

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

R E P O R T

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

July 15, 1949

To L. C. Fortier, Chairman, Maine Unemployment Compensation
Commission

Re: Overpayments

I have your memo of July 13th asking for information relative to a claim on which an overpayment was made in 1938. On June 10, 1949 a payable claim was filed in the amount of \$22.50 and a deduction of \$13.58 was made to apply against the old debit. This deduction should have been \$15.38, but an error was made in entering the figures, so there still remains an outstanding overpayment of \$2.

It is my opinion that you should charge this matter off, as it was an error in your office and the claim is over six years old; the statute authorizes an action of assumpsit to be brought, which is a statutory action, and the statutory limitation for actions in assumpsit on account annexed is six years. Therefore, in my opinion, the limitation is six years.

It is my opinion that the Commission should always in the future give notice on overpayments immediately on discovery that such exist, as Section 16(e) of Chapter 24, R. S., provides that if *after due notice* any person refuses to repay amounts erroneously paid to him as unemployment benefits, the amount due from such person may be collected by an action in assumpsit with account annexed, brought in the name of the Commission; or in the discretion of the Commission the amount erroneously paid to such person may be deducted from any future benefits payable to him under this Act. So the Commission is not entitled to bring a suit until after due notice, when a person has refused to pay.

Section 90 of Chapter 99, R. S., which enumerates actions to be commenced within six years, in subsection IV provides actions of account of assumpsit upon the case founded upon any contract or liability, express or implied, must be commenced within six years; and in your case it must be after due notice as provided by the MUCC Law.

However, I will state that it is not for the Commission to raise the question of the statute of limitation. It is incumbent upon the person against whom the claim is made, as the statute of limitation is only a defense statute, and if it is not raised when the action is brought, advantage cannot be taken of it later. To be effective, it must be raised by the defendant. So in case of other overpayments that are over six years old, if the persons make no objection, go ahead and collect them and make the necessary offsets.

RALPH W. FARRIS
Attorney General

July 19, 1949

To Edward L. McMonagle, Director S.C.U.T., Department of Education
Re: Conveyance of Private School Pupils

In your memorandum of July 6, 1949, you state as follows:

"Elementary school pupils living in Argyle Township, Penobscot County, attend the Old Town public schools to which they are conveyed on a bus owned by John T. Cyr and Sons of Old Town and operated under a contract with the Commissioner of Education.