STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

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

as the entire remuneration which they receive is not less than $1200 per year, from the personnel department of the employer. In other words, this is not a matter about which the administrative authority should be too technical, rather basing each case of exemption on the facts given the Commissioner by the inspector.

RALPH W. FARRIS
Attorney General

June 10, 1948

To Ernest H. Johnson, State Assessor
Re: Corporate Franchise Tax, R. S. Chapter 14, Sections 102-108

My understanding is that when we are notified by the Clerk of Courts of the filing of a bill in equity for dissolution, notice of which must be given to the Attorney General in accordance with statute, we notify the Secretary of State, and that office in turn notifies the State Tax Assessor. Whether or not the State Tax Assessor should discontinue assessing the corporate franchise tax should depend on the nature of the bill and the appointment of receivers.

In the case under consideration, the business was an active and profitable one. The bill was brought because of a fight amongst the stockholders for the control of the corporation. That, however, is a rare case. By far the majority of the cases are those where the corporation has either ceased to do business or is so hopelessly insolvent that liquidation and dissolution are sure to result.

Our Court has held that a franchise tax may not be assessed against a corporation in receivership, where dissolution and liquidation of the assets are the main purpose. On the other hand, courts have generally held that where a receiver continues and operates the business, the corporation is subject to the franchise tax. It is otherwise where the receiver is merely in possession to liquidate.

Therefore, I would advise you not to discontinue corporate franchise tax assessments, unless receivers have been appointed by the court, as, when receivers are appointed, the corporation "thereafter (has) no right to exercise for itself any of the privileges conferred upon it by the State." *Johnson vs. Johnson Bros.*, 108 Maine 272, at page 275. This tax, it is there said, is "in the nature of an annual license fee for the right to continue to exercise the privileges conferred upon it by the State."

ABRAHAM BREITBARD
Deputy Attorney General

June 16, 1948

Hon. John M. Dudley, Judge Calais Municipal Court . . .

I acknowledge receipt of your letter of June 15th regarding the alleged illegal possession of perch which, on the facts agreed upon, were caught in waters of New Brunswick. The catch, while lawful in New Brunswick, was in excess of the legal limit in Maine. Your letter seems to indicate that the arresting warden was under the impression that the Department of Inland