STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

Section 342 of Chapter 22, R. S. 1944, provides as follows:

". . the water privileges belonging to said islands, valuable for mills, booms, fisheries . . are not subject to assignment or distribution to members of said tribe, but shall remain for the benefit of the whole tribe."

Sections 350 and 351 of the same chapter provide for the leasing of the shores of the islands in the Penobscot River belonging to the tribe, such leases to be made by the agent under the orders of the Department of Health and Welfare, the rents to be paid into the treasury of the State and to be expended for the benefit of the tribe. Consequently, the riparian and upland owner has no right to the income from the exercise of the shore privilege.

JOHN S. S. FESSENDEN
Deputy Attorney General

August 23, 1949

To: Ober C. Vaughan, Director of Personnel,
L. C. Fortier, Chairman, Employment Security, and
David H. Stevens, Commissioner of Health and Welfare

Re: Federal grants to meet costs arising in carrying out the Federal "Standards for a Merit System of Personnel Administration."

On August 11, 1949, Mr. Vaughan addressed a joint memorandum to the addressees named above relative to financial participation by the Federal Security Agency to defray the additional costs arising by virtue of federal requirements superimposed upon the State in its administration of the State Personnel Law in so far as the personnel employed or to be employed by the respective addressee agencies are concerned. We have been asked to review the subject matter as to legal propriety and to give our opinion thereon.

Both of these State agencies receive federal grants for administrative purposes under the provisions of Federal Security Legislation originally known as the Social Security Act. In some cases the grants of federal aid defray 100% of the State's administrative costs and in some cases the federal aid is in "matching" form to a specified percentage of State funds. In any event among the conditions of State entitlement to federal aid are the provisions of federal law to the effect that no State shall be entitled to such aid unless the State law includes provision for "such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Administrator shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Administrator to be necessary for the proper and effective operation of the plan." Sec. 2(a), Title I, Social Security Act, as amended.

This quotation applies directly to the State's Department of Health and Welfare. The federal law applicable to the Employment Security Commission reads identically to the closing of the parenthesis and concludes as follows: "as are found by the Administrator to be reasonably calculated to insure full

payment of unemployment compensation when due." Sec. 303 (a), Title III, Social Security Act, as amended. Other titles of the Social Security Act authorizing federal grants for administrative purposes, such as for aid to the blind, aid to dependent children, etc., contain words of the same or similar import.

The Social Security Administration of the Federal Security Agency has promulgated "standards for a merit system of personnel administration," which standards, it says, when complied with, will entitle a State, if all other standards and provisions of law are complied with, to share in federal grants in aid. It recognizes that its standards for a merit system may and frequently do impose upon States added administrative costs over and above those contemplated by State law. Consequently, with respect to the expending of federally granted funds, the same administration has adopted standards which, when complied with, will entitle State agencies to additional funds to defray the added and burdensome expense to the State's personnel agency in the work superimposed upon it by federal requirement identifiable as attributable to the State agencies receiving federal grants in aid for administrative purposes.

Thus far the program appears perfectly clear and logical and is obviously supported by reason.

It remains to determine whether our State laws will permit or authorize such State agencies to receive such additional grants for transfer to or for reimbursement to still another State agency for the additional facilities or services rendered.

It was noted above that the federal funds for administrative purposes were granted in some cases on a 100% basis and in some cases on a lesser percentage basis. If the State's entitlement to the additional grant contemplates, in the case of federal funds on a "matching" basis, that the State agency shall transfer a part of its legislative appropriation to another State agency, the State cannot qualify for the additional grant. There is no statutory authority for the transfer of legislative appropriations between State departments.

It does not appear, however, that such a situation need arise. By virtue of federal law the merit system standards apply whether the grant in aid is 100% of the administrative cost or a lesser percentage. In any event the additional costs identifiable as attributable to compliance with federal standards are the result of the same requirements. If the logic and reason supporting the additional grants in the 100% case is sound, it appears to be equally applicable to the lesser percentage cases since the additional cost is not due to "matching" administration but recognized as 100% due to superimposed federal requirements. In the event this question arises, federal authorities should be requested to give serious consideration to this argument.

With respect to the State's right under existing law to accept federal grants when not otherwise specifically authorized, Section 14 of Chapter 11, R. S. 1944, reads as follows:

> "State authorized to accept federal grants. 1941, c. 315, §1. The governor, with the advice and consent of the council, is authorized and empowered to accept for the state any federal funds or any equipment, supplies, or materials apportioned under the provisions of federal law

and to do such acts as are necessary for the purpose of carrying out the provisions of such federal law. The governor, with the advice and consent of the council, is further authorized and empowered to authorize and direct departments or agencies of the state, to which are allocated the duties involved in the carrying out of such state laws as are necessary to comply with the terms of the federal act authorizing such granting of federal funds or such equipment, supplies, or materials, to expend such sums of money and do such acts as are necessary to meet such federal requirements."

This section, particularly the second sentence thereof, makes it possible for the State to qualify for and to be eligible to receive the additional federal grants in aid for administrative purposes contemplated in the participation program outlined in the memorandum of August 11, 1949.

When all the details have been agreed upon, including the basis upon which the additional grants will be made, a letter of approval thereof should be obtained from responsible federal authority, particularly for audit purposes, since such additional funds will be, by other federal standards, subject to audit by federal auditors.

A Council Order should then be prepared with a statement of facts supported by, 1) the memorandum of August 11, 1949, or one of similar import; 2) the letter of approval from federal authority; and, 3) this opinion.

JOHN S. S. FESSENDEN
Deputy Attorney General

August 24, 1949

To Marion E. Martin, Commissioner of Labor and Industry
Re: Industrial Home Work

I have your memo of August 23rd in regard to the question raised by a manufacturer in this State, whether he has to abide by Section 38 of Chapter 25, R. S., and pay weekly the workers who are doing work in their homes, even though no finished goods have been returned to him during the week.

You state that it occurs to you that the reasonable way to handle this matter would be to have a ruling that upon delivery of the finished goods, payment must be made within a period of eight days; and you ask, "Is this ruling consistent with the law and can we promulgate such a rule under our rule-making authority granted under Ch. 283, P. L. 1949?"

Chapter 283, P. L. 1949, provides that the commissioner shall have power to make, issue, amend and rescind such regulations and orders as are necessary . . to carry out the provisions of sections 37-A to 37-R.

It is my opinion that you have authority to make such a ruling under this statute.

RALPH W. FARRIS
Attorney General