

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1945-1946

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of armories comes back to the Adjutant General's Department for the operation thereof through legislative appropriations.

Therefore it is my opinion that it was the intent of the legislature not to mingle other moneys with the War Bond Fund. . .

RALPH W. FARRIS
Attorney General

May 2, 1946

To Harrison C. Greenleaf, Commissioner of Institutional Service

I have your memo of May 1st, dealing with the case of Anthony J. Bourgeois, who is now serving a sentence in the Maine State Prison of not less than 5, nor more than 8 years, imposed on March 21, 1942. Your inquiry is whether or not this sentence should have been for a fixed period, rather than an indeterminate sentence, and the Parole Board is in doubt as to the prisoner's being subject to the provisions dealing with parole which are applicable only to indeterminate sentences.

The papers which you have attached to your memo show that the prisoner was indicted by indictment which contained four counts. The first count was for incest; the third and fourth counts for rape, and the second count for a minor offense arising out of the same criminal act. It would appear, although it is not quite clear from the papers submitted, that the prisoner was convicted of the counts charging incest and rape. While the Court might have imposed sentences for each of these crimes, apparently it did not do so, but imposed one sentence.

The crime of incest is punishable under the statute by imprisonment for one to ten years. It is not excluded from the indeterminate sentence provisions. Thus, for that crime an indeterminate sentence may be imposed.

Where, as here, a single sentence was imposed, the same may be applied to any count in the indictment which is good. This sentence, then, could be applied to the count in the indictment which charged the crime of incest.

The prisoner would thus be entitled to the benefits of the provisions of the parole law, and the Parole Board may consider his application.

ABRAHAM BREITBARD
Deputy Attorney General

May 3, 1946

To Hon. A. K. Gardner, Commissioner of Agriculture

Your letter of May 1st at hand, concerning your problem which relates to the administration of Section 127-F of Chapter 153, P. L. 1945, and you ask for a ruling from this office.

As you state in your letter, Section 127-F has to do with the appropriation provided for in the act creating the Seed Potato Board, which defines its powers and duties. This was passed by the legislature of 1945 as an emergency measure and became effective April 5, 1945, when signed by the Governor. The legislature in this act appropriated from the unappropriated surplus of the General Fund the sum of \$100,000, to be made available to the Seed Potato Board, said appropriation to constitute an annual revolving fund for the use of the Board in carrying out the purposes of the act. There is, however, a proviso at the end of this appropriation section which reads:

“Provided, however, that from funds arising from the sale of seed potatoes under this program said seed potato board shall cause to be paid into the state treasury annually a sum which shall, in 10 years, equal the amount of said \$100,000 appropriation; and in any year when said board cannot, from the sale of said seed potatoes, pay said amount in full, then the state treasury shall be reimbursed as to the balance of said amount by money taken from, but not larger than 10% of, the total tax collected under the provisions of sections 206 to 217, inclusive, of chapter 14, commonly known as the potato tax.”

You state in your letter that the Seed Potato Board will have no income arising from the sale of seed potatoes until the fiscal year ending June 30, 1947, and you therefore feel that the sums of money to be paid back under the provisions of Section 127-F would not have to be paid back until the fiscal year beginning July 1, 1946.

In view of this fact, it is my opinion that that would be a reasonable interpretation of the statute; that the legislature did not intend that the Seed Potato Board should pay into the State Treasury \$10,000 until the year when the said Board would receive this amount or more from the sale of said seed potatoes. I feel that it would be reasonable to take the fiscal year beginning July 1, 1946, as the basis of making these payments to the State Treasurer.

RALPH W. FARRIS
Attorney General

May 13, 1946

To Fred W. Hollingdale, Commissioner of the Treasury

I have your memo of May 8th, relating to Section 11 of Chapter 15, R. S. 1944, as amended by Chapter 22, P. L. 1945, in which you state that the question arises as to the authority of the Commissioner of the Treasury with respect to State funds deposited under the exception established in said section 11 of said chapter, which reads as follows:

“The above restriction shall not apply to deposits subject to immediate withdrawal available to meet the payment of any bonded debts or interest or to pay current bills or expenses of the state.”

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