// MAINE STATE LEGISLATURE

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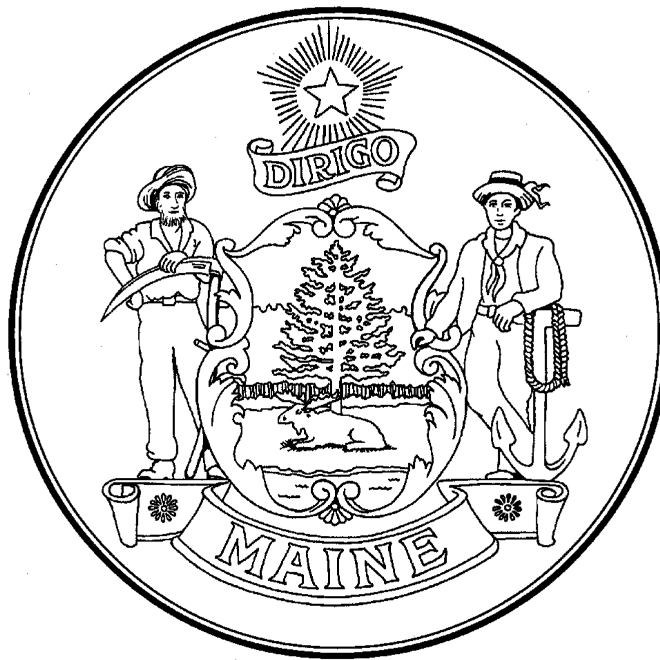

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1945-1946

Chapter 81, Section 49, R. S. 1944, reads as follows:

> "The assessors may assess on the polls and estates such sum above the sum committed to them to assess, not exceeding 5% thereof, as a fractional division renders convenient, and certify that fact to their town treasurer."

The first statute on the subject, enacted in 1821, Chapter 113, Section 14, was as follows:

> "Be it further enacted, That the Assessors for any town or plantation may and are hereby authorized and empowered to apportion on the polls and estates according to law, such additional sum over and above the precise sum to them committed to assess, as any fractional division of such precise sum may render convenient in the apportionment thereof, not exceeding five per centum on the sum so committed; and it shall be the duty of such assessors to certify such town or plantation Treasurer thereof."

This was taken from the statutes of the Commonwealth of Massachusetts, the language of which was practically the same; and the statute in the present Revision and in earlier revisions is a condensation of this original section on the subject, the meaning of which would be the same, the intent being merely to condense it.

In *Alvord v. Cullen*, 20 Pick. (Mass.) 418 (1838) at page 423, the Massachusetts Court said of its act:

> "The practice of *overlaying* prevailed and was general, long before the above statute was enacted. It is not only convenient but indispensable, to avoid impracticable fractional divisions, *and to guard against deficiencies*." (Emphasis of the last clause ours.)

This case is also authority for the proposition that if the overlay is within 5%, the assessment is good. See also *Lord v. Parker*, 83 Maine 531. It would thus seem that the only limitation is that the 5% shall not be exceeded.

I am therefore of the opinion that a tax assessed would be valid, if the overlay was not in excess of 5% of the sum committed to the assessors for assessment.

ABRAHAM BREITBARD
Deputy Attorney General

July 18, 1945

To Francis G. Buzzell, Chief, Division of Animal Industry

You ask for an interpretation of the word "control" in the third line of Section 66, Chapter 27, R. S. 1944, and it is my opinion that the word "control" in this connection means that situation where the Federal Government has full control of the cattle being shipped into this State from any other State or country. I do not believe that the meaning should be construed to include cattle imported from Canada and subject to

border inspection by the Federal Government, because they do not have control of the cattle in transit. Your department should carry out the provisions of this law and see that the shipments from other countries meet the requirements of the rules and regulations of the Commissioner of Agriculture. You will note the language of the statute in the second line, "from any other state or country," which would cover the Dominion of Canada. . .

RALPH W. FARRIS
Attorney General

July 25, 1945

To Lucius D. Barrows, Chief Engineer, State Highway Commission

I have your memo of July 19th enclosing a copy of a letter from Fernand Despins, corporation counsel for the City of Lewiston, relating to the establishment of a bus terminal in the center of Main Street between Lisbon and Middle Streets in Lewiston.

Inasmuch as Main Street is a part of the State Highway and Federal Aid Highway system, I do not believe that the Highway Commission has authority to grant permission to build platforms and safety islands within this area for a private corporation to use to take on and discharge passengers from its buses.

As to whether such a terminal would be considered an obstruction of a public highway, I do not believe it would be so considered, in view of the width of Main Street at that point, and the parking area maintained there at the present time, where they contemplate building platforms and safety islands.

RALPH W. FARRIS
Attorney General

July 25, 1945

To Daniel T. Malloy, Chief Warden, Inland Fisheries and Game

I have your memorandum of July 24th relative to paragraph 8 of Section 32 of the Fish and Game Laws, enacted by P. L. 1945, providing for a free permit to residents of Maine in and out of the armed forces of World War II. In answer thereto I advise you that the following persons are entitled to receive a permit, free of charge, to hunt and fish within the State, from the clerk of the town in which he or she resides, or, if resident in an unorganized place, then from the clerk of the nearest town:

1) A person who has not been dishonorably discharged in World War II. As I understand from the War Department, there are issued three types of discharges: (a) an honorable discharge, (b) a discharge, and (c) a dishonorable discharge. A person possessing the last of these three is excluded thus from obtaining the benefits of this provision. These permits are for a period of two years from the date of discharge or two years from the official declaration, *by the United States Government*, of the