

MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT

OF THE

ATTORNEY GENERAL



for the calendar years

1941--1942

den of payment of the accountant on the person employing him. However, there is nothing in the section requiring the presence of these public accountants at the races themselves, and it is the sole duty of the commission to determine whether or not the problem can be handled in a proper manner without the presence of such accountants.

A careful reading of the whole chapter discloses that the legislature intended that the commission should have charge of races and pari-mutuels. It is obviously impossible for the legislature to anticipate every situation that may arise. It is largely for that reason that commissions are set up and men of experience, firmness of mind and intelligence are appointed commissioners. Where the statute does not speak in regard to any detail, it is the duty of the commission to proceed along such lines as will best carry out the general intent of the legislature.

If, in the course of carrying out your duties, you find yourself in disagreement with the State Auditor, that does not necessarily mean that either of you is wrong. You each may have your ideas as to how best to proceed, but the final decision as to procedure must rest with you. There cannot be two different heads running a department. Either you are chairman of the racing commission or the auditor is chairman of the racing commission.

However, I strongly recommend that you give careful consideration to the auditor's suggestions because he seems to be a man sincerely desirous of furthering the best interests of the State. If, however, a suggestion of his is, in your opinion, impractical, you, as head of your department, must consider whether or not you are going to use your own judgment or capitulate to a suggestion that, in your opinion, it is unwise to follow.

Very truly yours,

Attorney General
State of Maine

July 10, 1941

From:

Frank I. Cowan, Attorney General

To:

John C. Burnham,

Director of Outdoor Advertising

I have your inquiry of July 9th in regard to a compact section of a town or city. Chapter 144 of the Public Laws of 1937 expressly describes the buildings which shall be considered in determining whether or not a section is "compact". These buildings must be devoted to business or be dwelling houses. We can hardly consider a private garage, an old barn, an ordinary hen house or an ordinary pig pen as "buildings devoted to business" and certainly they are not dwelling houses.

Over-night camps are dwellings devoted to business and so would be a store, an eating house or any other permanent structure erected for the handling of any kind of mercantile or financial transactions. It is possible, of course, for a pig pen or a hen house or a barn or garage to be a place of business as contemplated in the statute, but where they are merely accessories to the farm or the dwelling house, they cannot be so considered.

In considering the matter of distance, the Legislature has not expressly stated that distance must be considered along any one street or road. Therefore, if buildings devoted to business or dwelling houses are situated less than 150 feet apart for a distance of at least $\frac{1}{4}$ of a mile in any direction, that area is to be interpreted as a compact or built-up section.

FRANK I. COWAN

July 15, 1941

John G. Marshall, Esquire
33 Court Street
Auburn, Maine

Dear Sir:

I have your letter of July 10th, in regard to Dr. Arthur Werner, and note your two questions.

1. Query: "Whether or not the executors on the one hand can contract with an optometrist to continue in the business." In answer to this I will say that optometry has been recognized as a profession by our legislature, and we have a Board of Optometry set up to assist the members of the profession in their activities and to try to suppress improper practices. The legislature has said that members of this profession cannot be hired and exploited like day laborers. Since an optometrist is a professional man the right to practise his profession must, of course, die with him and the executors of his Will, unless themselves licensed optometrists, cannot be regarded as persons upon whom his mantle will fall.

If an optometrist is a professional man as distinguished from a business man, there is no "business" to continue. There is, however, a certain amount of good will that goes with the work of any professional man and that good will has a sale value which may be slight, or may be large. There can be no objection to the executors selling that good will to Mr. Werner, or to any other optometrist whom they can induce to purchase. But since it is not a "business", Mr. Werner must carry on the profession in his own name although I see no objection to his calling attention to the fact that he is "Successor to" so long as he does not violate professional ethics in his advertising.