

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

June 27, 1949

To H. A. Ladd, Commissioner of Education
 Re: Maine Maritime Academy—Eligibility for State Retirement Plan

As per your request of even date, I wish to state that it is my opinion that the Maine Maritime Academy, since it was declared a State agency under the provisions of Chapter 24, P&SL 1947, is eligible to participate as a State agency in the State Retirement System.

RALPH W. FARRIS
 Attorney General

June 30, 1949

To Unemployment Compensation Commission
 Re: Vacation Periods

In connection with the Commission's policy relative to vacation periods affecting the rights to benefits, the words "period recognized as a vacation" refer to a factual situation. If employers and employees are not agreed as to whether or not a period is in fact recognized as a vacation, that question of fact is to be determined by the Commission or its appeal tribunals in their quasi-judicial function of determining eligibility for benefits.

I see no reason why this same rule should not be followed after August 6th in interpreting the statutory provision to the same effect.

JOHN S. S. FESSENDEN
 Deputy Attorney General

June 30, 1949

To Ernest H. Johnson, State Assessor
 Re: Fertilizer Tax—P. L. 1949, c. 378

In your memorandum of June 23, 1949, referring to Chapter 378, P. L. 1949, an act imposing a tax on commercial fertilizer, effective August 6, 1949, you state: "The law requires persons manufacturing or offering to sell certain fertilizer in this state to file 'on or before September 1st in each year . . . a sworn statement . . . listing exactly the number of net tons of mixed fertilizer sold by him in the state during the 12 months preceding July 1 of the current year.' With the filing of this statement, each person 'shall pay to the state tax assessor a fee of 1c a ton of 2,000 pounds for mixed fertilizer so sold.'"

Your question is: "The law becomes effective August 6, 1949. Does it require such persons to file a report on or before September 1, 1949 covering sales from July 1, 1948 through June 30, 1949, and pay the tax thereon; or does it require an initial report, and payment of tax, on sales from August 6, 1949 through June 30, 1950?"

The Supreme Judicial Court of Maine has stated repeatedly that unless the legislative intent otherwise is clear, a statute shall be presumed to have prospective operation only. *Coffin v. Rich*, 45 Me. 507, *Oriental Bank v. Freese*, 18 Me. 109, *Carr v. Judkins*, 102 Me. 506, and many other cases. In so deciding, the Maine Court has simply followed the nearly universal rule

of statutory construction to the following effect: Statutes are not to be construed as having retrospective effect unless the legislative intent to make the statute retroactive is stated clearly, explicitly, positively, and unmistakably. Such effect is not to be inferred except when shown unambiguously by necessary implication.

The statute under consideration contains no positive statement of a legislative intent to impose a tax on commercial fertilizer sold in the state during the 12 month period starting July 1, 1948, a date 13 months prior to the effective date of this act.

Those liable to pay the tax when the same becomes due are required to file "on or before September 1st in each year with the state tax assessor a sworn statement, in such form as the state tax assessor may prescribe, listing exactly the number of net tons of mixed fertilizer sold by him in the state during the 12 months preceding July 1 of the current year." (See Section 217-A.) The only suggestion that any tax could be payable September 1, 1949, arises from the following sentence, reading:

"With the filing of said statement, each such person, firm or corporation shall pay to the state tax assessor a fee of 1c a ton of 2,000 pounds for mixed fertilizer so sold."

That this sentence requires a tax on business done between July 1, 1948 and July 1, 1949 is certainly by inference only. It falls short of evidencing a legislative intent of retroactive effect within the rule stated above.

Under the law the first report will be due September 1, 1949. In effect this will be an information return upon the basis of which future revenues can be estimated, but no tax will be due. The second report will be due September 1, 1950, with which a tax will be due for the period August 6, 1949 to June 30, 1950.

JOHN S. S. FESSENDEN
Deputy Attorney General

July 11, 1949

To Lester E. Brown, Chief Warden

I have your memo of June 13, calling my attention to the fact that the last legislature, in Chapter 34 of the Resolves of 1949, authorized and directed the Commissioner of Inland Fisheries and Game to issue a rule and regulation closing Mantle Lake in Presque Isle in the County of Aroostook to all fishing by persons over the age of seventeen, and requesting an opinion as to the constitutionality of this Resolve, also my opinion as to whether or not such a rule and regulation should be issued by the Commissioner, and also whether or not I consider the Resolve enforceable.

I do not pass upon the constitutionality of Acts and Resolves of the legislature. That is a matter for the courts to pass upon when a case is presented to them and both sides have been heard.

It is my opinion that any act or resolve that gives to a class of persons certain rights and privileges because of their age and denies the same privileges to others because they do not fall in the age category set by the legislature, is class legislation; and if you should issue a rule and regulation under this Resolve prohibiting all persons over the age of seventeen from fishing