

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

Based upon the foregoing statement of fact you ask the following question: "Are these town orders an obligation of the town of Chapman at this time and is the account represented by them collectible by the state?"

It is well settled law that an order against a town is not due until it is presented for payment, unless it is otherwise agreed. This rule is independent of any statutory requirement, and it is based on the consideration that it would be inconvenient and burdensome for the officials of a town to seek its creditors and tender payment of their claims, and also that it would be oppressive and unjust to permit creditors of a municipality to turn claims into investments through omitting to present them to the town for payment.

This is a claim of several teachers in their private capacity as employees of the town, who have attempted to negotiate town orders given them in payment for their services. The town orders, according to your memorandum, were never legally presented to the town for payment by the holder of same, which was the Presque Isle Normal School, within the time prescribed by the Inhabitants of the Town of Chapman through their municipal officers. Towns in Aroostook County are generally small in territory and the inhabitants comparatively few in number, and their municipal officers are elected annually. In 1945 the Inhabitants of the Town of Chapman apparently made provision for payment of all outstanding town orders and so notified all the inhabitants of Chapman and surrounding towns by publication in the Presque Isle Star Herald. The Presque Isle Normal School is located in Presque Isle, where this publication is printed and issued. There is no reason why the officers of an educational State agency should not be held to the same degree of diligence in presenting claims which they hold against a town, especially old claims of this nature, as the teachers themselves.

It is my opinion that these town orders held by the Presque Isle Normal School were not presented for payment within six years after they were negotiated and were therefore not deductible from the school fund being credited to the Town of Chapman against their account for State tax for 1948, and the Town of Chapman should be reimbursed for the amount deducted; and that the town orders should be put back on the accounts receivable of the Presque Isle Normal School and charged off by the school officials.

RALPH W. FARRIS
Attorney General

March 18, 1949

To Francis G. Buzzell, Chief, Division of Animal Industry
Re: Bang's Disease

Your inquiry in regard to Bang's disease received in which you ask if the head of the Division of Animal Industry has the authority to take and dispose of positive animals reacting to the Bang's test, and whether the rules and regulations set up by the department in this regard can be enforced in court.

Section 52 of Chapter 27 of the Revised Statutes, as amended by Chapter 275 of the Public Laws of 1945, provides: "The commissioner shall cause investigation to be made as to the existence of tuberculosis, Bang's disease. . .

within any county or part of the state, in or at which he has reason to believe there exists any such disease, and make search, investigation, and inquiry in regard to the existence thereof."

Following this subject through, I now refer to Section 73 of Chapter 27, R. S., as amended by Section 2 of Chapter 275, P. L. 1945: "For the eradication of Bang's disease, the commissioner or his agent in charge of live stock sanitary work shall have blood from the animals over 6 months of age in all herds in the state drawn by a regularly employed federal or state veterinarian or an authorized, accredited veterinarian and tested at the state laboratory by what is known as the blood agglutination test, and all animals showing a positive reaction to this test shall be identified by a 'reactor' eartag or brand, or by both eartag and brand, and shall be slaughtered, or quarantined and handled under direct supervision of the commissioner or his agent. Animals showing a suspicious reaction to the blood agglutination test may be held for 60 days and retested."

Sections 75 and 76 of Chapter 27 of the Revised Statutes were also amended by Chapter 275, P. L. 1945. Section 76 provides: "If it is shown by recognized tests that Bang's disease exists in a herd, the commissioner, or his duly appointed agent . . . may place such premises under quarantine by written notice, and no cattle shall be allowed to be removed from the herd while it is under such quarantine, except in accordance with the quarantine terms."

Section 74 of Chapter 27, R. S., provides indemnities for slaughtered animals and the disposition of the salvage.

Under the present law I do not believe the Commissioner has the right to slaughter a herd without the owner's having a hearing and his day in court, as the statute provides that the cattle shall be slaughtered or quarantined. Quarantine seems to be about the only thing that the Commissioners can enforce under these statutes which I have cited.

RALPH W. FARRIS
Attorney General

March 18, 1949

To Richard E. Reed, Commissioner of Sea and Shore Fisheries
Re: Importation and Processing of Lobster Meat

I have your memo of March 14th, asking for an opinion in regard to domestic and Canadian lobster meat. Your first question is:

"Is it legal to sell at retail or wholesale in this State canned Canadian lobster meat if the meat does not conform with our size limits?"

Answer. If the size limits conform to Canadian law and the cans are hermetically sealed in Canada and shipped here, and the meat is sold to the customer in the original can, the sale of it is legal.

"2. Can a person buy legal Maine lobster meat and cut it up for processing in canned stews, newburgs, etc.?"

Answer. Paragraph four of Section 120, Chapter 34, R. S., as revised in 1947, provides:

"It shall be unlawful to sell, offer for sale, deliver, ship or transport any