STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

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.

Section 10 of the Inland Fish and Game Laws provides that where all the owners or occupants refuse or neglect to erect, maintain, or repair or alter a suitable fishway, the Commissioner may do so and "shall have an action on the case against all delinquents for their proportion of the expense thereof."

In the present case there is only one owner of two dams which obstruct the passage of fish.

The word "case" refers to the form of action, but the recovery here would be for the total expense in erecting the fishway; and any property of the owner may be attached in that action and sold on the execution issued on the judgment that may be recovered.

As to further repair and maintenance in such a case, the obligation would rest on the owner or occupant, as the Commissioner, in erecting, merely does what the owner or occupant should have done and the Commissioner is allowed reimbursement therefor from the owner. Thereafterwards the duty devolves upon the owner or occupant to keep it in repair, and the failure to do so would subject him to another action of the same form, if the Commissioner is again obliged to do so.

ABRAHAM BREITBARD
Deputy Attorney General

June 7, 1948

To Marion E. Martin, Commissioner of Labor and Industry

I have your memo of June 1st, relating to the exemptions in Sections 24 and 25 of Chapter 25, and in reply will say that in my opinion the exemptions in Section 24 also apply to Section 25.

Then you inquire, "Does the classification 'personal office assistants to any person working in an executive, administrative, professional, or supervisory capacity,' include all office workers such as stenographers, file clerks, etc., who receive more than $1200 per year?"

In my opinion this statute does not apply to all office workers, but only to those who are personal office assistants to any person working in an executive, administrative, professional or supervisory capacity. Many file clerks, bookkeepers, stenographers, etc., in mercantile establishments, stores, restaurants, laundries, telegraph offices, etc., may not be personal office assistants to these persons enumerated in Section 24. In my opinion it is a matter of administration in your office, as to whether or not a certain stenographer or file clerk is a personal office assistant to those exempted under the language of the statute. I will admit that the language of the statute is very broad and might cover stenographers and file clerks, if the facts disclosed that they were personal office assistants to those persons enumerated in Section 24.

Your third question is, "If their salary is rated on a monthly rather than a yearly basis, would this mean that they are exempt from this exception unless they are employed in an executive, administrative, professional or supervisory capacity?"

It does not matter whether their salaries are rated on a monthly or a yearly basis, so long as it is not less than $1200. The statute reads as follows, "who receives remuneration on an annual basis." In my opinion it would make no difference whether they were paid on a monthly or a yearly basis, so long