

# MAINE STATE LEGISLATURE

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STATE OF MAINE

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REPORT

OF THE

ATTORNEY GENERAL

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for the calendar years

1941--1942

The history of the University of Maine was reviewed somewhat by Judge Cornish in the case of *Orono v. Sigma Alpha Epsilon Society*, 105 Me., 215. This opinion is dated March 2, 1909, subsequent to the enactment of almost every one of the above mentioned amendments to the charter of the College. The things that the Judge says about the College are very largely dicta and, as such, not binding as precedents of our courts but, nevertheless, are entitled to great weight. In his opinion the Judge uses the following words: "No language could more plainly recognize the distinction between the corporation and the State. The legal status of this institution has been and is the same as that of the other Colleges in Maine chartered by Massachusetts or by Maine, Bowdoin College, Colby College and Bates College".

From the above it is plainly evident that the University of Maine is a private institution having all the rights and privileges of any private corporation within the limits of its charter. That charter is subject to modification just as the charters of every other corporation in the State of Maine set up during the last hundred years are subject to modification. The fact that the Legislature can modify the charter, and at times has done so, does not change the nature of the College as a private institution any more than the right of the State to change the charter of the Todd-Bath Shipbuilding Company changes the nature of that corporation.

FRANK I. COWAN

Attorney General

March 30, 1943

To:

C. M. White

Agriculture

From:

John Marshall, Assistant

Attorney General

*Federal-State Grading Work on Butter, Cheese, Eggs and Poultry*

1. Can Maine Department of Agriculture surrender all supervision of establishment of fees collection and distribution thereof as contemplated in paragraphs (b) and (c) on page 2 under subject heading "Food Distribution Administration" and paragraph (b) page 3 under subject heading "Mutual Agreements"?

The Maine Department of Agriculture cannot surrender its supervision of the matters expressly set forth in our statutes, and the Commissioner of Agriculture must account for all fees collected and the disbursement of funds in accordance with State law and the regulations of the Department of Agriculture.

The Commissioner of Agriculture does have the right to make such rules and regulations, including payment of such fees as will be rea-

sonable and as nearly as may be to cover the cost for the service rendered. In attempting to undertake a method of cooperation with another agency, the Commissioner would have the right to make new regulations modifying the service of supervision and, consequently, modify the fees for such a modified service.

2. Can Maine Department of Agriculture subscribe to paragraph (a) under "Mutual Agreements" page 3 without qualifying clause to safeguard State Laws?

The Maine Department of Agriculture cannot subscribe to any agreement without a qualifying clause to insure adherence to existing State laws.

3. Has the Maine Department of Agriculture the authority to be party to the collection of fees with the possibility that they may be used for purposes other than that for which they were specifically paid as contemplated in paragraphs beginning on page 4 of the agreement, lettered (d), (f), (g) and (h)?

The answer is, "No".

4. In general, has the Maine Department of Agriculture the authority to participate in an agreement certain sections of which definitely commit the Department to policies and regulations promoted by Federal officials rather than Federal law particularly if such policies conflict with Statute Law of the State of Maine as well as policies and regulations of the State?

Under Chapter 102, P. L. 1931 the Commissioner of Agriculture of this State is authorized to enter into agreements with the United States Department of Agriculture, and with other departments of the New England States in the *collection* and *publication* of agricultural statistics and in developing grades and standards for farm products and providing inspection thereof; such agreements to be subject to approval of the Governor and Council. In our opinion, this would not permit us to answer the question contained in Paragraph 4 of your memo in the affirmative.

Except in so far as the Commissioner of Agriculture of this State could modify existing regulations which he has the authority to make, none of these other things could properly be done which would be contrary to existing State law without either having the State Legislature enact some authorization therefor to be exercised by the Commissioner during the present emergency, or unless the Executive department of the State should invoke its emergency powers already delegated to it by the Legislature.

JOHN MARSHALL  
Assistant Attorney General