STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

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Section 38 of Chapter 25 was originally enacted by the legislature under Chapter 39, P. L. 1911, and at the time of the enactment of this section, the contents of Section 39 were Section 51 of Chapter 40,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

I can appreciate the confusion caused by these two sections. . . The Law Court has held that it assumes that the employee leaves rightfully, when he is entitled to his pay in leaving. In that case he is entitled at once on leaving to the full wages due him, but not to wages that he had forfeited if there is a contract under the provisions of Section 39 of Chapter 25, R. S.

You may advise Mr. Marvin that it is not sufficient to place the statute on the board. It should be done by a contract between the employer and the employees under Section 39, relating to giving one week's notice of intention to quit. The terms are binding upon both parties, once the contract is consummated.

In the case in 114 Maine, *Veitkunas vs. Morrison*, the Court held that the employee was not entitled to recover from the employer in an action to recover pay for one week's labor, having left without one week's notice of intention to leave, under the provisions of the statute.

In regard to the question of reasonable cause of discharge by the employer or of leaving without notice by the employee, I will say that the Maine Labor Law does not cover that question, as it would be impossible for the legislature to cover every state of facts that might arise between an employer and an employee. The question of what constitutes a reasonable cause is left with the employer and the employee in each case of discharge or quitting without notice. If the employer and employee have entered into a contract under the provisions of Section 39 of Chapter 25, R. S. 1944, they should live up to the contract, and that section would, in my opinion, be strictly construed by the Court, because what might be considered reasonable cause by the employer might not be considered reasonable cause by the employee, and vice versa. If an employer discharges an employee who is working under a contract under Section 39, he should pay the week's wage without any quibbling about what is a reasonable cause. This provision was passed on by the Law Court in 91 Maine, page 59, *Cote vs. Bates Mfg. Co.* In this case the defendant claimed that the plaintiff quit work without working a week's notice, and retained one week's wages. The plaintiff claimed that he was discharged without notice and that he was entitled to recover a week's wages due him and another sum equivalent to a week's wages as a forfeiture by defendant. The Court held that the facts of the case did not support the claim of forfeiture by either party and that the plaintiff was entitled to recover the amount due him when he quit work for labor then performed. In this case the mill reduced the rate that the employee was receiving for his work, and the employee refused to work any further at the cut and quit his job. Under these circumstances, the Court held that the plaintiff was justified in leaving and incurred no forfeiture thereby. . . .

RALPH W. FARRIS
Attorney General

May 12, 1948

To Charles P. Bradford, State Park Commission
Re: Power line right of way—Sebago Lake State Park

I have your memo of May 11th, in which you state that the Park Commission has had a request from the Central Maine Power Company to extend power lines beyond the last outlet needed by the State for the new water and