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

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for the calendar years

1929-1930

There is no requirement that authority to perform an autopsy must be in writing. Under R. S. Chapter 18, Section 3, you need merely to be satisfied that no person who is a member of the family or family connection or next of kin of the deceased wishes to claim the body for burial. In the case of patients who are not public charges an express authorization given by any one person entitled to the body would seem to be sufficient. This is plain in the case of a widow or widower. Such widow or widower has a right to the body, and therefore a right to give the consent for an autopsy. Where several persons seem to have an equal claim to the body it would be my view that the express consent of any one of those persons would be sufficient to authorize the autopsy, but in the absence of an express consent from one of those persons there would be a risk involved in performing the autopsy on a person not a public charge or a stranger within the provisions of Chapter 18, Section 3.

I trust this answers your inquiry and should be glad to be of any further assistance that I can.

Very truly yours,
CLEMENT F. ROBINSON
Attorney General

COMMITMENT OF CHILDREN

February 27, 1930

Dr. Stephen E. Vosburgh,
Superintendent, Pownal State School,
Pownal, Maine
Dear Dr. Vosburgh:

I have your inquiry regarding the legality of the commitment from a probate court to the State School of a child of eight years, at the request of the State Board of Children's Guardians without notice by publication or to any person.

It seems to me that this commitment was legal.

By Revised Statutes, Chapter 146, Section 49, a judge of probate may commit to the Pownal State School "after due notice and hearing."

By Revised Statutes, Chapter 67, Section 50, "due notice" denotes public or personal notice at the discretion of the judge.

By Revised Statutes, Chapter 64, Section 54, as amended by P. L. 1917, Chapter 297; P. L. 1919, Chapter 171, the State Board of Children's Guardians to whom a child is committed has "full custody and control over said child;" and the order and decree divests the "parents of all legal rights," "as if the child were adopted."

Putting these statutes together I should say that it is not necessary to give notice by publication or to any individual. The child himself is too young to be entitled to notice; his parents have no legal right to it; the State Board having brought the proceeding obviously has notice.

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