

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

December 3, 1943

William D. Hayes, State Auditor

Interpretation of the Decision in Frankfort v. Waldo Lumber Co.
128 Maine 1

The opinion of Judge Barnes is very beautifully and powerfully written, and if the reader is not careful, he will read into the opinion matters that are not actually there.

Judge Barnes has clearly and succinctly stated the law. I think that nowhere would there be any question about the correctness of the legal maxims he has laid down. However, what he says in the Town of Frankfort case is not that taxes may be collected at any time and that the statutes of limitations do not run against the collection. What he says is that the tax lien cannot be lost, because it is a right of the State, and that if the statute of limitations has not run against the method of collection, the tax may be collected.

I believe it is generally accepted law that a tax lien is never lost. The legislature has set up certain limited times within which a certain act must be performed in order to collect that tax. A question has always existed in my mind as to whether or not the legislature cannot at any time enlarge the period or provide new machinery for collection of taxes, so that the tax collecting agencies can reach back into the remote past and enforce the rights of the State against owners of property who are at present immune because the period during which the collector can operate has expired.

FRANK I. COWAN
 Attorney-General

December 7, 1943

Laurence C. Upton, Acting Chief, State Police

Re Beano

Your memo of December 1st in regard to Beano enforcement, addressed to Commissioner Mossman, has been referred by him to me.

Section 5 of Chapter 355 of the Public Laws of 1943 (the Beano Law) was apparently inserted to take care of any extra expense that might fall on the State Police in the administration of said law. As a necessary expense, the employment of investigators is well recognized. The Chief of Police has full authority to employ such persons, to be paid out of the funds derived from Beano licenses.

In case the revenues from the licenses are insufficient to pay the expense of administration, recourse should be had to the Governor and Council for sufficient funds.

FRANK I. COWAN
 Attorney-General

December 7, 1943

Roscoe L. Mitchell, M. D., Director of the Bureau of Health

Subject: Venereal Diseases Statute

Our attitude must be that the first paragraph of Section 37 of the Public Laws of 1933, Chapter 1, as it appears in the 1943 amendment

(P. L. 1943, Chapter 358) is separable from the rest of said act. Its declaration that certain diseases are infectious and communicable is not in any way to be modified by the language of the remaining paragraphs of said Section 37, nor by the provisions of Sections 38 and/or 39.

Section 38 is a method provided for determining whether a suspected person is or is not suffering from certain infectious and communicable diseases. The person may not willingly submit to examination. The legislature has furnished authority for making such an examination against the will of the suspect. Whether or not Section 38 is an unconstitutional invasion of the rights of the person examined is for the Supreme Court to say. Once the legislature has spoken, the statute is presumed to be valid till the Supreme Court has declared otherwise, and it is our duty to carry out the legislative provisions.

Section 39 provides for treatment of a person found infected. The remarks above in regard to Section 38 apply equally to Section 39.

There is nothing in Chapter 358 that limits in any way the duties of the Bureau of Health in its war on infectious diseases. The statute simply adds four diseases to those previously declared infectious and communicable and tries to furnish an additional method for suppressing them.

FRANK I. COWAN
Attorney-General

December 8, 1943

Hon. W. Mayo Payson
Corporation Counsel, City of Portland
Portland, Maine

Dear Mayo,

I have your letter of December 6th in regard to the venereal diseases statutes. Dr. Mitchell of the State Bureau of Health has consulted with this office frequently in regard to the above statutes.

The doctor's difficulty, and the difficulty of this office, has been in devising a way of using P. L. 1943, Chapter 358. Apparently, it ties in with Chapter 330 and with the 1933 laws. I cannot believe that Chapter 358 must stand alone. It is a rewriting of certain sections of the 1933 laws. Moreover, the wording of the first paragraph of the rewritten Section 37, which provides that the four diseases therein named "are hereby declared to be infectious and communicable diseases, dangerous to the public health," cannot, to my mind, be other than an addition of those diseases to the list heretofore declared infectious and communicable.

Whether or not the machinery set up in Chapter 358 is to some extent unworkable does not, it seems to me, detract from the authority of the State Bureau of Health to act in the protection of the public from all diseases declared by the legislature to be infectious and com-