

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)

PUBLIC DOCUMENTS

OF THE

STATE OF MAINE

BEING THE

REPORTS

OF THE VARIOUS

**PUBLIC OFFICERS
DEPARTMENTS AND
INSTITUTIONS**

FOR THE TWO YEARS

JULY 1, 1928 - JUNE 30, 1930

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1929-1930

I should say that it is only in the case of a minor who has no parents, guardian or public board like the Board of Children's Guardians that it is necessary to appoint a guardian ad litem.

Very truly yours,

CLEMENT F. ROBINSON

Attorney General

SUNDAY LAW

February 20, 1930

Frederick W. Smith, Esq.,

Waterville, Maine

Dear Sir:

I have your inquiry of February 15 as to the effect of eliminating the words, "Uses any sport, game or recreation" from our Sunday Law.

My immediate predecessor gave you a very careful opinion interpreting the existing Sunday Law under date of April 9, 1928. This is printed in his report for the year on Page 278 and doubtless you have a copy.

In the last part of this opinion he comments on the fact that irrespective of statutory provisions, unnecessary acts of individuals which disturb or interfere with the proper enjoyment of Sunday by the general public who stay at home, might be illegal. Each case must stand on its own merits.

Applying this opinion to your question it seems to me that the effect which a court might give to the omission of the words which you suggest might be this: sports which did not disturb or interfere with the rights of that part of the general public who stay at home on Sunday and observe it as a day of rest, would be held legal; and sports coming within this general objection would still be illegal and so, of course, would sports coming within the express prohibition of the rest of the section, viz.: unnecessary or uncharitable "work, labor and business." Those "present at" the diversions mentioned in the last sentence would still be within the prohibition of the statute.

Coming down to some practical cases I should suppose the eliminating of this phrase would legalize a quiet game of golf on the grounds of a club not contiguous to the residence of those who might be disturbed by the game, and would legalize recreation and games within the family. Some of these diversions may be legal even now with the statute as it is worded, but the amendment would at least appear to clarify the situation to that extent.

It is always difficult to pass beforehand on what application courts would make to a statute or rule of law to a certain set of facts, although in practice that is just what the inquirer would like to know. About as far as any legal adviser can go is to outline the rules of law and forecast his opinion as to the probability of the application which a court would make of those rules of law to suggested facts. But every

legal adviser has to accompany such an opinion with the cautionary statement that very slight facts make a difference as to the application of one rule of law or another. The rules of law we can be fairly sure of, only a court decision will show the particular application.

Very truly yours,

CLEMENT F. ROBINSON

Attorney General

SUNDAY LAW

November 26, 1930

Reverend F. L. Littlefield,

Bath, Maine

Dear Mr. Littlefield:

I have yours of November 17 with reference to the operation of miniature golf courses on Sunday. I appreciate very much the very temperate tone of your letter. I can see that you appreciate that it is not merely a question of law, but also of public policy.

You suggest that the State might properly take a hand in the matter. This raises another question of policy which is more obvious to one acquainted with our governmental traditions than to the private citizen. Under our system of government local authorities are elected and vested with the duty of administering the criminal laws of the State. There is a natural feeling on the part of local officials that they should ordinarily be free from state interference. This feeling has a very real historical and constitutional basis.

There is no doubt of the constitutional power and duty of officials at the State House with respect to the local administration of these laws, but this is not called into play locally except on the request of local officials, or where there has been substantially a breakdown or where crimes of unusual gravity are concerned, typically, capital crimes or crimes involving the fundamental organization and efficiency of the government.

Applying these general principles to the situation which you outlined, it seems to me clear that the working out of the Sunday Law in your community is for the local officials who would have reasonable ground to take it amiss if authorities from Augusta should interfere without their request.

Two practical considerations may have some weight. First, that the incoming legislature will probably consider further the whole question of Sunday observance and may by legislation indicate a public policy one way or the other which is now somewhat uncertain. Second, it is not unlikely miniature golf courses will go as quick as they have come.

Your letter raises fundamental questions of governmental policy which are difficult to work out satisfactorily in specific instances but which are fairly clear of definition in theory and principle.

Very truly yours,

CLEMENT F. ROBINSON

Attorney General