MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

Under this latter provision the Governor with the advice of the Council may appoint one or more associates who act under the direction of the probation officer with the same authority, if the Governor thinks such additional probation officers are necessary.

The same section expressly exempts Cumberland County, which is governed by a special act so far as that county is concerned. Then also in the County of Androscoggin provision is made by the legislature for two probation officers, one to be designated as the probation officer and one as the assistant probation officer; and this provision also fixes their salaries and that of a clerk or stenographer, and directs the county commissioners to pay it.

I thus feel that in the County of Androscoggin, where the legislature has fixed the number and salaries of probation officers, the provisions of the sections which I have above quoted, would not apply to Androscoggin County.

All other counties would be governed by that provision.

ABRAHAM BREITBARD
Deputy Attorney General

March 3, 1949

To Fred M. Berry, State Auditor
Re: Sheriffs' Fees

I received your memo of March 2nd, relating to the provisions of Chapter 313, P. L. 1947, which has to do with the compensation of sheriffs and their deputies for their services.

Deputy sheriffs are entitled to $7 a day while performing duties in attendance and services at court, and to incidental expenses, under Sections 1 and 2 of Chapter 313; and to civil fees for serving civil writs, even though they are receiving $7 a day as deputy sheriffs performing civil duties under this act.

Under Section 3, as you state, all fees chargeable under the statute by a deputy sheriff for the performance of criminal duties with the exception of actual expenses incurred, when charged by deputies receiving $7, shall be charged, collected and paid over to the county treasurer.

RALPH W. FARRIS
Attorney General

March 7, 1949

To Ernest H. Johnson, State Assessor
Re: Stover Airport

Referring to your memo of February 18th, relating to the above subject matter, where John G. Stover operates a business under the name of Stover Airport, which is unincorporated, and purchases gasoline under the name of Stover Airport and sells to operators of airplanes:

He owns a plane registered in his own name, which is fueled at the Stover Airport. Sales slips are made out when gasoline is placed in his plane. Upon this statement of facts you ask the following question:

"In applying for a gasoline tax refund under Section 166-A, Chapter 14 (P. L. 1947, Chapter 349, Section 4-A) are receipted invoices rendered by Stover Airport to John G. Stover acceptable? i. e., can an individual 'purchase' gasoline from an unincorporated business of which he is proprietor?"

Answer. After my conversation with you this morning and with Mr. Berry, the State Auditor, on the telephone in which he assured me that he would be willing to accept these invoices receipted by Stover Airport to John G. Stover, and inasmuch as you can go back of the record and check on the number of gallons which he used, it is my opinion that these receipted invoices rendered by Stover Airport to John G. Stover might be acceptable by the State Tax Assessor for the purpose of reimbursing Mr. Stover for such tax paid by him, as shown by the original invoices, if the other provisions of Section 166-A are complied with.

RALPH W. FARRIS
Attorney General

March 7, 1949

To Honorable Sanford J. Prince, House of Representatives

I have your message asking if there is any law or decision on riparian rights which would affect the clam bills coming up for hearing. . .

The State holds the rights of common fishery in trust for the public, and as to them, it exercises not only the rights of sovereignty, but also the rights of property. The legislature has full power to regulate and control such fisheries, and may grant exclusive rights therein, when the interest of the public will thereby be promoted. *State v. Leavitt*, 105 Maine, page 76. This right being general and not modified by colonial ordinances extends to shellfish on flats.

Though by the colonial ordinance of 1641, the riparian proprietor acquired title to the flats adjoining, not exceeding 100 rods, between high and low water mark, yet he can acquire no *exclusive* right to the fisheries upon them by such ownership. The general term of fisheries includes all fisheries without regard to their distinctive character, such as shellfish, including the digging of clams, which is embraced in the common right of the people to fish in the sea, creeks and arms thereof. The State, as respecting the people, has the right to regulate the common rights and privileges of fishing. This was laid down in *Moulton v. Libby*, 37 Maine 472, *Matthews v. Treat*, 75 Maine 597, and *State v. Leavitt*, 105 Maine at page 79.

I will say in passing that in non-navigable water, under the common law, fish belonged to the riparian proprietor; but in Massachusetts from the earliest settlement the principle was modified by legislation and general acquiescence, and public rights were recognized as paramount in the case of shad and salmon. *Cottrill v. Myrick*, 12 Maine 229. In the early history of our State it was deemed conducive to the public good to subject salmon, shad and alewives to public control, whenever the legislature thought proper to interpose, and the rights of riparian owners yielded to the paramount claims of the public. The right of the public to regulate the interior fisheries is proved both by legislative acts and by judicial construction.