

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

February 25, 1949

To John C. Burnham, Administrative Assistant, State Highway Commission

Referring to your memo of January 4th, about which I talked with you on the telephone, relating to whether or not the State Highway Commission has authority to grant permits for moving vehicles over the highway when the vehicles are made up of a tractor and semi-trailer and a vehicle towed behind the semi-trailer, when these vehicles exceed the legal weight, height, width or length:

I wish to state that under the provisions of Section 89 of Chapter 19, as re-enacted by Chapter 348, Section 5, of the Public Laws of 1947, the State Highway Commission is authorized to issue permits in emergency matters whenever these vehicles exceed the legal weight, height, width or length. However, the permit issued by the Highway Department should designate the equipment which the permit covers, so that in case they are stopped by the State Police they will have in their possession permits to cover these vehicles. Therefore the applicant for an emergency permit from the State Highway Commission should be careful to include just what equipment is being moved under the provisions of the permit.

RALPH W. FARRIS
Attorney General

February 25, 1949

To William P. Hinckley, Acting Technical Secretary, Sanitary Water Board

On January 14th you requested this office to interpret the provisions of Chapter 72 of the Revised Statutes of 1944 as amended by Chapter 345 of the Public Laws of 1945. You state that:

"1. A starch factory became established in 1947 at a location where the public sewer is used as a means of discharging its waste material to the St. John River."

Answer. It is my opinion that the starch factory should obtain a license, even though the public sewer is an old source of pollution; the industry is a new source of pollution and adds to the old source. The two combined may create an objectionable odor.

"2. A textile industry was, previous to 1946, located where waste was discharged by public sewer to the tidal waters of the Penobscot River. The industry has relocated in old mill property formerly used and operated for the manufacture of pulp and paper but unoccupied for some years. This new industry is located about eight miles upstream from its old location and about six miles above the head of tide at Bangor and above the source of the public water supply of that city. Textile wastes are to be discharged from the plant to the Penobscot River."

Answer. My interpretation of the statute as it relates to the statement of facts in Question 2 is that they should first obtain a license under the provisions of the statute, as their output constitutes a new source of pollution to the waters of the Penobscot.

"3. An industrial plant is located in Bangor where for several years the public sewer provided the means of waste disposal eventually discharging into Kenduskeag Stream. This company built a new plant in 1947 and now discharges waste by public sewer but by a different sewer, the waste now entering a river. Would the following conditions have any special bearing upon the situation:

- "A. The old plant discharged directly to the river with no use of the public sewer.
- B. The new sewer discharge enters the river further upstream.
- C. The new sewer discharge is to the Penobscot River rather than to Kenduskeag Stream."

Answer. It is my opinion that the statement of facts constitutes a new source of pollution under the 1945 statute. Of course the industries will question the authority of the Board at all times if they can get by with it; but in case their sources of pollution constitute a nuisance and complaint is made, the Attorney General can bring action to abate same under the common law powers. I understand that you have legislation pending to take care of some of these technicalities.

RALPH W. FARRIS
Attorney General

March 1, 1949

To Hon. Frederick G. Payne, Governor of Maine
Re: Letter of Major D. J. Smart

The writer of this letter says: "In 1946, I sold my property in Maine, and bought a place in Newburgh, N. Y., but, I went right back in the Army as soon as my terminal leave was up. What I want to know is this, how can I re-establish residence in Maine, which I really want to do, now that I intend to stay in the Army for the next several years."

This statement is not sufficient upon which to base an opinion as to whether a change of domicile was ever effected, as there is nothing in the statement to indicate that he actually established himself in Newburgh, N. Y., after purchasing property there, or whether it was from that place that he re-entered the Army when his terminal leave was up."

Domicile is a question of intent. To acquire a new domicile two things must concur: actual residence in a particular locality and intent to remain there permanently or indefinitely. Thus, if the writer sold his property in Maine and moved from Maine to Newburgh, N. Y., and there established an actual residence with the intent to remain there permanently or indefinitely, Newburgh became the domicile of his choice. As he re-entered the Army and is in service now on foreign soil, Newburgh would still be his domicile until he established a new one; but in order to do that, actual presence in the locality would be required, with an intention to remain permanently or indefinitely. Consequently, he cannot re-establish a domicile in Maine while he is out of the country or out of the State, which I assume he may be for some time, in view of his statement that he intends to stay