

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.

1. If the lobster meat is illegally canned in the State of Maine it cannot be legally shipped, transported, carried, bought, given away, sold or exposed for sale.

2. If the lobster meat is imported in the can, the wording of said section should be interpreted in accordance with the ruling of the Court of the State of Maine in the case of *State vs. Bucknam*, 88 Me., Page 385. This interpreted Revised Statutes of 1883, Chapter 30, Section 12, as amended by Public Laws of 1891, Chapter 95, Section 4. The words of said section: "No person shall . . . have in possession between the first days of October and January more than . . . three deer."

The Court in the above named case held that this statute could apply only to deer unlawfully taken. The Court said on Page 392, "They do not intend to interfere with foreign game, dead or alive, brought within the State at any time or with game lawfully taken or killed here."

The statute of 1883 was subsequently changed by Chapter 131, Public Laws of 1919. Said chapter contained the following language: "No person shall . . . have in possession any bull moose or part thereof, whenever or wherever taken, caught or killed" The Court in the case of *Woods vs. Perkins*, 119 Me., Page 258, held that these words "whenever or wherever taken" made the law apply to moose killed in Canada. The Court called attention to the express language of the statute of 1919, as distinguished from the language of the statute of 1883, and calls the earlier statute one of limited, not unlimited, scope.

My conclusion, if I have correctly interpreted your question, is that lobster meat canned in Maine must conform to the requirements of the State law in regard to length. Lobster meat canned outside of the State of Maine but brought into this State need not, under the wording of our present statute, conform to those requirements.

Very truly yours,

FRANK I. COWAN

Attorney General

May 24, 1941

Hon. Sumner Sewall
State House
Augusta, Maine

My dear Governor:

I have your request for an opinion in regard to the power of sheriffs to summon assistance for suppressing mobs and riots, and also asking about the rights of sheriffs or their deputies to cross county lines in order to assist in suppressing civil disorders.