STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

December 27, 1949

To Ernest H. Johnson, State Tax Assessor
Re: Gasoline Tax Allowance

I have your memo of December 7th relating to the interpretation of Section 163, Chapter 14, R. S., as amended by the Public Laws of 1947 and 1949, which relates to the assessment of gasoline taxes and provides as follows:

> "An allowance of not more than 1% from the amount of fuel received by the distributor, plus 1% on all transfers in vessels or tank cars by a distributor in the regular course of his business from one of his places of business to another within the state, may be allowed by the tax assessor to cover the loss through shrinkage, evaporation or handling sustained by the distributor; but the total allowance for such losses shall not exceed 2% of the receipts by such distributor and no further deduction shall be allowed unless . . . etc., etc."

Following the quotation of the law as amended you give a concrete example of the audit of the Socony Vacuum Oil Company for the calendar year 1948, which indicates that the company had a total loss through shrinkage, evaporation or handling of 693,284 gallons on total imports of 41,645,262 gallons and total transfers (subject to allowance) of 25,193,927 gallons. If figured on 1% of receipts and 1% of transfers, the allowance of 1% plus 1% would be 668,392 gallons, allowable loss. If you deduct this from the actual loss of 693,284 gallons, in your formula this leaves 24,892 gallons which are not allowable, upon which there would be an additional tax of $1493.52. However, if you take the 2% allowance and apply it, the allowable loss would exceed the actual loss, as follows: 2% of receipts 832,905 gallons; total loss, 693,284 gallons. You therefore ask the question, "Is this interpretation, under which in the present instance the total losses would exceed the allowable losses, correct?"

In answer to your question I will say that I hesitate to give an opinion based on one specific case. You must take the language of the statute which I have quoted, in full, so far as deductible losses are concerned. It is my opinion that a distributor gets an arbitrary deduction of 1% plus 1%, and if he has actual losses, he should receive an additional allowance beyond the 1% plus 1%, up to 2% of receipts, to cover his total losses, and no further deduction shall be allowed. Therefore it is my opinion that the legislature intended that the State Tax Assessor should have authority to authorize allowances for the actual losses, but it shall not exceed 2% of the receipts by such distributor. The actual loss in this particular case was 693,284 gallons, and it does not exceed 2% of the receipts, which is the limit the State Tax Assessor can allow except for losses due to fire, accident or unavoidable calamity, which requires further proof. In other words, we must give meaning to the 2% clause which the legislature wrote into the 1947 amendment in Chapter 279 and also into the 1939 amendment in Chapter 349. That is, the legislature intended that the distributor should be allowed his actual loss in shrinkage, evaporation or handling, but the total allowance for such losses shall not exceed 2% of the receipts, thus allowing the distributor his actual loss in gallons, and yet limiting it to the 2% of his receipts.

The language therefore serves a double purpose. It allows the distributor his actual loss and at the same time limits said loss to 2% of receipts, which is beyond the 1% of receipts plus 2% of transfers.

RALPH W. FARRIS
Attorney General

December 28, 1949

To Marion E. Martin, Commissioner of Labor and Industry
Re: Request from Internal Revenue Department for List of Manufacturers Engaged in Industrial Homework

I have your memo of December 27th, stating that your department has had a request from the Internal Revenue Department for a list of the industrial manufacturers who have taken out industrial homeworkers manufacturers' licenses, and you ask if you should make such lists available to the Federal Government.

In view of the language contained in Section 37-J entitled, "Employment status," "All industrial homeworkers shall be presumed to be employees of their employers and not independent contractors or self-employed persons," it is my opinion that you should furnish such lists to the Department of Internal Revenue on request. Furthermore the Federal Government has been very co-operative in furnishing records of Federal employees, when they were required by this office, unless there was a special Federal statute prohibiting the producing of said records.

I find nothing in Chapter 283, P. L. 1949, which provides that these records of licenses issued by you under this Act are confidential.

RALPH W. FARRIS
Attorney General

December 28, 1949

To Marion E. Martin, Commissioner of Labor and Industry
Re: Definition of "Employer"

I have your memo of December 27th on the above subject, in which memo you state that in Section 37-B of Chapter 283, P. L. 1949, "employer" is defined as "any person who directly or indirectly distributes or delivers or causes to be distributed or delivered to another any materials or articles to be manufactured in a home, and thereafter to be returned to him for other than the personal use of himself or a member of his family, or to be disposed of otherwise as directed or arranged by him, or sells or causes to be sold to another person any materials or articles to be manufactured in a home, and, after such manufacture, to be repurchased by him or purchased or otherwise disposed of by any other person as directed or arranged by him: . ."

You state that a further provision of this law provides that an employer must receive a permit, but that there are some manufacturers who refuse to take out a permit on the ground that they do not distribute materials to the workers. They do, however, give specifications as to the type of material