# STATE OF MAINE

# REPORT

OF THE

# ATTORNEY GENERAL

for the calendar years

## 1945-1946

Section 17 of Chapter 25, as amended by P. L. 1945, Chapters 277-1 and 309, prohibits employment of a child under 15 years of age in a bowling alley; and except as provided in the following section no child between the ages of 15 and 16 years shall be so employed during school hours without a permit from the school superintendent of the city or town in which the child resides.

As to a child under 15 the prohibition is absolute and such employment is prohibited during and after school hours. The superintendent thus was without authority to issue a permit at all.

I desire, however, to call to your attention the fact that our laws have no extraterritorial force. The child's employment in New Hampshire, and whether the law was violated, would depend on the laws of that State. Our statute is directed against employers within the State and penalizes only them. The superintendent of schools, however, in any case could not issue a permit to a minor authorizing his employment outside the State.

ABRAHAM BREITBARD
Deputy Attorney General

November 14, 1946

To Paul A. MacDonald, Deputy Secretary of State

Your inquiry concerns ..... who on January 24, 1945, was convicted of driving under the influence of intoxicating liquor and sentenced to pay a fine of $100 and costs and was thereupon committed in default of payment, according to the record forwarded to you by the Judge of the Houlton Municipal Court. His license to operate was thereupon revoked, in accordance with the mandatory provision of the statute.

On September 11, 1945, while the revocation was still in force, he was arraigned in the Bangor Municipal Court, charged with operating while under the influence of intoxicating liquor. To this charge he pleaded guilty and he was thereupon sentenced to pay a fine of $200 and costs and in addition to serve three months in the county jail. The jail sentence was probated on condition that he pay the fine and costs. He appealed to the Superior Court. At the September Term, 1946, the case was filed. The record does not show that the plea of guilty in the court below was withdrawn, by leave of the presiding justice in the appellate court.

The question is whether on the record the respondent stands convicted as a second offender, so that his right to operate a motor vehicle should be revoked for a period of 5 years.

Our court has not had occasion to pass on the question whether after a plea of guilty in a municipal court and appeal, the respondent may without leave withdraw a guilty plea and plead not guilty and have a jury trial on the respondent's guilt or innocence. The precise question

has, however, been passed on in Massachusetts. In *Commonwealth vs. Mahoney*, 115 Mass, 151-152, the court said per Gray, C. J.:

> "A defendant in a criminal case, who has once pleaded to the charge against him, has no right to withdraw his plea, but is confined to the issues of law or fact thereby raised or left open, unless the court in which the case is pending sees fit to exercise the discretion of allowing him to withdraw it and plead anew. If he appeals from a judgment against him in the court in which his plea is first made, the appeal indeed vacates the judgment, but it does not multiply his grounds of defence or enlarge the issue once joined between the Commonwealth and himself. The same defences are open to him in the appellate court as in the court below, and no other. *Commonwealth v. Blake*, 12 Allen, 188. If he pleads guilty upon his first arraignment, and his plea is received by the court and recorded, it is an admission of all facts well charged in the indictment or complaint, and a waiver of his right of trial by jury thereon, and, unless withdrawn by special leave of court, or a motion is interposed in arrest of judgment for legal defects apparent on the record, leaves nothing to be done but to pass sentence."

Under our statutes relating to appeals from the municipal court, it seems that an appeal may be taken from the sentence and this would justify my holding that the above ruling is applicable here.

Section 21 of Chapter 133 provides:

> "Any person aggrieved at the decision or sentence of such magistrate may, within 5 days after such decision or sentence is imposed . . . appeal therefrom."

In *State v. Corkrey*, 64 Maine 521-523, our Court said:

> "The record of the municipal court in this case shows that the respondent filed a plea of misnomer, and that the decision was against her upon that plea; and that, thereupon, judgment was rendered against her. By thus electing to go to trial solely upon the plea of misnomer in the municipal court, the respondent waived her right to plead anew in the appellate court and go to trial on the merits."

The appeal therefore after a plea of guilty in the court below was from the sentence only, unless the presiding justice in the appellate court allowed a withdrawal of the plea and permitted the respondent to plead anew.

On the record as it now appears, the respondent stands convicted on his plea of guilty in the municipal court with the case on file in the appellate court.

Under the provisions of Sections 121 and 122 of Chapter 19 providing for the revocation of licenses or the right to operate after a conviction, the last sentence of Section 122 is as follows:

> "For the purposes of this section and of section 121, a person shall be deemed to have been convicted if he pleaded guilty or nolo con-

tendere or was adjudged or found guilty by a court of competent jurisdiction, whether or not he was placed on probation without sentence or under a suspended sentence or the case was placed on file or on special docket."

The respondent's right to operate is therefore subject to revocation on this record, as upon a second conviction, and I so advise you.

ABRAHAM BREITBARD
Deputy Attorney General

November 18, 1946

To Guy R. Whitten, Deputy Commissioner, Insurance

In your memo of November 14th you wish to be advised about the computation of the 45-day period during which fire insurance companies are prohibited from paying a loss. Your question is as follows:

"Will you kindly advise me if a policyholder executed a complete and properly notarized statement of loss, that this document is sufficient to mark the beginning of the 45-day statutory waiting period (Section 103, Chapter 56, R. S. 1944) even though a loss was subsequently adjusted at a figure materially different from that set up in the original statement either by compromise or by award of referees and if the situation is changed if in confirmation of the final adjustment a corrected proof of loss is accepted from the assured."

So much of the statute as is pertinent reads (Section 103 of Chapter 56, R. S. 1944):

"In case of physical loss by fire to property insured by any company transacting insurance business in this state, said company or its representative shall begin adjustment of such loss within 20 days after the receipt of the notice provided for by section 97; but no fire insurance company shall pay any loss or damage until after the expiration of 45 days from the date when the statement of loss referred to in said section 97 is filed with the company; . . ."

The statement of loss referred to in this provision is the sworn detailed statement in writing which the insured is required to furnish within a reasonable time after the loss, in accordance with the statutory fire insurance policy, the standard provisions of which are contained in Section 97. When this is filed with the companies, the 45-day period begins to run and payment may be made after such period has expired, notwithstanding the fact that subsequent to such filing, adjustments were made by which the amount of the loss was arrived at by compromise or award of referees and amended proofs filed, if such is required, by the insurance carriers.

The statutory period runs from the first filing and not from any subsequent filing by way of amendment.