

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

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

tail section of lobster meat that is not whole and intact as removed from the shell.”

The next paragraph reads:

“All barrels, boxes or other containers containing lobster meat that has been removed from the shell, before being transported or offered for transportation, shall be plainly labeled with the name of the permittee, together with the words, ‘Lobster Meat Removed Under Permit Number _____,’ followed by the number of the permit under which such lobster meat was removed.”

This provision does not apply to lobster meat passing through the State under the authority of the laws of the United States; nor does it apply to lobster meat for serving in hotels and restaurants, provided such meat is removed on the premises where it is served.

Question 3 is as follows: “Do paragraphs 3 and 4, Section 120, cover meat taken from the claws and body as well as the tail section?”

Answer. Paragraphs 3 and 4 apply to all lobster meat, with the proviso that the tail section shall be removed from the shell whole and intact and cannot be mutilated in the removing. It shall not be less than 4½ nor more than 6½ inches in length when laid out straight, etc. . . .

RALPH W. FARRIS
Attorney General

March 22, 1949

To the Honorable Committee on Judiciary:

I have examined Legislative Document No. 900 entitled “An Act Relating to Unsatisfied Judgments Resulting from Motor Vehicle Accidents.”

1) I am of the opinion that the fee exacted in order to create the fund is a revenue measure, for it is generally said that if the fee exacted exceeds the amount necessary for the administration of the law, it is an exercise of the power of taxation and thus a revenue measure.

By the 62nd Article of the Constitution all revenues derived from fees, excises and license taxes relating to registration, operation and use of vehicles on public highways are to be used solely for the enumerated purposes and for no other purposes. The fee here provided is an excise tax for the privilege of using the highways of the State. The fund here is not to be used for highway purposes but to satisfy unpaid judgments arising from injuries to persons and property on the highway. This is not one of the enumerated purposes in the article of the Constitution referred to, and hence this legislation would contravene that article.

2) It is also doubtful whether legislation of this nature can be sustained, assuming that the money was raised by an ad valorem tax, since the tax would be imposed to redress private wrongs, and tax money can be raised only to be expended for a public use.

3) Section 71-F of this legislation provides, where an action is brought against the Secretary of State by permission of the court in a case where the identity of the owner or driver of the vehicle causing the accident is unknown or cannot be ascertained and a judgment is recovered, that the owner of the