

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)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

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.

The powers of a sheriff as a peace officer do not follow him outside of the limits of the county for which he is elected. When he leaves that county, his status is exactly the same as that of any other citizen in so far as relates to the suppression of crime.

However, under R. S. Chapter 134, Sections 16, 17 and 18, a sheriff is given very broad powers for suppressing riots and mobs in his own county. Under Section 16, he and other peace officers are empowered to command the dispersal of mobs and if there is lack of obedience, the officers are empowered to "command the assistance of all persons present in arresting and securing the persons so unlawfully assembled", and there is a criminal penalty provided for anybody, who, being so commanded, shall refuse to assist.

Under Section 17, if the persons unlawfully assembled neglect or refuse, after command, to disperse without unnecessary delay, any two peace officers may "require the aid of a sufficient number of persons in arms or otherwise, and may proceed in such manner as they deem expedient, to suppress such riotous assembly and to arrest and secure the persons composing it; and when an armed force is thus called out, it shall obey the orders for suppressing such assembly and arresting and securing the persons composing it, which it receives from the governor, any justice or a judge of a court of record, the sheriff of the county, or any two of the officers mentioned in the preceding section", (meaning municipal officers, constables, marshal, deputy marshal, police officers, deputy sheriffs, sheriff.)

In case of a riotous assembly in County No. 1, the sheriff of County No. 2 would have no authority to lead or send his deputies into County No. 1 to assist in suppressing the riot. It would be perfectly proper, however, for him to notify his deputies of the conditions in County No. 1, and if they saw fit to go voluntarily into County No. 1 with arms and place themselves at the disposal of the sheriff in that county, the latter could command their immediate assistance without the necessity of formal deputization, and it would be their legal duty to obey his commands, as provided in Section 17, quoted above, and failure to obey those commands would subject them to the severe penalties provided in Section 16.

So long as the sheriffs and their deputies bear in mind that their powers as sheriffs and deputies terminate at their own county lines, and that when they cross the line they cross it as private citizens, and that before they can give active armed assistance to the suppression of a riot in the second county they must be commanded by an officer of that county to give such assistance, there will be no difficulty.

The question in regard to the right of a private citizen to interfere in the prevention of crime in the absence of an authorization by an officer of the law is one that has caused a great deal of difficulty. A private citizen may always interfere to prevent the commission of a felony, using no more force than is necessary to prevent the act

and may prevent the commission of certain types of misdemeanors such as stretching out a hand to prevent a rock from being thrown through a window, or restraining an assailant from striking another person. In such cases, however, there is no protection for the man acting as peacemaker if he uses more violence than the facts warrant, or if he is mistaken when he thinks the person he restrains is in the act of or about to commit a crime, and good intentions are no defense.

Therefore, in the suppression of riots and mob action, the private citizen should, in general, act only when he is commanded to do so by a properly constituted officer. Otherwise we might have the case of a conflict between two mobs rather than an orderly suppression of crime by a properly disciplined body or group of citizens.

I trust this gives you the information you desire.

Very truly yours,

Attorney General
State of Maine

May 29, 1941

J. A. Mossman
State Controller
Augusta, Maine

Dear Sir:

I have your memorandum of May 27th calling attention to a requested opinion in connection with Carlton Bridge Special Maintenance Account.

It is improper practice for the State to pay interest on any sums ordered refunded by the Legislature unless there is definite instruction from the Legislature or an order of court. In connection with the Carlton Bridge Account, I can see in the Legislative Act of 1939, no authority whatsoever for paying to the railroad company interest on the money refunded.

Very truly yours,

FRANK I. COWAN
Attorney General

June 5, 1941

Marie J. Tibbetts
Legislative Reference Librarian
Maine State Library

Dear Madam:

I have your letter of June 3rd, asking in regard to the disposal of Maine Reports, Laws and Statutes in Judge Dunn's library.