STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1945-1946

any action concerning the license, and I can see where a judge would entertain some doubt about ordering the accused to surrender to him the license. Under our motor vehicle law, provision is made whereby the judge is authorized after conviction to suspend a license and take it up, and the accused is directed to surrender it, and, having the same in his possession by virtue of this authority, the judge is directed to forward it to the Secretary of State.

There is also this difference. In the motor vehicle law, the judge is authorized to suspend, while under this law the Commissioner is the only person authorized to suspend or revoke. Assuming, therefore, that the judge did take up the license, this in and of itself would not suspend it, since the Commissioner is the only one who could suspend it.

I don't think I can say to you that this paragraph of Section 64 would authorize the judge to order the accused to surrender the license.

As a practical matter, however, since the Commissioner alone is empowered to suspend the license after a conviction and pending an appeal, according to the fourth paragraph of this section, I think that the warden making the arrest and attending court should inform the Commissioner immediately of the result of the hearing, and if the accused is convicted and enters an appeal, the Commissioner may then act under the fourth paragraph. This would accomplish the result to be attained by this section.

ABRAHAM BREITBARD
Deputy Attorney General

November 16, 1945

To Arthur R. Greenleaf, Commissioner Sea and Shore Fisheries

Your message relating to the licensing of freight planes was received by me. As I read Section 116 of Chapter 34, it authorizes you to issue licenses "only to smackmen, or truckmen, who buy, sell and transport lobsters by smack, boat, automobile or truck." These categories would not include planes.

"Common carriers engaged in carrying any general freight on fixed schedules may without license transport within or without the state lobsters legally caught. . . provided that said lobsters are received by said common carriers at one of their regular established places of business upon land for receiving freight. . ." (Section 116, Chapter 34.) Common carriers such as are here described would be railroads and motor trucks engaged in that business, operating on fixed schedules and licensed by the Interstate Commerce Commission or some other similar agency. I presume that when planes carrying freight are eventually included by the Interstate Commerce Commission or other agency in the category of common carriers, they would fit into the provisions of Section 116 of Chapter 34 and would be authorized to carry and transport, without a license, lobsters legally caught.

Section 119, however, prohibits transportation by the owner and the master or captain of any smack, vessel or boat or the driver of any automobile or truck or other means of transportation engaged in transporting lobsters without the State, unless licensed and having given bond as therein described; but this provision also excludes common carriers as above defined. I think that under the wording of this section "other means of transportation" would include planes; hence a license for this form of transportation may be issued and would have to include a bond as provided in this section and also include the agreements with the owner and operator as to compliance and forfeiture of the bond upon noncompliance.

ABRAHAM BREITBARD
Deputy Attorney General

November 20, 1945

To David H. Stevens, State Tax Assessor

Re: Tax on Sweet Corn

I have your memo of November 13th relating to the provisions of Chapter 125 of the Public Laws of 1945, which is an amendment to Chapter 27 of the Revised Statutes of 1944 and imposes a tax on sweet corn and adds new sections 145-A to 145-J inclusive to said chapter. You call my attention especially to Section 145-F which provides the imposition of the tax and the collection of same and provides that one-half the tax shall be paid by the contractor and one-half by the grower. You recite in your memo that the contractor in many cases supplies seed and fertilizer to the grower on credit and at the end of the season the grower receives the total value of his crop turned in to the contractor, less the charge for seed and fertilizer; and now that there is a tax, the contractor pays the tax and charges the grower with one-half the tax and deducts one-half the tax, as well as the cost of seed and fertilizer, before paying off the grower. You further state that in some cases, due to a poor crop, the amount due the grower for the corn turned in is not equal to the costs of the seed, fertilizer and tax.

On the basis on the foregoing statement you desire an opinion as to whether the contractor is justified in reimbursing himself first and paying what is left on account to the grower, or whether the tax should be paid first and the contractor should then apply the balance of the grower's return toward the charge for the seed and fertilizer, even though it does not balance the account.

It is my opinion that the tax has precedence over the charge for seed and fertilizer, and the tax must be paid regardless of whether the amount for the seed and fertilizer is paid from the amount received. In other words, this is a tax measure placed on the statute books by the industry itself, and it should be considered strictly for the benefit of the industry, and the tax should come first, notwithstanding the fact that some growers may have a poor crop some years.

RALPH W. FARRIS
Attorney General