

# 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

1943--1944

nowhere appears that in the notice for the annual meeting the attention of the receivers of the notice was directed to the fact that such special action would be taken at that meeting.

Furthermore, under Section 48 of Chapter 56, these certificates of the change in purposes, etc., are to be filed within twenty days thereafter. While this provision, I believe, has been held to be directory rather than mandatory, I call it to your attention, as it may be that you will have to call another meeting on notice or waiver of notice and have the action taken on March 21, 1941, ratified and confirmed.

Sincerely yours,

ABRAHAM BREITBARD

Deputy Attorney-General

January 27, 1944

A. M. G. Soule, Deputy Commissioner of Agriculture

I have examined the letter from R. H. Lovejoy, county agent, addressed to Mr. Carl R. Smith, Commissioner of Agriculture, bearing date January 25, 1944, and describing the procedure of Mr. .... of ....., who is butchering hogs in sufficient numbers, apparently, to make it a business enterprise on his part.

P. L. 1943, Chapter 351, Section 1, in the first sentence, expressly provides that "No person . . . shall operate a slaughterhouse . . . or other place or establishment where animals are slaughtered . . . unless such persons . . . be licensed by the commissioner of agriculture." On the statement of fact contained in Mr. Lovejoy's letter and the further information you have given me, there is no question but what Mr. .... must have a license to carry on this business.

Section 3 of the Act was carefully drawn to protect the farmers and make sure that they would not be in a position to need a license permitting them to butcher or have butchered their own animals and fowls. The language "or has butchered for him" and the words "or elsewhere" apply solely to the farmer. If he takes his fowls or animals to a "slaughterhouse, abattoir, or other place or establishment where animals are slaughtered" for butchering, the operator of the butcher shop or place must have a license.

FRANK I. COWAN

Attorney-General

January 28, 1944

Guy R. Whitten, Deputy Insurance Commissioner

Under date of January 5, Commissioner Perkins sent me a memorandum, a copy of which I enclose herewith. I have made careful examination of the Statutes in regard to Domestic Mutual Fire Insurance Companies. Whatever may have been the intention of the author of the amendment which appears as Public Laws 1943, Chapter 148, it seems to me that no change has been made in the law concerning Domestic Mutual Fire Insurance Companies.

R. S. Chapter 60, Sec. 85, which provides for annual certificates for "every domestic insurance company" might seem at first glance to cover these domestic mutuals. However, the language of the second sentence of that section shows clearly that the provision was intended for stock companies. This is the more clear when we compare the language of Sec. 85 with Sec. 84. In Sec. 84 (1) domestic stock insurance, and (2) mutual life insurance companies, and (3) domestic mutual fire insurance companies, are particularly set forth; whereas, Sec. 85, as said above, can refer only to stock companies.

Public Laws of 1931, Chapter 101, Sec. 5, which amends R. S. Chap. 60, Sec. 84 cut out the direct reference to (1) stock insurance, (2) mutual life insurance, (3) domestic mutual fire insurance companies, and makes the section apply to "every domestic insurance company." This provides for a biennial examination, but does not go further. We have then, as the law stands, a provision in Sec. 84, as amended, for biennial examinations of every domestic insurance company, and in Sec. 85 a provision for annual certificates in the case of stock companies.

Public Laws of 1943, Chapter 148, ties in directly to the amended Sec. 84 and the original Sec. 85 of R. S. Chap. 60. The language in Chap. 148, above cited, "except that domestic mutual fire insurance companies writing on the assessment plan only are exempt from this requirement" can apply only to the original certificate of qualification. It can, moreover, have no connection with the words "for each annual renewal thereof \$20.00" since there is no provision in the Statutes requiring that domestic mutuals shall obtain annual certificates.

FRANK I. COWAN

Attorney-General

January 28, 1944

Guy R. Whitten, Deputy Insurance Commissioner

My attention has been called to an interpretation said to have been placed on the Public Laws of 1939, Chapter 2, by the Attorney-General's Department in the winter of 1942-43. Much as I hesitate to appear to over-rule any opinion given by an Assistant Attorney-General or by a Deputy, it seems to me that in this case I must do so.

I was myself on the Insurance Committee of the Legislature at the time when the amendment of R. S. Chapter 35, Sec. 55, which appears as Chapter 2 of the Public Laws of 1939 was written. I played a very considerable part in the discussions and in the rewriting of the insurance amendments which that Legislature enacted. There was a real reason for using the words "or collects premiums or assessments in the State;" and there was a real reason for using the expression "of the gross direct premiums for fire risks written in the State," and for omitting any reference to assessments in that part of the act.

The Legislature didn't intend that the assessments should be subject to taxation. We debated the matter at very considerable length in the Committee, and we believed that when we had the amendment in its final shape it provided that there should be a tax of one-half of one