

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

First: In the cases where employees resign or otherwise leave the service of the State, each and every department head should notify the Personnel Department and the State Department of Audit immediately on the date of the termination of this employment, in writing. The Auditing Department would then be in a position to determine whether or not the conditions of the bond of the employee had been breached, and if not, the auditor should be authorized to notify the surety company, or other sureties, that the bond was cancelled, and any unearned premium could then be recovered for the State.

Second: When State officials or heads of departments, who have been appointed by the Governor, resign or leave the positions held by them, the Governor should notify the State Auditor, so that the same procedure can be followed as suggested in the foregoing paragraph.

Under Chapter 320, P. L. 1933, the State Auditor and the Commissioner of Finance are authorized to determine the amount of the bond and the extent of the coverage necessary for each official or employee obligor, and the foregoing suggestions would seem to coordinate the necessary supervision that the State Auditor is supposed to exercise in these situations. Before the bond is cancelled, the State Auditor should be in a position to know whether there had been any default or defalcation at the time the obligor terminates his or her employment with the State. In cases where the State Auditor is in doubt as to any default or defalcation on matters of law, he should at all times consult the Attorney-General's Department before cancelling the bond. However, if the State Auditor finds no default or defalcation, he would simply notify the bonding company, or other sureties, and would have the authority to sign the cancellation order and the release to the bonding or surety company or sureties.

This is entirely a matter of policy, and it is thought that it would expedite the method of cancelling bonds and save unearned premiums, and yet protect the State on the obligations of the obligors. If it is to be adopted, the Governor and Council should pass on it as a matter of procedural administration and circularize the same among all the departments.

JOHN G. MARSHALL
Deputy Attorney-General

September 27, 1943

David H. Stevens, State Assessor

Bureau of Taxation

Potato Tax

In response to your inquiry whether or not persons in the State of Maine engaged in the dehydration of potatoes shall deduct 1¢ per barrel from the purchase price of potatoes bought by the dehydrating plant:

Subject to the conditions hereinafter set forth, the answer is that the tax shall be so collected by the dehydrating plants, the same as any other purchaser, under the provisions of Chapter 84, P. L. 1937, as amended.

The terms used in this chapter shall be construed as follows: " 'Potatoes' shall mean and include all potatoes of the grades as recommended by the Bureau of Agricultural Economics of the U. S. Department of Agriculture, and such other grades as may from time to time be promulgated by the Department of Agriculture in the State of Maine; 'barrel' shall mean 165 pounds of potatoes; 'shipper' shall mean any person, partnership, association, firm or corporation engaged in the shipping of potatoes or transporting his own potatoes whether as owner, agent or otherwise." The language used is sufficiently broad to include a person purchasing potatoes and dehydrating the same for the purposes of selling or shipping the same later.

Section 3 of said Chapter 84 provides the following: "There is hereby levied and imposed a tax at the rate of 1¢ per barrel on all potatoes raised in this state." Then, in the same section 3, there appear to be only two exceptions, to wit, any potatoes to be used by the grower, for seed purposes or for home consumption.

In conclusion, there are two conditions that exist upon which one determines the issue of taxation. First, do the potatoes used by the dehydrating plants come within the grade classifications defined under Section 2 of Chapter 84? Secondly, were the potatoes raised in the State of Maine? If both these questions are answered in the affirmative the shipper shall charge and collect from the seller at the rate of 1¢ per barrel, to be deducted from the purchase price.

JOHN G. MARSHALL

Deputy Attorney-General

October 1, 1943

Harry V. Gilson, Commissioner

Education

Attention: Mr. Hutchinson

Reimbursement for Secondary Tuition of State Wards

In answer to your inquiry of October 1st about Section 206, Chapter 19, R. S. 1930, and its relation to Chapter 335, P. L. 1943, so far as the reimbursement of towns is concerned, for tuition for high school pupils:—It is our opinion that the Commissioner of Education shall apportion to such town a sum equal to two-thirds of the amount thus paid by such town, but not in excess of the statutory limit for any one year, and Chapter 335, P. L. 1943 simply allows the Health and Welfare Department to reimburse the town for the amount expended by the town for secondary tuition of State wards. This would mean, in most cases, the one-third that is paid by the town after being reimbursed two-thirds of the cost by the Commissioner of Education.

The two sections or chapters are not in conflict; but the Department of Education and the Department of Health and Welfare will simply make these reimbursements in accordance with the terms of their respective provisions.

JOHN G. MARSHALL

Deputy Attorney-General