

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1947 - 1948**

Fisheries and Game had a policy that persons possessed of fish, as in these circumstances, were subject to prosecution in Maine, notwithstanding the fact that the fish were caught in waters outside of the State.

I inquired from the Commissioner and he informs me that he is unaware of any such policy. The question has always been whether the fish were caught in our waters and whether the claim that they were caught in foreign waters was a sham.

As I read our statute, Section 37 of Chapter 33, being the Ninth Biennial Revision, the prohibition is directed specifically to waters of this State, and a reading of the context would indicate to me that the possession which is made an offense necessarily relates to fish taken and caught in the waters of this State.

On the conceded facts I should be of the opinion that no crime has been committed within the meaning of our statutes. See in this connection *Woods vs. Perkins*, 119 Maine 257, and *State vs. Bucknam*, 88 Maine 385. . . .

ABRAHAM BREITBARD  
Deputy Attorney General

June 23, 1948

To Fred M. Berry, State Auditor

Re: Duties and Repsonsibilities of the Department of Audit relating to the University of Maine

I have your memo of June 14th relating to the above entitled subject and have been giving this considerable study, because of the several citations in your memo, together with an opinion of former Attorney General Cowan who cites the *Orono v. Sigma Alpha Epsilon* case, 105 Maine 215. He states in the last paragraph of his opinion, on page 182, Report of the Attorney General, 1941-42,

"From the above it is plainly evident that the University of Maine is a private institution having all the rights and privileges of any private corporation within the limits of its charter. That charter is subject to modification, just as the charters of every other corporation in the State of Maine set up during the last hundred years are subject to modification. The fact that the legislature can modify the charter and at times has done so, does not change the nature of the college as a private institution, any more than the right of the State to change the charter of the Todd-Bath Shipbuilding Company changes the nature of that corporation."

The legislature in 1945, under the provisions of Chapter 98 of the Public Laws of 1945, declared the University of Maine to be an instrumentality and agency of the State for the purpose for which it was established and for which it has been managed, etc., under the provisions of the Private and Special Laws of 1865 and supplementary legislation relating thereto; but it is my opinion that the 1945 Act did not alter the provisions of Section 1 of Article I of Chapter 216 of the Public Laws of 1931 as cited in the third paragraph of your memo, for the reason that said provision was not repealed in the Revision of 1944. If you will consult page 2240, Volume II, R. S. 1944, under the Repealing Act, you will find that this provision was specially excepted from the Repealing Act.

The Administrative Code Act language was as follows: "The provisions of this act shall not be construed to apply to the judiciary, the University of Maine, the state normal schools, the Port of Portland Authority, the executive council, nor the legislature, except when expressly specified."

The legislature, in the 1945 Act making the University an instrumentality of the State, did not in any way alter the application of the Administrative Code Act, as it relates to the University of Maine. Therefore, in my opinion, it is not a part of the Department of Finance and does not fall within the provisions of Section 3 of Chapter 16, R. S. 1944, which is also a part of the old Administrative Code as amended by Chapter 206 of the Public Laws of 1937, Chapter 27, P. L. 1941, Chapter 345, P. L. 1943, and Chapters 337 and 378, Section 13, P. L. 1945.

The Judiciary is an agency of the State, and that was specifically excepted by the Administrative Code Act. In my opinion there is no conflict of these statutes and the ruling of former Attorney General Cowan, which would affect the rights, powers and duties of the Department of Audit in this matter.

RALPH W. FARRIS

Attorney General

June 28, 1948

To R. E. Reed, Commssioner, Sea and Shore Fisheries

Subject: Section 1, Chapter 349, P. L. 1947.

I have your memo of June 25th, calling my attention to the provisions of Section 1 of Chapter 349, P. L. 1947, which provides that eight mills of the tax paid on fuel used in motor boats, which is refunded under the provisions of Section 166, shall be paid to the Treasurer of State, to be made available to the Commissioner of Sea and Shore Fisheries for the purpose of conducting research, development and propagation activities by that department. You state that there is a question as to balances on hand, whether they are to be carried over or should lapse to the general fund under the general statute.

I note in your memo that you will have, at the end of the fiscal year 1947-48, a balance of approximately \$7000 in this fund, and you ask my interpretation of the statute.

It is my opinion that it was the intent of the legislature that this balance should be carried over and not lapsed, because of the fact that it is to be used for research, development and propagation activities of your department; and if it were allowed to lapse, the purpose of the legislation would be defeated.

RALPH W. FARRIS

Attorney General

July 6, 1948

To John C. Burnham, Administrative Assistant

Re: Amounts due Deceased Employee

Your memo of July 1st received, inquiring as to whether or not you can pay for vacation not used, to the estate of an employee who has recently died.

Vacation is not a matter of right, but a matter of privilege or grant and is not considered pay after the employee has died.