

# MAINE STATE LEGISLATURE

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**PUBLIC DOCUMENTS**

OF THE

**STATE OF MAINE**

BEING THE

**REPORTS**

OF THE VARIOUS

**PUBLIC OFFICERS  
DEPARTMENTS AND  
INSTITUTIONS**

FOR THE TWO YEARS

**JULY 1, 1926 - JUNE 30, 1928**

PUBLIC DOCUMENTS, 1926-28

(Explanatory Note)

Three reports in this volume cover periods in variance with the given biennium. They are as follows:

1. The report of the Attorney General covers the period from 1924 to 1928.
2. The report of the Bangor State Hospital covers the period from 1919 to 1928.
3. The report of the department of Inland Fisheries and Game covers the fiscal year ending June 30, 1928. No printed report was made for the fiscal year ending in 1927.

# STATE OF MAINE

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## REPORT

OF THE

# ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

JUNE 30, 1926

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PRESS OF MERRILL & WEBBER CO.  
AUBURN, MAINE

July 15, 1925.

*Hon. Charles E. Gurney, Chairman, Public Utilities Commission,  
Augusta, Maine.*

DEAR BROTHER GURNEY: In your letter of July 14th, referring to Chapter 167 of the Public Laws of 1925, you ask whether: "Section 6, which requires the keeping of accurate records and other statistics of operation, becomes effective at once, or whether it, like the provisions 'applying to registration of motor vehicles and trailers' enumerated from Section 7 to 14, does not become effective until January 1st, 1926?"

Section 16 of said Chapter provides "this act shall apply to registration of motor vehicles and trailers for the year nineteen hundred and twenty-six and for subsequent years, but not for the year nineteen hundred and twenty-five."

The provisions of the act relating to registration are contained in sections subsequent to Section 6, consequently, it is my opinion that the provisions of Section 6, became effective July 11th.

Had it been the legislative intent to apply the provisions of Section 16 to Section 6, it is fair to infer that the usual words would have been used, "This act shall not take effect (or become effective) until January 1, 1926."

Yours very truly,

SANFORD L. FOGG,

*Deputy Attorney General.*

April 27, 1926.

*Hon. Charles E. Gurney, Chairman, Public Utilities Commission,  
Augusta, Maine.*

DEAR SIR: I am in receipt of your favor of the 15th, inst., in which you ask for an interpretation of certain provisions of Chapter 211 of the Public Laws of 1923, as amended by Chapter 167 of the Public Laws of 1925, in respect to the following:

"'A' is employed in a mill ten miles from his home. He is the owner of a seven passenger Buick. On days when the mill is operating he goes to his work taking with him as fellow passengers six of his neighbors who are fellow workmen in the same mill. They pay him for such service a price agreed upon,

arrived at by estimating the cost of operating the car for that distance. This would necessarily vary with the rising and falling prices of oil and gasoline. This car is not open to the public generally, unless it be required to be available, to the public by reason of the fact that he is operating under Chapter 211, which is precisely the point we desire to have you rule upon. The man publishes no schedules indicating time of departure or arrival or price for the journey, although it is a fact that he runs regularly over the same route on every day that the mill is in operation and on some Sundays when repair work on the mill is needed to be done, his time of departure and arrival being governed by the mill schedule, etc."

You especially ask "under such circumstances, does he come within the provisions of Chapter 211 of the Laws of 1923, as amended, and does he require from this Commission a certificate permitting the operation of a car as aforesaid?"

There is no intimation in the law itself nor in the legislative proceedings for its enactment, which clearly indicates the legislative intention. I do not find that the courts have ever passed upon this or a similar case. From the facts as stated, it appears that the owner of the car primarily operates same for his own use in his business and only carries his neighbors as an accommodation, they paying therefor their part of the exact cost.

There appears to be no indication that the owner thus operating the car does so at a profit, nor does he accept the public generally as passengers; it further appears that he runs his car only when the mill is in operation and that his time of departure and arrival is governed by the mill schedule. He is not a common carrier of passengers, because to constitute himself a common carrier, "it is necessary that he hold himself out to the public as engaged in the business of carrying passengers."

"The fact that the owner of a private automobile hires it to certain friends but not to everybody does not indicate that his automobile is devoted to the business of a common carrier."

Section 1, Public Laws of 1923, Chapter 211, provides "the public utilities commission shall have jurisdiction over every person, firm or corporation operating any motor vehicle upon any public street or highway for the carrying of passengers for hire etc."

It is my opinion that it was the intention of the legislature in this enactment to make it apply to him and him only who operates his car primarily for the carriage of passengers for hire, in other words, as a common carrier who obligates himself to "serve all without discrimination".

It has been held that the test in determining who are passengers, "is whether the person desiring passage in good faith offers himself for the purpose of being carried as a passenger, and whether he is as such accepted and received by the carrier who undertakes to transport him."

The facts as disclosed in this case do not appear to meet the requirements of this test because,

(1) The person operating the car is not a common carrier.

(2) The arrangement between the parties interested appears to be of a reciprocal nature.

They are in the nature of companions, co-workers, rather than as carrier and passengers. The legislature evidently intended to protect the public by requiring the carrier operating a motor vehicle to secure insurance or a surety bond which shall indemnify the insured against any legal liability for personal injury, etc., caused by the use or operation of the motor vehicle described in the insurance contract and also a certificate permitting the operation of said vehicle.

In my opinion it was not the intention of the legislature to subject the person you mention to the expense necessarily incurred in procuring the insurance contemplated in the act, his undertaking evidently being for accommodation and without profit. Of course, the meaning of this act is a question of fact for your Commission.

Yours very truly,

SANFORD L. FOGG,

*Deputy Attorney General.*

October 23, 1926.

*Mr. Horatio D. Crie, Director, Sea and Shore Fisheries Commission, Rockland, Maine.*

DEAR MR. CRIE: Section 21 of Chapter 45 of the Revised Statutes permits the Commissioner, in his discretion, on sufficient