

# 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

in the county of Washington, may be sold by the person taking the same."

In none of these provisions is the sale of pickerel prohibited. The prohibition is against fishing for gain or hire by devoting the whole or any part of the time to that business (Section 27). A person who resells pickerel lawfully purchased by him in Washington County and legally taken in that county, is not engaging in the business or occupation of fishing for gain or hire.

ABRAHAM BREITBARD

Deputy Attorney-General

August 25, 1944

Francis K. Purinton, Executive Secretary, Executive Department

I have your memo of August 22nd in regard to the term of office of the Adjutant General.

This matter was considered very carefully in the winter or early spring of 1941, but I cannot find a copy of the opinion issued at that time.

The Constitution of Maine, Article XXVIII, provides, "The adjutant general. . . shall be appointed by the governor." No term is set. R. S. 1930, Chapter 18, Section 8, provides that "The staff of the commander-in-chief shall consist of the adjutant general, who shall be ex officio chief of staff, etc." R. S., Chapter 18, Section 22, provides for the appointment by the Governor of staff officers, and Sections 23 and 24 provide for the duties and qualifications of staff officers.

The Federal Military Law, a copy of which I do not have before me at the present moment, sets up "staff officers" on a permanent basis, and if I remember correctly, subject to the authority of the Secretary of War.

As I recall my 1941 opinion, I said at that time that the Adjutant General of the State is the personal representative of the Governor in the military arm of the State. As such, it is necessary that he be subject to the control of the Governor. Inasmuch as our statutes do not provide for any term, I said at that time that he holds office at the pleasure of the Governor. I said further that he is "ex officio" chief of staff, but that he is not a staff officer.

If I were writing the opinion again, I should arrive at exactly the same conclusions.

FRANK I. COWAN

Attorney-General

September 1, 1944

H. M. Orr, Purchasing Agent

*Subject: Sale of Surplus, Obsolete or Unused Equipment*

The statute gives the Department of Finance, through the Bureau of Purchases, the authority to sell those "supplies, materials and equipment which are surplus, obsolete or unused," of the various departments or agencies.

The subject under consideration is a quantity of guns of the Department of Inland Fisheries and Game. I advised you that these must be sold through the Bureau of Purchases. I can see no objection, however, to the agents of the Inland Fisheries and Game Department making the preparations for the sale thereof, which I understand is to be held by public auction, and giving notice thereof to prospective buyers by mail, advertising, or otherwise, provided it is done in the name of the Bureau of Purchases and the sale thereof is held under your supervision. I would also suggest that you be personally present at the auction.

ABRAHAM BREITBARD

Deputy Attorney-General

September 5, 1944

Milk Control Board

*Sale and delivery of milk, Kittery Navy Yard*

I have examined the question as to the powers of the Milk Control Board to regulate under the act the sale and delivery of milk to the Navy Department on the government reservation at Kittery Navy Yard. I have examined the acts by which Seavey Island in the Town of Kittery and Dennett's Island were ceded to the United States Government by Chapter 198, P&SL 1863 and Chapter 112, SL 1822, respectively. By these acts exclusive jurisdiction was granted to the Federal Government, save and except that concurrent jurisdiction was retained for the purpose of serving and executing both civil and criminal process, and in the earlier act, in addition to these reservations there was a further provision that all persons residing on Dennett's Island, not in the military or marine service of the United States "shall be holden to do military duty in the militia of this State." These reservations, however, were not, and could not be, a limitation on Article I, Section 8, Clause 17, of the Constitution of the United States, declaring that the Congress shall have power to exercise exclusive jurisdiction and authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

In view of the recent ruling of the United States Supreme Court in the case of *Pacific Dairy vs. Department of Agriculture*, 318 U. S. 235, decided March 1, 1943, application for re-hearing of which was denied by said Court, April 5, 1943, I am of the opinion that the Milk Control Board would have no jurisdiction to regulate the price of milk sold and delivered on land of the Kittery Navy Yard.

ABRAHAM BREITBARD

Deputy Attorney-General

September 6, 1944

Daniel T. Malloy, Warden Supervisor, Inland Fisheries and Game

You have asked whether hornpouts or any other of the fish enumerated in the second paragraph of Section 28, Chapter 38 of the Inland Fish and Game Laws, may be taken or fished for "with any device or in any other way than by the ordinary mode of angling with