

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

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.

It is apparent that the language of the original Bang's Disease Act, requiring that "when any owner of cattle in the state shall signify in writing his willingness to place his herd under the supervision of the department of agriculture for the eradication of Bang's disease," is still in effect and that the legislature must change the law before it will be safe to attempt any criminal prosecutions.

If R. S., Chapter 40, Section 4, did apply to Bang's disease, it did not apply on the facts you have cited, because there is nothing therein to show that either Dr. Edwards or Dr. Fine was an agent of the Commissioner of Agriculture at the time they went to the farm.

For the convenience of yourself and others who have occasion to use the little pamphlet issued in November, 1943, and containing the laws, rules and regulations pertaining to live stock sanitation, I would suggest that before a new edition is issued, you submit your proof to this department for editing, so that we can correctly identify each section of the statutes quoted therein.

FRANK I. COWAN
Attorney-General

September 7, 1944

Hon. Harold I. Goss
Secretary of State
Augusta, Maine

Dear Sir:

I have before me the letter of Frank C. Creteau asking authority to use stickers to place the name of a candidate for county treasurer on the York County ballots. R. S. c. 16, §4, provides that if a vacancy occurs in the office of county treasurer, the governor may appoint a treasurer who shall serve "until the first day of January following the next biennial election, at which said election a treasurer shall be chosen for the remainder of the term, if any; but in any event he shall hold office until another is chosen and qualified."

The governor has made an appointment under the provisions of this section and the present incumbent is to hold office until the first day of January, 1945, or "until another is chosen and qualified." Obviously, the latter language provides for continuing said appointed incumbent in office until another treasurer is chosen and qualified by due process of law. The question before us is whether or not there is any legal machinery for providing at this late date that any candidates' names may appear on the ballot.

R. S. c. 8, §16, as amended by P. L. 1941, c. 127, contains the following language: "Stickers shall not be counted unless used to fill a vacancy or correct an error in the printed ballot." The words "fill a vacancy" must of necessity apply to an actual vacancy in an office. In York County there is no vacancy since the governor has filled the office and there is a provision of the statute, as above quoted, for keeping the office from going vacant pending the next regular election at which candidates can be chosen by the respective parties and the election can be held in accordance with the general laws of the State.