

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1947 - 1948**

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.

However, his estate is entitled to pay for any days that he actually worked for the State, and the administrator of his estate or the executor of his will can sign a receipt for pay for the days worked before the decease of the employee. For the Saturdays and Sundays that he worked his estate is entitled to receive pay at the regular rate therefor.

RALPH W. FARRIS  
Attorney General

July 6, 1948

To H. A. Ladd, Commissioner of Education  
Re: Records, Maine Teachers Retirement Association

Referring to your memo of June 14th, relating to the request of Earle Hayes of the Employees' Retirement System that your department turn over every record of any sort which you have in your department bearing on teachers' pensions, I will say that the legislature did not provide for such a transfer of records as is demanded by Mr. Hayes, and at this time the records of the administration of the Commissioner of Education should be kept in your office, until a Resolve is passed by the legislature ordering them turned over to the Secretary of the Employees' Retirement System.

The records are in your office and are available, but these are the records of another Board.

I presume that the records of all meetings of the Pension Board are available in your office, and it would be proper to lend Mr. Hayes the record relating to any particular case that he had in mind.

As to the wholesale turning over of the records of the Teachers' Retirement Association, I advise against it until you have authority from the legislature to do this.

RALPH W. FARRIS  
Attorney General

July 6, 1948

To Richard E. Reed, Commissioner, Sea and Shore Fisheries  
Re: Section 2, Chapter 23, Laws of 1937 (Resolves)—Beam Trawls

On June 10th I talked with you in regard to the use of otter trawls in places where the statute prohibits the use of the beam trawl, and you left a memo in my office asking for an interpretation of Section 2, Chapter 23, Resolves of 1937, which regulates fishing for ground fish in Sheepscot Bay.

This Resolve provides that the Commissioner shall repeal the rules and regulations numbered 6 and 7 and issue two new rules in place thereof, and I presume that these rules and regulations have been legally promulgated and are now in effect. Regulation (2) in Chapter 23 provides:

"It shall be unlawful to fish for or to take with beam trawls any fish from the waters subject to the jurisdiction of this state northerly from a line drawn from Cape Small Point to the North End Sequin Island thence in an easterly direction to Pumpkin Island and thence in a northerly direction to Ocean Point."

This was an emergency Resolve and became effective on March 18, 1937, when approved by the Governor.