

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1947 - 1948**

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 Sheepscoot 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.

There is a difference in construction between the beam trawl and the otter trawl, and if you went into court on a complaint issued for violating this rule and regulation, alleging that a beam trawl was used, you would have to prove that it was a beam trawl of another construction or make, as the statute authorizing rules and regulations and the rule and regulation must be strictly construed. I doubt whether a judge of a municipal court would allow your wardens to "prove" in court that the accused persons were using a beam trawl if they were not actually doing so. The burden is on your department to prove beyond a reasonable doubt that they were violating this rule and regulation by taking fish with a beam trawl.

Your only remedy is action by the legislature to have this statute authorizing this rule and regulation amended, taking care of otter trawls or any type with a similar construction.

My advice is to try to stop these people if you can, but do not take a chance of losing a case in court by attempting to say that they are using a beam trawl when they are not, but are using a substitute thereof which is of a different construction, although it answers the same purpose.

RALPH W. FARRIS  
Attorney General

July 12, 1948

To Ernest H. Johnson, State Tax Assessor  
Re: Stamp Shipments

Your memo of July 6th received, in which you stated that on shipments of cigarette or tobacco tax stamps to distributors you are insuring them for \$50 which will cover the manufacturing cost, but not the face value thereof, and in seven years have had no difficulty and suffered no losses. In case of loss in transit the Railway Express Company will pay the \$50 declared value, and the Post Office will pay the actual manufacturing cost up to \$50 on presentation of the proper forms and claim sheet. Since the distributor pays the carrying charges it will be necessary, in the case of express shipments, for the consignee to waive his claim in favor of the State, and, in the case of shipment by mail, for both the consignee and the State to indicate to whom the indemnity should be paid.

You further state that you have taken this matter up with the local Railway Express Agent and the Augusta Postmaster, and you have decided that, in case of loss in transit, the Tobacco Tax Division will, upon proof of loss, send a duplicate order of stamps to the consignee at no cost to him, arrange to collect the indemnity from the Railway Express Agency or the Post Office, and adjust the loss on your books. You state that this matter has been taken up with the State Controller and the Deputy State Auditor, and both have agreed with your arrangements. You ask if this plan meets with my approval.

As far as I can see, this plan is perfectly all right, as far as this office is concerned.

RALPH W. FARRIS  
Attorney General