

# 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**

July 25, 1949

To John C. Burnham, Assistant to Chief Engineer, Highway

Re: Lewiston Drive-in-Theater

In your memorandum of July 8, 1949 you inquired as to the status of an outdoor advertising structure or structures erected by the Lewiston Drive-in-Theatre at its place of business, a part of which structure or structures is within 50' of the traveled way. It appears that the structure or structures consist of two panels, each of the size of 8' x 23' or 184 sq. ft., making a total of 368 sq. ft.

Under Section 116 of Chapter 20, R. S. 1944, as amended, no permit can be granted for any outdoor advertising structure or structures within 50' from the nearer line of the traveled way. Section 112 of the same chapter, as amended, specifies that not more than 10 signs the total area of which cannot exceed 250 square feet, are exempt from permits and are not required to be 50' from the traveled way.

Since the area of this outdoor advertising structure exceeds 250 sq. ft., it may not be located within 50' of the traveled way, and no permit can be granted, unless the structure or structures are more than 50' from the traveled way.

The advertiser, of course, would be entitled to have smaller signs, the total area of which does not exceed 250 sq. ft. each, within 50' of the traveled way at his place of business; but this right or privilege cannot be claimed as an integral part of the outdoor advertising structure or structures which exceed the 250 sq. ft. area.

JOHN S. S. FESSENDEN  
Deputy Attorney General

July 26, 1949

To Richard E. Reed, Commissioner of Sea and Shore Fisheries

Re: §89, Chapter 34, R. S., as replaced by Chapter 442, P. L. 1949

I received your memo of July 19th relating to the new Section 89 of Chapter 34 of the Revised Statutes which deals with interstate transportation of shellfish. Paragraph 1 of said Section 89 prohibits any person, firm or corporation from shipping or transporting or attempting to ship or transport in any manner beyond the limits of the state any soft-shell clam in the shell. You specifically call my attention to paragraph 11 of said Section 89, which contains several exceptions to the general provisions cited in paragraph 1 of said new section. The last sentence of said paragraph 11 reads as follows:

“The provisions of this section shall apply only to holders of non-resident shellfish transportation licenses, except that holders of resident shellfish transportation licenses may ship clams beyond the limits of the state for the ‘steamer trade’ only.”

Upon the foregoing statement of the law you ask the following questions:

“Question 1. Does this sentence mean that all provisions of the section apply only to holders of non-resident shellfish transportation licenses, including license and certificate requirements, with the exception that they

apply to holders of resident shellfish transportation licenses in relation to shipment of soft-shell clams in the shell beyond the limits of the state and restricts such shipment for the 'steamer trade' only, or should the sentence be interpreted to refer specifically to paragraph 1?"

*Answer.* After reading the whole section, it appears to me that it was the intent of the legislature that this provision relating to shipping clams beyond the state for the steamer trade only refers to paragraph 1 of the new Section 89. However, you will note that the exception does not state "may ship clams in the shell." It refers only to "clams" for the "steamer trade" only. It is common knowledge that clams are steamed in the shell, and it is my opinion that it was the intent of the legislature that the holders of resident shellfish transportation licenses may ship clams in the shell beyond the limits of the state for the "steamer trade" only.

"Question 2. Paragraph 1 prohibits shipment or transportation of soft-shell clams in the shell beyond the limits of the state. Paragraph 11 permits the holder of a resident transportation license to 'ship' such clams. Is he also permitted to transport them in that a distinction is drawn between shipment and transportation in section 16, c. 34, R. S. as revised where 'ship' is thus defined, to consign by common carrier."

*Answer.* In the amended Section 89 the words "ship or transport or attempt to ship or transport," being coupled by the conjunction "or" it is my opinion that the definition would come within the provisions of Section 16 of Chapter 34, which means "to consign by common carrier" as the definitions in Section 16 apply to the entire chapter 34. The wording of the exception in paragraph 11 of Section 89 is as follows:

"Except that holders of resident shellfish transportation licenses may ship clams beyond the limits of the state for the 'steamer trade' only."

That must necessarily mean by common carrier, as the word "ship" is defined in Section 16.

"Question 3. Inasmuch as there is no legal definition of the term 'steamer trade' it is essential that you should define it for the information and guidance of all concerned."

*Answer.* Since there is no statutory definition of the term "steamer trade," we must resort to the common usage of the term as employed in the shellfish industry. It is common knowledge that clams for the "steamer trade" are clams in the shell, which can be steamed and sold in hotels, restaurants and shore-dinner resorts to be consumed by the public; and steamed clams is a well-known New England shore-dinner delicacy. Therefore it is my opinion that the definition of the term "steamer trade" should be "clams shipped in the shell" to dealers or hotels and restaurants who buy clams in the shell for the purpose of being steamed and sold to the consuming public.

"Question 4. Section 114, c. 34, R. S., as revised, provides that the holder of a wholesale lobster dealer's license is permitted to ship shellfish outside the state by virtue of such license provided he also holds the proper shellfish certificate. In your opinion is he permitted to ship soft-shell clams in the shell beyond the limits of the state for the 'steamer trade'?"

*Answer.* It is my opinion that Section 114 refers to the "wholesale trade," as that term is used in paragraph 2 of Section 114. Then again paragraph 4 of Section 114 classifies a wholesale dealer. In my opinion he would not be permitted to ship soft-shell clams beyond the limits of the state for the "steamer trade" as specified in the new Section 89.

RALPH W. FARRIS  
Attorney General

July 26, 1949

To the Unemployment Compensation Commission

In connection with the payments of benefits to be made under the provisions of Chapter 291 of the Public Laws of 1949, it is my opinion that when a payable claim is filed, after September 1, 1949, for a week of unemployment in which any day in September falls, the benefit payments should be in accordance with the schedule enacted by this chapter.

In other words, as a matter of practical administration, valid continued claims filed on and after September 6, 1949, will be payable at the new statutory rate, this for the reason that no valid claims for the week ending September 3rd can be filed on September 1, 2, or 3, and September 4 and September 5 are holidays.

JOHN S. S. FESSENDEN  
Deputy Attorney General

July 27, 1949

To General George M. Carter

I acknowledge receipt of your memo of July 22nd, attaching communication from the chairman of the board of selectmen of the town of Norway in connection with a request that you return to the town from a previous grant of land for military purposes a strip of land indicated on a plan enclosed with your memo.

It is my opinion that the Commission cannot sell land belonging to the State without legislative authority. . . .

RALPH W. FARRIS  
Attorney General

July 27, 1949

To Carl L. Treworgy, Secretary, Racing Commission

Your memo of July 26th received, asking for a ruling on a case where a pari-mutuel clerk issued more tickets than the customer paid for, the tickets were winners, the customer admitted that he had not paid for the extra tickets, refused to pay for them, but still claimed the winnings on them. You ask if the Mutuel Director is justified in withholding payment on the tickets which were not paid for.

I wish to advise that the Mutuel Director is justified in withholding payment of tickets which were not paid for by the purchaser, if they were issued through error and the customer knew it.

RALPH W. FARRIS  
Attorney General