STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

May 20, 1948

To John C. Burnham, Administrative Assistant, State Highway Commission
Re: Advertising near the Turnpike

I received your memo of May 14th, relating to the enforcement of Chapter 279 of the Public Laws of 1947. You want to know if, in the enforcement of this Act, the Highway Commission is to consider as illegal billboards and other advertising signs if erected within 500 feet of the right-of-way boundary of roads constructed and maintained by the Turnpike Authority as approach roads to the main part of the Turnpike.

You state that the question has been asked of the Commission if billboards and other advertising signs can be erected adjacent to Route U. S. #1, if located within 500 ft. of the point where the different approaches to the Turnpike intersect Route U. S. #1. Another question has been asked, if billboards can be erected along the approach roads, provided they are not within 500 feet of the right-of-way line of the main part of the Turnpike.

No person or corporation should be allowed to erect or maintain within 500 feet of the nearest right-of-way boundary line of any State Turnpike any billboard or other advertising as defined in Chapter 279 of the Public Laws of 1947.

In reply to the question whether advertising signs can be erected adjacent to Route U. S. #1, if located within 500 feet of the point where the different approaches to the Turnpike intersect Route U. S. #1, my answer is in the negative. They must not be within 500 feet of the nearest right-of-way boundary line of the Turnpike. That will be a question of measurement for your inspectors.

In regard to your question whether billboards can be erected along the approach roads, provided they are not within 500 feet of the right-of-way line of the main part of the Turnpike, my answer is in the affirmative. My reason for this answer is that the approach roads are not a part of the Turnpike.

RALPH W. FARRIS
Attorney General

May 25, 1948

To Milk Control Board
Re: Milk Sales at Veterans Administration

Receipt is acknowledged of your memo of May 19, 1948, requesting that we advise the Board whether it may enforce minimum prices for sales of milk applicable to the area wherein is located the Veterans Administration at Togus, so-called. The entire tract where the Veterans Administration is located is within the exclusive jurisdiction of the United States, and it has exercised exclusive jurisdiction over that area for a great many years.

The United States Supreme Court has held in *Pacific Coast Dairy vs. Department of Agriculture*, 318 U. S., page 285, that a State Milk Control Board may not regulate contracts to sell and sales consummated within an area over which the United States exercises exclusive jurisdiction, under Article I, Section 8, Clause 17, of the Constitution of the United States.

I am therefore of the opinion that the Board would have no authority to enforce the State Act in so far as contracts are concerned which involve the sale of milk in the territory where the Veterans Administration is located, to the Administration or to any Federal Agency there located.

ABRAHAM BREITBARD
Deputy Attorney General

May 28, 1948

To Ernest H. Johnson, State Tax Assessor

I have your memo of May 24th in which you state that the Bureau now assesses and collects the insurance premium tax, under the provisions of Section 136 of Chapter 14, R. S. 1944. You further state that this tax is assessed on gross direct premiums, less deductions due to return premiums and dividends paid or credited thereon, the rate being 2% except where the rate is retaliatory.

You further state that the American Guarantee and Liability Insurance Company of Chicago filed with the Bureau a return covering the period January 1 to December 31, 1947, on which return they requested a refund of $15.22 for the following reasons. During the period in question the company collected gross direct premiums of $459.46, but paid in return premiums the amount of $1220.44, an excess of return premiums of $760.98. In the amount of return premiums paid by them there was an amount returnable on business written by them during 1946 and on which a premium tax was paid April 8, 1947, in the amount of $24.48.

You call my attention to the fact that there is no specific provision in the law whereby the State Tax Assessor has authority to make a refund in such a case. The peculiarity of this case is that the return premiums exceed the direct premiums paid, and you ask the question: "Has the State Tax Assessor authority to direct a refund of this $15.22?"

I am unable to cite any statutory authority for the State Tax Assessor to direct the refund of any State Tax. However, the State Tax Assessor, subject to the approval of the Governor and Council, may make an abatement of any State tax and the amount of the same may be transmitted to the State Controller and deducted from the taxes.

If, in your opinion, the amount of $15.22 is due the insurance company in this case, you might handle same under the provisions of Chapter 31 of the Public Laws of 1947, as aforesaid.

RALPH W. FARRIS
Attorney General

June 3, 1948

To George J. Stobie, Commissioner of Inland Fisheries and Game
Re: Fishway—Meddybemps

I acknowledge receipt of your letter of May 27th, inquiring about reimbursement for the erection of a fishway by the Commissioner, where the owner or occupant neglects to obey an order of the Commissioner to construct one, and also whether the Commissioner would be obliged thereafterwards to maintain and repair the same.