

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

as administrative director for the Commission is not a fee, emolument or perquisite as Adjutant General or as an ex officio member of the State Military Defense Commission, but is for special extra duties assigned to you by the members of the Military Defense Commission, for which they voted to pay you the sum of \$500 for these extra duties, and which are not necessarily a part of your duties as Adjutant General, you having taken the place of the original administrative director, who received a salary of \$10,000 a year and was succeeded by an administrative director who received a salary of \$4000 a year. Your assuming these duties, on a vote of the Military Defense Commission and the recommendation of Governor Sewall, then chairman of the Commission, at a rate of \$500 for services rendered, in no way conflicts with the said statute above quoted and in my opinion it saved the State at least \$3500. You should receive credit rather than censure for accepting these added responsibilities for the Military Defense Commission and the then Governor of Maine.

RALPH W. FARRIS
Attorney General

June 27, 1947

To A. K. Gardner, Commissioner of Agriculture
Re: Conformity with the Food and Drug Act

I have your memo of June 26th . . . asking for an opinion on a letter written by an officer of a canning company, in which he states:

"Since arriving home from the very pleasant interview with you I have been reading the Maine sardine Law, Revised Statutes 1944, and particularly under section 201 where it clearly states that we are to conform with the Federal Food and Drug Laws, and the laws of the State of Maine, we all know those laws call for no tolerance, and as they are laws clearly made it does not appear that anyone has the right to establish rules and regulations, in any case where the law is clearly defined, therefore it appears that your Department does not have the authority to establish tolerance, but as your department has established a tolerance outside of that law, hasn't the law been violated by your department and also all sardine packers?"

Commenting on this letter, I will say that he did not quote the important part of Section 201 of Chapter 27, relating to this subject. Further on in this section, the law reads:

"He (meaning the Commissioner) shall make uniform rules and regulations for carrying out the provisions of said sections (meaning sections 198 to 205, inclusive) and shall fix standards of quality when such standards are not fixed by law; . . ."

It is my opinion that the Food and Drug Act of the State of Maine does not fix standards of quality in the packing of sardines, and that the Commissioner has authority under this section to make uniform rules and regulations carrying out the provisions of said sections relating to the packing of sardines, and also to fix standards of quality when such standards are not fixed by law.

It is my opinion that the standards of quality are not fixed by law except in Section 168, subsection 6, paragraph F of Chapter 27, R. S. 1944, where the law of Maine reads as follows, relating to adulterated or misbranded goods:

"If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter."

After looking into the evidence before you, it is my opinion that this company has been violating Section 168 of Chapter 27, R. S. 1944, relating to the packing of diseased fish without properly branding said cans with the amount of diseased or putrid matter contained in said pack. . .

RALPH W. FARRIS
Attorney General

June 30, 1947

To Earle R. Hayes, Secretary, Employees' Retirement System
Re: Effective Date of Chapter 384, P. L. 1947

I received your memo dated June 27th relating to the above entitled subject matter, in which you call my attention to my memo to Fred W. Hollingdale, Deputy Treasurer, dated June 20, 1947, which is in effect the same as I talked with you some time during the session of the legislature. The law cannot possibly be in effect under the Constitution until 90 days after adjournment of the legislature, notwithstanding anything in the bill saying that it takes effect before the constitutional period concerning the effective date of laws passed by the legislature.

In my memo to Mr. Hollingdale I told him that the law was not effective until August 13, 1947, but it was the intent of the legislature to make the provisions thereof retroactive to July 1, 1947. So, getting down to the real point involved in your memo, you ask:

"May those employees who are approved for retirement on or after August 13, 1947, have their retirement benefits start as of July 1, 1947 (or any other date between July 1, 1947 and August 13, 1947) on the basis of the provisions of the new law, or must retirement benefits be figured on the basis of provisions of the existing statute up until August 13, 1947?"

Answer. Their retirement benefits start as of July 1st, or at any other date between July 1st and August 13, 1947, on the basis of the new law. In other words, the legislature intended that the provisions should be retroactive. That is what I told Mr. Hollingdale in my memo. It is probable that Question 2 of the memo was not clear and so the answer did not bring out the point that you ask in your memo of the 27th. In other words, it was the intent of the legislature that employees retiring on July 1, 1947, should come under the provisions of the new law after August 13th, the effective date of the law; but they cannot retire until the act takes effect, to get the benefit of the new law.

RALPH W. FARRIS
Attorney General