STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

It is my opinion that any board which is so operated that odds will change at least once every two minutes would be equivalent to a totalizator.

Question 3. "The first sentence of section 12 states in part that between the dates of the 1st Monday in August and October 20, no license shall be issued to anyone but an agricultural fair association, except night harness racing as hereinafter defined. The last paragraph of Section 12 now states that the commission may grant a license to operate day or night harness racing between June 15th and October 15th."

In order to interpret the meaning of Section 12 as amended by Sections 4 and 5 of Chapter 388 of the Public Laws of 1949, we must read the two amendments together. It is my opinion that the legislature intended that the second paragraph of Section 5 should apply to the agricultural fairs in so far as day racing is concerned, and a license can be issued under this section for racing only to agricultural fair associations between the first Monday of August and October 20th. It is my opinion that the legislature did not intend that night harness racing should in any way interfere with the licenses granted to agricultural fair associations under Section 12 of Chapter 77, R. S. It did not intend agricultural fair associations to meet the specifications set forth in the night harness racing definition.

The new draft of the bill, which was L.D. 1388, did not include day harness racing in the second paragraph of Section 5 of the bill and by amendment "day or" was added after the word "operate" and before the word "night," so as to take care of the agricultural fairs.

It is quite apparent from reading Chapter 388 and the questions and answers here outlined that there will be no remaining period of the time for night harness racing if licenses are granted to two or more applicants under the first paragraph of Section 5 authorizing and defining night harness racing. However, the granting of licenses in my opinion is an administrative function of the Racing Commission, because there is nothing in the statute which limits the number of applicants for licenses for night harness racing or the number of tracks, provided the applicants can qualify under the definition; and the section specifically provides that the commission *shall* grant such licenses to those who apply and have met all the specifications in the definition of night harness racing.

RALPH W. FARRIS
Attorney General

May 18, 1949

To Marion E. Martin, Commissioner of Labor and Industry
Re: Section 24 of Chapter 25

I acknowledge your memo of May 12th requesting an interpretation of Section 24 of Chapter 25 and asking specifically if the term "transportation company" as used in the first sentence of said section includes taxi companies.

I find an Oklahoma case, which is *Clark vs. Walworth*, 176 Okla. 349, which held that a private citizen operating as a public service entity, seeking to render a public service and for hire absolves himself from the distinct rights of a private citizen as regards his business, with respect to which he becomes a "transportation company" within the meaning of the statute providing that action may be commenced against a transportation company in any county in which a cause of action or some part thereof accrued.

There would be no question about a taxi's being a transportation company, if it was incorporated as a company doing business under the laws of Maine.

It is my opinion that under this decision, with which I am in accord, a taxi driver would be included who holds himself out for hire seeking to render a public service by transporting passengers.

RALPH W. FARRIS
Attorney General

May 26, 1949

To Earle R. Hayes, Secretary, Employees' Retirement System
Re: Military Leave

While I was attending court in Houlton you sent to my department a memo relating to military leave cases. . .

You call my attention to the cases of three persons, all of which are more or less similar. One of these persons taught in Maine for a short time, later going to Massachusetts where he taught for a period of years and from that teaching in Massachusetts was inducted into the armed forces of the United States. Upon his release from the armed forces he returned to Maine and resumed his service here as a teacher. The question involved is whether or not the Board should give him credit for his period in the armed forces of the United States in spite of the fact that he entered the armed forces from teaching in Massachusetts rather than in Maine.

It seems to me that he should be given credit for his full period in the armed forces under the full faith and credit clause of the Constitution of the United States. You should not show any discrimination against any citizen of the United States who has served in the armed forces during the war.

The next case about which there seems to be a question is that of Gerald Murch who was employed by the State on July 1, 1933 and entered the armed forces of the United States in December, 1942, at which time he was a member of the Retirement System and was granted military leave in accordance with the provisions of law. He was released to inactive duty on February 8, 1946, but entered private business and did not return to State service until February 1, 1949. You call my attention to the provisions of the Military Leave Law to the effect that a person must return or report for duty within 90 days from his discharge from the armed forces in order to protect his military leave credits.

In my opinion Mr. Murch did not comply with the provisions of the statute just quoted; but in view of the fact that he was an officer and was not discharged in the true sense of the word, but released as a Reserve officer to inactive duty, he would still be eligible to receive the benefits under the provisions of our Military Leave Law, and this in my opinion would protect his military service credit towards retirement.

The third case is that of Mr. George Davala of the Bureau of Accounts and Control who was employed by the State in February, 1942, made his application for membership in the System in July, 1942, and was inducted into the armed forces on August 12, 1942. Technically, you say, he was not entitled to military leave, due to the fact that he was exactly twelve days