the smark owners and an attempt on the part of the State to regulate interstate commerce in defiance of the federal constitution. This point may not be well taken, but it is worthy of thought and consideration. . .

I should bring no suit against LeBlanc, if I were you. I should notify his employees that I was willing under the circumstances to release his bond and attempt no liability under it. In doing so, I should preserve in writing the proposition on your part that your action in this case was not to be construed as a precedent and was taken in consideration of the peculiar standing of the case, without prejudice as to any action that you might see fit to take concerning any other bond. Then if you want to start another case, after seeing

what action the legislature takes in the matter of the lobster law, begin it with care and with an understanding with some responsible respondent that it is to be a test case and that it is to be followed through the various Courts until some Court of authority finally interprets the law.

I might add that undoubtedly you will be criticized if you do not pursue the Leblanc case. On that account, I have made my advice as explicit as possible in order that you may truthfully say that you acted on my suggestion and not on your own initiative; hence, if there is to be any criticism, it will be on me and not you, and I have become so accustomed to criticism that it does not worry me as much as it otherwise might.

William R. Pattangall
Attorney General