

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1947 - 1948**

The facts, as they appear, are that a resident of the town would be willing to construct a building costing \$100,000, using plans provided by the Department of Education, and that the town is to agree to rent the building for a 30-year period. The town, at the end of said period, is to own the building, apparently having by that time paid the total cost of construction thereof. You do not say whether the building is to be constructed on land owned by the town.

While a town might, in carrying out the obligations imposed on it by statute to provide schools and school buildings, lease buildings for such purposes upon a payment of an annual rental, a town may not by this method circumvent, or attempt to do so, the constitutional limitation of debt or liability to be created by it. A contract by which it creates a liability in excess of its debt limit is illegal and void.

It would seem that here is not a mere hiring by the town of buildings to be used for school purposes at an annual rental, but rather a contract to purchase, which would create an obligation on the town for a substantial sum of money payable in future annual instalments. Calling it a lease and rental would be form only and would not represent the true nature of the contract. Thus, the question would arise whether its present indebtedness and the limitation on its indebtedness would authorize it to enter into such a contract. If such a contract would be for an amount in excess of the limitation on its indebtedness, the contract would be void.

ABRAHAM BREITBARD

Deputy Attorney General

June 18, 1947

To David H. Stevens, State Assessor

The department acknowledges receipt of your memo of June 9th. You inquire whether, under Chapter 88 of the Revised Statutes of 1944, Sections 168-175, inclusive, a service station selling gasoline may sell from any tank, container or pump gasoline under a trade name or symbol of his own, although the gasoline dispensed from said equipment is that of a well-known refiner or manufacturer which advertises its product under the name adopted by it.

I am of the opinion that under Section 168 of said chapter, such practice would not be permissible. This section reads as follows:

"It shall be unlawful for any person, firm or corporation within this state to store, sell, distribute, transport, expose for sale, or offer for sale, distribution, or transportation any internal combustion engine fuels, lubricating oils, or other similar products in any manner whatsoever so as to deceive or tend to deceive the purchaser as to the nature, quality, and identity of the product so sold. . ."

While a dealer may adopt a trade name to conduct his service station and do business under that name, he cannot use that name on his pumps or other dispensing equipment with the idea of conveying to the buyer that the gasoline so sold is of that name or manufacture; but he must identify the gasoline sold and dispensed with the true name of the manufacturer and the trade name or trade mark adopted by such manufacturer.

Any other course would be practicing a deception, within the meaning of this act, on the purchaser.

ABRAHAM BREITBARD

Deputy Attorney General