

MAINE STATE LEGISLATURE

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STATE OF MAINE

R E P O R T

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

a Council Order was contemplated in October, 1943, authorizing Governor Sewall to sign a bill of sale for this scrap, which was mentioned in Dr. Hauck's letter to you relating to the salvage of the steel in the pier at Lamoine.

In checking with the Controller's office I find that the University of Maine Report of 1946 has a set-up of \$3280 for buildings and \$2500 for equipment on this Lamoine property.

I also find a letter in my Attorney General's file, dated March 10, 1931, from Acting Secretary of the Navy, Ernest Lee Jahnce, addressed to Congressman John E. Nelson, in which he states that the Navy Department would not regard the lease of the property in question by the State of Maine to the University of Maine for biological and scientific research purposes as coming within the provisions in the deed "that the said property herein conveyed shall be limited to its retention and use for public purposes and upon cessation of such retention and use shall revert to the United States of America without notice, demand or action brought." This limitation in the deed to the State prohibits the State from selling this property, and if it should attempt to part with this title, the property would revert to the Federal Government. Therefore the University of Maine Trustees should be careful in the use of this property not to violate the provisions of the reversion clause in the deed from the Federal Government to the State of Maine.

Senator Noyes of Hancock County has spoken to me about having this property used as a public park, and it is probable that he will contact you in regard to this matter, inasmuch as the contemplated Lamoine lobster rearing station is not feasible and I understand from the Controller that there is a bill in to lapse to the General Fund the balance of the appropriation which was made for the purpose of a lobster rearing station at Lamoine; it is in the budget of the Sea and Shore Fisheries Department.

It is still my opinion that while the legislature is in session the Board of Trustees of the University should seek authority to handle the situation of salvaging the steel in the old pier and building a new pier for small boats, although I feel that under the provisions of Chapter 81, P&SL 1941, which are still in effect, any expense for reconstruction or maintenance shall be borne by the University of Maine. Their problem is one of finance, and the question is whether this should be paid from the funds of the University of Maine or by Special Resolve.

RALPH W. FARRIS
Attorney General

January 29, 1949

To Col. Francis J. McCabe, Chief, Maine State Police
Re: Jails and local police lock-ups

Your memo of December 13th, upon which I called you on the telephone, relating to the use of jails by the State Police when arresting offenders accused of violations of law, without a warrant, is before me. You call my attention to the language of Section 26 of Chapter 122, R. S. This section is not applicable to this case, however, because it applies to a jailer accepting into his custody a prisoner committed to him on a lawful process.

When a prisoner is taken to the county jail at night without a lawful process, the jailer is not required by law to accept such prisoner; and if he does accept him, he lays himself liable for false imprisonment. Similarly, the sheriff or the turnkey at the county jail is not obliged to accept a prisoner unless a warrant or mittimus accompanies the incarceration, which warrant or mittimus he must hold in his office to show his legal authority for holding anyone a prisoner in the county jail. If he has no such authority, the remedy of a writ of habeas corpus would be available at once.

When a State trooper places a person under arrest for having committed a misdemeanor or even a felony, such person is in the arresting officer's custody until he has secured a warrant or mittimus to incarcerate the prisoner in one of the county jails.

In the case of a city lock-up, where a prisoner is arrested for intoxication, he must be held until the municipal court convenes the next morning, when a warrant can issue and a hearing be held. During the night, technically the prisoner is in the custody of the arresting officer and not in the custody of the city jailer or chief of police, whichever the case may be.

Of course if a person arrested for operating under the influence offers to give bond and calls a bail commissioner, he must be released after proper bail has been furnished to appear at a certain date to answer to a warrant.

RALPH W. FARRIS
Attorney General

January 29, 1949

To Carl L. Treworgy, Secretary, Racing Commission
Re: Section 9, Chapter 77, R. S. 1944

I have your memo of December 30, 1948, concerning the interpretation of Section 9 of Chapter 77, R. S., as amended by Chapter 358, P. L. 1947, which provides that no meeting shall be allowed for more than six days in any 28-day period, except that between the 1st day of July and the first Monday of August a meeting may be allowed not exceeding 18 days on mile tracks. I presume the Commission's request for an interpretation is in regard to what constitutes a 28-day period.

It is my opinion that meets can be held in periods of 28 days, the first day of the six days allowed beginning on the first day of the 28-day period. For example, if races were started on September 1st and ended on September 6th, you might start another period of 28 days on September 29th and allow six days in that period. In other words, the six days allowed begin on the first day, and in each succeeding period of 28 days you may allow six days of that period, either the first part of it or the last part of it.

My reason for construing the statute in this manner is that the statute does not state that racing periods shall be 28 days apart. It clearly states, "6 days in any 28-day period," so that the starting point must be at the beginning of the period and not at the end of it.

RALPH W. FARRIS
Attorney General