

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

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

single-baited hook and line, artificial flies, artificial minnows, artificial insects, spoon-hooks, and spinners, . . . "

I am of the opinion that they may not be taken except on a single-baited hook and line and the other lures mentioned. The exception contained in the second paragraph, which is worded as follows, "except suckers, eels, hornpouts, yellow perch, white fish, and cusk, as hereinafter provided," relates to the special provisions concerning the manner in which the enumerated fish may be taken at certain places and under certain regulations and by ways other than by the ordinary mode of angling.

I therefore advise you that any of the enumerated fish above named may not be fished and taken in any other way than the manner provided for, namely, "with single-baited hook and line, artificial flies, artificial minnows, artificial insects, spoon-hooks, and spinners, . . . "

ABRAHAM BREITBARD

Deputy Attorney-General

September 7, 1944

Francis G. Buzzell, Animal Industry

Subject: Testing for Bang's Disease

I have your memo of September 1st in regard to the reception accorded to Dr. M. J. Edwards and Dr. S. G. Fine, employees of the United States Government, at the hands of a Mr.

The law in regard to prevention of contagious disease among animals is found in R. S., Chapter 40; Section 4 of that chapter provides as follows:

"Any person who knowingly and wilfully refuses permission to the commissioner of agriculture, or his duly constituted agent, to make, etc., . . . as to animals supposed by the commissioner of agriculture or his agent to be diseased *as aforesaid*. . . "

The words "as aforesaid" can apply only to Sections 1, 2, and 3 of the statute. Bang's disease is not mentioned in either of those sections.

P. L. 1934, Chapter 297, provides for testing for contagious diseases with the coöperation of the owner of the animals. P. L. 1941, Chapter 254, provides for a bond issue of \$450,000. to finance eradication of Bang's disease. Section 6 of said Act uses the following language:

"For the eradication of Bang's disease and other contagious diseases under powers vested in him by chapter 40 of the revised statutes, as amended, and by chapter 297 of the public laws of 1933."

As you can see, the Bang's disease law is, by the very force of the language, kept separate from the penalty provision of R. S., Chapter 40, Section 4.

It is true that there is an amendment to Chapter 40 in P. L. 1935, Chapter 106 and this refers to Bang's disease, but only in connection with Section 11. There is a further amendment to Chapter 40 which appears as Chapter 77 of the Public Laws of 1939, and this applies to Bang's disease; but the amendment is to Section 17 of Chapter 40, as amended by Section 2 of Chapter 106, P. L. 1935.