STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

and the other a 50-lb. bag labeled

WIND MILL MAINE POTATOES
Produce Dealers Supply Co.
Presque Isle, Maine

You state that the Produce Dealers Supply Co. own a warehouse in Presque Isle and supply bags to dealers and shippers but do not buy, sell or ship any potatoes; and you ask the following questions:

"(1) Are the Produce Dealers Supply Co. responsible for the quality and character of the potatoes enclosed and shipped in such containers?"

In answer to this question, I will say that they are not, because the Produce Dealers Supply Co. does not buy, sell or ship potatoes. As I gather from your memo, this company furnishes the bags for dealers and shippers, some of whom probably store their potatoes in the Produce Dealers Supply Co.'s warehouse.

Your next question is, "(a) Is the Potato Branding law violated by shipping and selling a package containing potatoes that is not conspicuously tagged and branded with the name and address of the person or persons truly responsible for grading and packing of the potatoes contained in a package bearing the legend above described?"

My answer to Question 2 is in the affirmative, as the law requires potatoes prepared for market to be tagged, branded, labeled or stenciled before being removed from the premises where they are prepared for market, with the name and address of the person or persons responsible for the grading and packing, and the name of the grade, together with true net contents. . . .

RALPH W. FARRIS
Attorney General

April 30, 1948

To H. H. Harris, Controller
Re: Mileage—Inspectors, Certified Seed Potatoes

Mr. Witham of your pre-audit department brought in a copy of a memo which you wrote to this office on November 12, 1947, which I answered orally to you on the telephone. Mr. Witham indicated that you would like a written memo on this matter, which has to do with the interpretation of Chapter 396, P. L. 1947, relating to employees who are regularly employed by the Department of Agriculture and work on a part-time basis as inspectors of certified seed potatoes.

As I pointed out to Mr. Witham, this statute provides for not more than 8c a mile for the first 5000 miles actually traveled in any one fiscal year, not more than 5c a mile for the next 9000 miles, and not more than 4c for all miles exceeding 14,000. This relates to regular State employees. Then the legislature saw fit that the State shall pay inspectors of seed potatoes 7c for every mile so traveled, which makes two classes of mileage among State employees.

In my opinion this proviso relates to mileage to the regular inspectors of seed potatoes and not to the general employees of the Department of Agri-

culture. In my opinion, the regular employees of the Department of Agriculture should proceed under the 8c a mile for the first 5000 miles and keep on that schedule. When they do part-time work as inspectors of certified seed potatoes, they would come under the second classification of 7c per mile. When they cease inspecting seed potatoes, they should go back to their regular mileage schedule as general employees of the department. . . .

RALPH W. FARRIS
Attorney General

May 6, 1948

To Marion E. Martin, Commissioner of Labor and Industry
Re: Sections 38 and 39 of Chapter 25, R. S.

I have your memo of May 6th requesting a ruling on Sections 38 and 39 of Chapter 25, R. S., to which memo was attached a letter from Wood Products Co., Inc., of Brewer, Maine, dated May 5, 1948.

Section 38 of Chapter 25 was originally enacted by the legislature under Chapter 39, P. L. 1911, and at the time of the enactment of this section, the contents of Section 39 were Section 51 of Chapter 40, R. S. 1903.

Upon comparison of Section 39, R. S. 1944, with Section 51 of Chapter 40, R. S. 1903, I find that no amendment or change has ever been made in this statute.

However, Section 38 has been amended by the legislature since its enactment in 1911, in the 1935 session, in 1937, 1939, and 1941. In 1915, the Maine Supreme Court had occasion to pass upon these two statutes, and the late Chief Justice Savage wrote an opinion in which he held that the law of 1911, which is now Section 38, Chapter 25, R. S., 1944, was not inconsistent with Chapter 40, Section 51, R. S. 1903, which is now Section 39, Chapter 25, R. S. 1944. I quote from the language of Chief Justice Savage on page 258 of 114 Maine, the case of *Veitkunas vs. Morrison:*

> "It is obvious that the apparent purposes of the two statutes are unlike. (This refers to Sections 38 and 39.) They do not touch each other. Though both relate to wages, they relate to entirely distinctive features of the wage question. The earliest statute which includes also a provision requiring an employer having a forfeiture contract with an employee to pay him an extra week's wages if he discharges him without notice, is evidently intended to prevent the injurious consequences which might result to the one or the other, if the employer discharged the servant, or the servant left the employer, without notice. It has nothing to do with the time of the payment of wages. On the other hand, the act of 1911 relates solely to the time of payment. (This is now Section 38, R. S. 1944.)"

Section 38 provides that the employee is entitled to his weekly wages earned by him to within 8 days of the date of the weekly payment; "but any employee, leaving his or her employment, shall be paid in full on demand at the office of the employer, etc. . . but an employee who is absent from his regular place of labor at a time fixed for payment shall be paid thereafter on demand."