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

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

JUNE 30, 1928

authority in the matter of approval or disapproval of Federal Aid Projects.

Under the Act of February 12, 1925, Chapter 219, Section 1; 43 Stat. 889, printed in Title 23, "Highways", Section 44, Revision of 1926, the approval of any project by the Secretary of Agriculture within three years after the act of 1925 "shall be deemed a contractural obligation of the Federal Government."

Under these circumstances and in view of the authority which the Secretary of Agriculture undoubtedly possesses, it did not seem to me proper for the State of Maine to proceed over the objection of the Federal representative in this State.

The Federal representative in this State is the one with whom we necessarily must deal and his interpretation of the regulations of the Federal Government is the one by which we should be guided, pending further direction to him by competent authority.

Immediate action in Washington regarding this matter would seem to be essential in order to make it prudent for the State to proceed with the provisions that it desires to give preference to Maine workmen. The appropriate course would seem to be for the proper Federal department to advise the Federal representative in this State that there is no objection on their part to the preference that is proposed.

Respectfully yours,

RAYMOND FELLOWS,
Attorney General.

April 9, 1928.

Rev. Frederick W. Smith, 301 *Savings Bank Bldg., Waterville, Maine.*

DEAR SIR: Your recent communication addressed to His Excellency, the Governor, has been handed to this Department for reply.

You ask an interpretation of the word "necessity" as the same occurs in the existing Sunday law which is Section 35 of Chapter 126 of the Revised Statutes. The statute in question is as follows:

"Whoever, on the Lord's Day, keeps open his shop, workhouse, warehouse or place of business, travels, or does any work, labor or business

on that day, except works of necessity or charity; uses any sport, game or recreation; or is present at any dancing, public diversion, show or entertainment, encouraging the same, shall be punished by fine not exceeeding ten dollars."

An examination of the authorities shows that Sunday legislation commenced more than fifteen centuries ago, when Constantine the Great commanded that the inhabitants of *cities* should "rest on the venerable day of the Sun". Similar statutes were passed at an early date in England, but the statute known as 29 Car. 11 c. 7, passed in the reign of King Charles the Second, which provided that "no person is allowed to work on the Lord's Day or use any boat or barge or expose any goods to sale, except meat in public houses or works of necessity or charity" is undoubtedly the basis of the Colonial ordinances from which the Maine statute is derived.
(4 Blackstone 64.)

All of the Sunday statutes have been upheld as constitutional on the ground that they are essentially civil and not religious regulations, as they have for their object the promotion of the health and good order of society by insisting upon a periodical day of rest. Donahoe v. Richards, 38 Maine 405. Hinge v. Crowley, 113 U. S. 703; 28 L. Ed. 1145; L. R. A. 1917-B, 93 note.

While the Statutes of the various states in the Union differ in their attempt to regulate observance of Sunday, and prohibit secular labor and business on that day, they apparently all exempt from their operation works partaking of necessity and charity. The question of what constitutes a work of necessity is one that has been much discussed. A definition that is apparently most satisfactory is the one given in the early Massachusetts case of Commonwealth v. Knox, 6 Mass. 76, where the Court say: "By the word 'necessity' we are not to understand a physical and absolute necessity; but the moral fitness or propriety of the work or labor done, under the circumstances of any particular case." This definition has been followed by our own court in Cleveland v. Bangor, 87 Maine 266, in which opinion, after citing the above case of Commonwealth v. Knox, the Court say:

"The primary object of such legislation has been to secure to private citizens the quiet enjoyment of Sunday as a day of rest, and to encourage

the observance of moral duties on that day, but not to authorize any arbitrary or vexatious interference with the private habits and comfort of individuals. Hamilton v. Boston, 14 Allen, 475. In accordance with these views was the decision of the court in McClary v. Lowell, 44 Vt. 117, holding that it was not unlawful for a father to ride eight miles on Sunday to visit his minor sons and attend to their welfare in another town. And it has been repeatedly held in this State and Massachusetts that walking or riding in the open air in a quiet and civil manner with no object of business or pleasure except the enjoyment of the air and gentle exercise and the consequent promotion of the health, is not in violation of the Sunday law. O'Connell v. Lewiston, 65 Maine 34; Davidson v. Portland, 69 Maine 116; Sullivan v. M. C. R. R. 82 Maine 196 supra; Barker v. Worcester, 139 Mass. 74."

It is impossible to lay down any general rule as to what are and are not works of necessity and charity. Changing needs of human life are so numerous and diversified that it is impossible to classify them. Each case must depend upon its own facts, or in other words,

"This exception may properly be said to cover everything which is morally fit and proper under the particular circumstances of the case." Sullivan v. M. C. R. R. 82 Me. 196; State v. Morin, 108 Me. 303; Eaton v. Insurance Co. 89 Me. 573.

The various state statutes known generally as "Sunday Laws" were never intended to interfere arbitrarily with the comfort or conduct of individuals when necessary to the promotion of health. The prohibition is against unnecessary work, and the jury under proper instructions of the court must determine the question on the circumstances presented to them in each individual case. It seems to be essentially a question of "moral fitness and propriety."

The following are some of the instances where courts of this and other states have held under certain circumstances that work done on Sunday was necessary and therefore lawful; going to a store for prescription in case of sickness; barbering; operation of passenger trains, freight trains, street cars; bathing in the surf; fishing; furnishing food and refreshments; furnishing of heat, water and electric lights; repairing of highways; the making of repairs in a factory so as to prevent employees from losing time; repairing a railway track on Sunday to avoid delay of trains on week days; pumping an oil well where permanent loss and injury to the owner would otherwise ensue; keeping open a hotel, running a restaurant, or dining room; the operation

of an ice factory; harvesting a tobacco crop in danger of frost; carrying mails and express freight; delivery of milk to customers, the hauling to market of fruit or produce to avoid its spoiling; walking and riding to church; walking or riding in the open air for health.

Sports, games, dancing, shows and entertainments are clearly prohibited by the statute, and yet in some instances courts of last resort have held certain games and entertainments to be outside the contemplation of the law, especially where no admission fee is charged. Each case stands and must stand on its own merits, and the question is always a question for the court and jury to decide.

Any unnecessary acts of individuals which disturb or interfere with the rights of that portion of the general public who stay at home on Sunday, and endeavor to observe the day as a day of complete rest and relaxation, would undoubtedly be considered breaches of the law; for example, there might be no legal harm for two or even more persons to pass a baseball from hand to hand in order to derive benefit from out door exercise, provided it did not cause annoyance to others; but for two teams to engage in a regular game with the usual accompanying disturbance would not be considered as legally proper under the existing law.

It is, of course, apparent to everyone that this and similar statutes, aimed to compel the observance of a day of rest, and upheld as constitutional because they are civil and not religious, must be reasonably interpreted to fit the social conditions of today. It is impossible to construe them strictly and literally. If literally construed, the clergy would be fined each Monday for work done on the Sabbath, and every housewife would find herself a criminal because of some act done that she should have performed on the preceding Saturday. Again, under the interpretation advocated by some of our colonial ancestors, many or all of our Sunday School concerts would be considered "entertainments" and every person who attended subject to penalty.

Trusting that this letter may in a measure answer your inquiry, I am

Very truly yours,

RAYMOND FELLOWS,

Attorney General.