

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

April 22, 1947

To Lester E. Brown, Chief Warden, Inland Fisheries and Game

In answer to your inquiry concerning the taking of smelts as provided in Chapter 33, § 46:

You say that you "find nets being used which have rectangular bows, 20 inches by 16 inches, others having circular bows of $4\frac{1}{2}$ feet in diameter and again a large rectangular shape bow even as large as 4 by 6 feet. These nets are lowered to the bottom of the water while used and allowed to remain until smelts arrive and they are raised quickly to the surface by the use of a pole which is attached to the net by 3 or more guy lines."

The pertinent wording of Section 46 is:

"During the open season on such waters, smelts may be taken by the use of a dip-net in the usual and ordinary way. No person shall take, kill, catch or have in possession more than 4 quarts of smelts in any one day."

"The usual and ordinary way" of using a dip-net, it seems to me, refers to the "usual and ordinary way" of netting a fish that has been caught on a line. The net is submerged in the water and with a sweeping motion the fish is scooped into the net.

The net to be used, I also believe, is the usual size of net used to scoop the fish up, manually.

The contraptions you describe are not dip-nets, but are rather traps. Nor can they be used in the "usual and ordinary way," which is contemplated by the act.

Smelting in that way is contrary to the statute and in my opinion is illegal.

My interpretation also finds support in the limit of 4 quarts of smelts that may be caught or possessed in any one day.

ABRAHAM BREITBARD
Deputy Attorney General

April 24, 1947

To Charles P. Bradford, Superintendent, State Park Commission

I have your memo of April 22d, referring to Chapter 144, P. L. 1935, stating that you are submitting for my approval the following maintenance and service fees, approved by the State Park Commission on April 21, 1947:

- A. Tenting and Trailer Space: 50c per day for party of 3, 25c for each additional person.
- B. Shelters: 75c per day for party of 3, 25c for each additional person.
- C. Maintenance Fee: 15c per person over 10 years.
- D. Ski Tow: \$1.00 per day.
- E. Toboggan Chute: 25c per person or minimum of 50c.

You should now refer to the 1935 law as Section 23 of Chapter 32, R. S. 1944, as the 1935 law was amended in 1937 by Chapter 221 and in 1943 by Chapter 359.

Under the provisions of subsection III, paragraph (c), of said Section 23 of Chapter 32, I certify that in my opinion the rules and regulations submitted to me for maintenance and service fees are in conformity with the law and are ready for publication.

RALPH W. FARRIS
Attorney General

April 24, 1947

To Stillman E. Woodman, Chairman, State Highway Commission

I acknowledge receipt of your communication of April 17, 1947, requesting me to advise you whether it is the right and duty of the State Highway Commission to pay from the General Highway Fund created under the provisions of R. S. Chapter 20, §105 or from funds appropriated in general terms for the maintenance of bridges, the share of the State in the expense of the reconstruction and maintenance of highway bridges crossing railroad tracks, as ordered by the Public Utilities Commission under the provisions of § 17 of Chapter 293, P. L. 1945.

Section 105 of Chapter 20 defines the General Highway Fund. You will note in the last sentence of Section 105 the following language:

“After payment from said general highway fund of such sums for interest and retirement as are necessary to meet the provisions of bond issues for state highway and bridge construction, the remainder of said fund shall be segregated, apportioned, and expended as provided by the legislature.”

As you know, each session of the legislature reapportions the expenditure of this fund by Private and Special legislation. For instance, Chapter 136 of the P. & S. L. of 1945 makes allocation from the general highway fund in the fiscal years ending June 30, 1946 and June 30, 1947. This act sets up the amount for interest on bonds, bond retirement, general administration of the highway commission, highway planning, maintenance of bridges, maintenance and betterments of state and state aid roads, snow removal, construction of bridges under the general bridge act, compensation for injuries to highway employees, interest and retirement of bonds of the Hancock-Sullivan bridge, State Police, motor vehicle registration under the Secretary of State, administration of the gasoline and use fuel tax, with a general fund for accounting, auditing, and legal services rendered to the State Highway Commission, public service enterprises for toll bridge deficits, funds for the Employees' Retirement System. After the foregoing set-up, the act provides that should it appear, after providing for the foregoing purposes, there will be money available from current revenues in excess of those contemplated, any such excess may be apportioned in accordance with Section 2 of the act making the allocations. Section 2 provides as follows: