

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

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

judgment or the treasurer of the State, if the judgment has been paid, may on application to a Justice of the Superior Court in term time or vacation have an order directing that the amount of damages awarded in that action shall be made a judgment against the owner or driver or both of the identified vehicle. Subsection IV then provides that it shall be no defense in that action that the accident was not caused by reason of any negligence or improper conduct on the part of the owner or driver of that vehicle.

It would seem to me that this provision is obnoxious to the due process clause of the Fourteenth Amendment to the Federal Constitution and to our own Constitution which guarantees to every person the right to a trial by jury in any civil suit.

Respectfully submitted,

ABRAHAM BREITBARD
Deputy Attorney General

March 22, 1949

To the Honorable Committee on Judiciary:

With regard to Legislative Document No. 685, entitled "Resolve Authorizing Donald S. Porter of Lowell to Sue the State of Maine."

It seems to me that the Resolve, as written, creates a new remedy, in that it provides that the liabilities of the parties shall be the same as the liabilities between individuals. The rights of the parties therefore under this Resolve would be governed by common law principles. This differs from the remedies provided by statute.

I am informed by the Highway Department that Route 16 is a state-aid highway. By Chapter 20, Section 16, the State is made liable to towns and counties for any judgments recovered in any actions against such towns and counties, including reasonable attorney fees and expenses and costs incurred in defending it, when such actions pertain to those state and state-aid highways to the improvement of which the State has contributed, provided, however, that within 24 hours after the "various" officials, namely the county commissioners or the municipal officers or road commissioners of the town receive notice of a defect or want of repair or sufficient railing, such officials shall give written notice thereof to some member of the Highway Commission; provided also that within ten days after any of the various officials mentioned has had notice of any injury to any person, such official shall have given notice thereof to some member of the Highway Commission. This is then followed by a limitation of liability not in excess of \$4000.

The Resolve here presented contains no limitation on the amount of liability, nor would it be essential that the various written notices of the defect in the highway or of the injury be given to the Highway Commission as a condition precedent to the maintenance of the action.

I have obtained a report from the State Police which I submit herewith and which was apparently made on the scene after the accident. The facts set up in the Resolve are not in accordance with the facts as they appear from the officer's return. In the facts contained in the Resolve it is stated that this pipe railing was on the ground and at the time of the injury the