

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

You have directed my attention to a ruling made in 1929 by the then Attorney General, which would appear on superficial examination to be in conflict with this ruling. I do not so regard it, since the statute has since been changed. In 1943, by Chapter 285, § 1, the apportionment provisions were amended by limiting the hours to 10 in any one day, where an apportionment is made by the employer. Previous to that, there was no limitation except as to the 54-hour week, and attempts were made by some employers to have 12-hour days and more, and then reduce the number of working days per week. This, the Attorney General held, was not permissible, and I agree with him.

I am of the opinion that the amendment limiting the hours to 10 where an apportionment is made would permit the 5-day week, where the 50-hour week is used.

ABRAHAM BREITBARD
Deputy Attorney General

May 21, 1947

To David H. Stevens, State Assessor
Re: Cigarette Tax

I received your memo of May 12th, relating to the provisions of Chapter 377 of the Public Laws of 1947, which provides for an increase of 2c per packet on cigarettes and a 20% tax on cigars and tobacco products, which new law will go into effect on July 1, 1947. You state in your memo that, due to the fact that the payment of this tax is made evident by affixing a stamp to the tobacco product and also due to the fact that your inspection for tax purposes of tobacco products will be completely fruitless if you do not attempt to collect a tax on those tobacco products in the hands of the retailers on July 1st, it would seem desirable to arrange for the retailers to purchase and affix stamps to cover their inventories on July 1st. You further comment that it would also seem that Section 190 of Chapter 14, R. S. 1944, as amended, would indicate that cigarettes and tobacco products held in this State by any person for sale should bear the correct tobacco tax stamps, if sold after July 1, 1947.

It seems to me that this is a matter of purely administrative procedure. In my opinion it would be entirely legal to arrange for retailers to cover their inventories on July 1st. According to the statute, cigarettes and tobacco products held in this State for sale after July 1, 1947, should bear the correct tobacco tax stamps.

RALPH W. FARRIS
Attorney General

May 21, 1947

To David H. Stevens, State Assessor
Re: Gasoline Tax

I have your memo of May 12th relating to the provisions of Chapter 349, P. L. 1947, which provides for an increase of 2c per gallon in the State tax on gasoline.

This law becomes effective on June 1, 1947. The gasoline tax law provides for the first distributor receiving the gasoline in the State to be responsible for the tax, except as to the case of shipment by tank car or barge.

You request this office to advise you whether you are charged with the responsibility, under the new law, of attempting to recover the 2c on the gasoline held in the hands of distributors who purchased from other distributors, and of retailers, on June 1, 1947, or in other words upon that gasoline on which the 4c tax has already been paid.

In reply I will say that where the gas tax has already been paid by the first distributor, as provided by law, under the provisions of the old law, it is my opinion that you cannot collect an additional 2c tax when the new law becomes effective, as there is no such retro-active provision, relating to inventories, in the act.

RALPH W. FARRIS

Attorney General

May 23, 1947

To A. K. Gardner, Commissioner of Agriculture

Re: Salvage Derived from Condemned Reactors to Tuberculosis

Your memo of May 21st, relating to the above matter, which you have discussed with Mr. Buzzell and Mr. Mudge, received. You refer to Section 7 of Chapter 297. I presume you are referring to the Public Laws of 1945, which amended Section 69 of Chapter 27 of the Revised Statutes by changing the wording of that statute so that the money received from the sale of hides and carcasses of condemned animals shall be credited to the General Fund.

I note what you say in your memo in regard to the salvage, that when the salvage exceeds \$50, the owner of the condemned cattle must be reimbursed and that the condemned cattle are usually killed at slaughter houses in Maine and shipped to Boston for inspection; and that the Division of Animal Industry receives the salvage value, less the expense incidental to the slaughter. You ask:

"Is it possible for the slaughterer to pay the Division of Animal Industry for deposit to the General Fund the appraised value up to \$50 and to pay to the owner of the condemned animal any amount in excess of \$50 when so appraised?"

It is my opinion that this cannot be done, as there is no authority under the statute.

I do not see why you could not issue a voucher to the owner for the balance above the appraised value. This is another case of delay and hardship caused by the amendment of Chapter 297, P. L. 1945, which was intended to simplify the financial structure of the State, but has hampered the administration of the departments that are functioning on a fee basis, and is very unfair to the several departments involved, that is, in crediting the fees to the General Fund and taking payments out of an appropriation for the department in which the legislature has made no provisions therefor.

In case the Controller's office will not accept your vouchers for payment to the owner of condemned cattle for the salvage value beyond the \$50 limit, I would go to the Governor and Council and ask that money be taken from the Contingent Fund to pay this excess to the owners.

RALPH W. FARRIS

Attorney General