

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

Mr. Stobie's question, addressed to me, was whether the owner of a deerskin may have it processed for use. I find nothing in our statutes to prohibit the owner from having this done. However, he is confronted with Section 66 if he wishes to transport the deer or any part thereof beyond the limits of the State, unless he purchases a special license, the fee for which is \$10.15. Moreover, the provisions of Section 67 make it exceedingly embarrassing to transport the deerskin and head within the State.

It is the opinion of this department that the owner of a deerskin and head may have it processed; that he can send it outside the State if he pays a fee of \$10.15 for that purpose; but that he is restricted on sale to taxidermists and dealers having a license. Whether or not this last is an unconstitutional restriction of the rights of an owner to deal with his own property as he sees fit (where the police and health laws are not involved) is not a matter for this office to consider. The legislature has spoken and it is the duty of the attorney-general to presume that the legislative enactments are constitutional till held otherwise by the courts.

FRANK I. COWAN

Attorney-General

December 16, 1943

Roscoe L. Mitchell, M.D., Director

Bureau of Health

Subject: Interpretation and Procedure under P. L. 1943, Chapters 358 and 330; tie-in of said statutes with 1933 statutes.

1. The procedure under Chapter 358, P. L. 1943, in regard to a person who, the Bureau of Health has cause to believe, is infected with venereal disease is not exclusive. The powers of quarantine of infectious and contagious diseases, as provided by the laws of 1933, Chapter 1, as amended, still exist.

2. You have asked the question whether the Department of Health of the State can define as infectious and contagious diseases which are already so declared by legislative enactment. The answer is clearly, "Yes." P. L. 1943, Chapter 358, declares that certain diseases are infectious and communicable and dangerous to the public health. Chapter 330 of the Laws of 1943 provides that persons suffering from certain named diseases and others which are defined as infectious and communicable under the rules and regulations of the State Bureau of Health, shall not mingle with the general public until such time as such persons have become "non-infectious" or have complied with certain regulations. Obviously, the legislature did not deliberately contradict itself in describing certain diseases as infectious and communicable and so dangerous, at the same time saying that a person should be excluded from mingling with his fellows until the disease becomes non-infectious or he has complied with certain regulations. The two chapters are complementary to one another. Chapter 358 is a broad enabling act. Chapter 330 gives the Bureau of Health a yardstick which it can use in determining how far it shall go in applying the broad powers which it necessarily has by reason of the wording of the first paragraph of Chapter 358.

3. The duty of public health officials is very definite under the language of the statutes. Chapter 358 has declared that four named diseases are infectious and communicable. Chapter 330 requires quarantine of persons suffering from any infectious or communicable diseases so defined under the rules and regulations of the State Bureau of Health. The State Bureau of Health has in its regulations declared syphilis, gonorrhoea, chancroid and lymphogranuloma venereum under certain named circumstances to be infectious and communicable. It is therefore the duty of health officials under the provisions of Chapter 330 and also the provisions still existing unrepealed and unmodified under P. L. 1933, Chapter 1, to quarantine a person suffering from smallpox, scarlet fever, diphtheria, pulmonary tuberculosis, syphilis as defined by the Bureau of Health, gonorrhoea as so defined, chancroid as so defined, and lymphogranuloma venereum as so defined, or any other infectious or communicable diseases so defined under the rules and regulations of the Bureau of Health.

FRANK I. COWAN

Attorney-General

December 16, 1943

Hon. Sumner Sewall, Governor

Mrs. Stevens of Civilian Defense tells me that you have suggested that she inquire of this office whether the Town of Brunswick can be authorized under the Civilian Defense Act (either Section 1 or Section 3) to appropriate money for purchasing land and erecting foundations for a recreation building, the funds for completion of which are to be advanced by the Federal Government.

The Civilian Defense Act was passed by the legislature to give certain emergency powers to the Executive. The giving of those powers was to provide for the security, health and welfare of the people at such time as the legislature might not be in session. The whole purpose of the Act was to make sure that no sudden emergency could arise and no method of meeting it exist. There is nothing in the Act at all to authorize the construction of permanent buildings, nor the appropriation of moneys for the acquisition of land, for other than temporary purposes. My answer must therefore be that there is no authority in P. L. 1941, Chapter 205, under which the Town of Brunswick can be authorized to do what is contemplated.

The further question has been asked whether the Town of Brunswick has authority to raise money for an appropriation for such a purpose without specific legislative authority. There are certain questions in regard to the rights of municipalities and the rights of individuals that cannot be raised by the Attorney-General. There are cases where an individual or a municipality may do things that are in violation of the law, but the Attorney-General cannot of his own motion take any action. This would seem to be such a question. The Town of Brunswick has authority to employ counsel and to get advice on the point raised by Mrs. Stevens. It is not the function of this office to advise in such matters, nor has this office any right to interfere.

FRANK I. COWAN

Attorney-General