

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

May 17, 1941

Arthur R. Greenleaf, Commissioner
Department of Sea and Shore Fisheries
Boothbay Harbor, Maine

Dear Sir:

I have your letter of May 14th asking with regard to the constitutionality of Sec. 54-A of the Sea and Shore Fisheries law, being Chapter 230 of the Public Laws of 1937.

It is my opinion that the provision in the Act providing that clams taken from the clam flats of the five Eastern coastal counties cannot be sold in the three Western coastal counties, is invalid. The court of Maine has passed on this matter several times. In the case of *State vs. Mitchell*, 97 Maine, page 66, the question of a statute arbitrarily applying to one section of the State or one class of people, but not to another section or another class, was discussed at great length and the particular statute under discussion at that time was held invalid.

It is true that in the case of *State v. Leavitt*, 105 Maine, 76, the court upheld Chapter 317 of the Private and Special Laws of 1903 which forbade the taking of clams on flats of Scarborough during certain months by any person except residents of the town, but the court upheld that solely on the ground that the State has a right to give a preference to the locality in which the fishery is located.

You understand, of course, that Acts of the Legislature are regarded as valid until declared invalid by the courts. However, since you have asked the question, it is my duty to inform you that in my opinion if we attempt to enforce this Act by prosecution of any person in the courts, we will meet with an adverse decision.

Very truly yours,

FRANK I. COWAN
Attorney General

May 22, 1941

Arthur R. Greenleaf, Commissioner
Sea and Shore Fisheries
Boothbay Harbor, Maine

Dear Sir:

I have your letter of May 19th, asking for a ruling as to the legality of the selling of canned illegal lobster meat in Maine. Section 89, Public Laws of 1933, as amended by Public Laws of 1933, Chapter 247, as further amended by Public Laws of 1935, Chapter 176, is, I believe, the section to which your letter refers.