STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

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 in Mantle Lake in Presque Isle, I believe that someone would take the case to court. The injustice of the Resolve is so obvious that it is my opinion that you could not enforce the rule and regulation, if you should promulgate it.

RALPH W. FARRIS
Attorney General

July 12, 1949

To Col. Francis J. McCabe, Chief, Maine State Police
Re: Warrant—Excess Weight of Vehicle

Your memo of July 9th received, together with warrant from the Old Town Municipal Court which alleges that the respondent named in said warrant "did drive and operate a certain motor vehicle to wit: a truck tractor and semi-trailer attached, upon and along a certain public way to wit: U. S. Highway No. 2 in the Town of Milford, County of Penobscot, the gross weight of said vehicle and load exceeding fifty thousand pounds, to wit: 1,430 lbs. (one thousand four hundred and thirty pounds).

I note that Lt. Herbert Mariner states that the attorneys for the respondent take exceptions to the phraseology of the warrant.

If I were phrasing the warrant I should have the last part of same read: "the gross weight of said vehicle and load exceeded fifty thousand pounds, to wit, fifty-one thousand four hundred thirty pounds, an excess of one thousand four hundred thirty pounds." The words in the Old Town warrant, "to wit: 1,430 lbs.," might indicate that that was the total load. Of course the word "by" might correct this; but I feel that the proper wording should be as I have outlined it above.

In regard to the second point raised by the attorneys for the respondent concerning the language of the statute, "10% up to 15,000 lbs. and 5% over 15,000 lbs.," they claim that they should be allowed 5% on their 50,000 registered gross. As subsection VI of Section 15 provides that no motor vehicle of either a single unit or combined unit shall be operated on the highways with a load that exceeds 50,000 pounds gross weight of vehicle and load, it is my opinion that the statute is not inconsistent relating to percentages under 50,000. . .

RALPH W. FARRIS
Attorney General

July 14, 1949

To Honorable Frederick G. Payne, Governor of Maine

Re: Appointments to Aeronautics Commission under Chapter 389, P.L. 1949

It is my opinion that the language in Section 4 of the above Act, to the effect that the three members who shall be appointed shall be in no way connected with the aviation industry, means the industry in the State of Maine, and that the intent of the legislature was to prevent the appointment of a Commissioner who was interested in the industry in Maine, which would be under the supervision of the Commission of which he would be a member.

RALPH W. FARRIS
Attorney General