

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

to be used and the homemaker may buy it from any source she desires. You then set forth two varying situations:

1. Where the manufacturer submits specifications as to the type of material, colors and amounts and states the price that he will pay.
2. Where the worker makes a sample and submits it to the employer who in turn tells her the number that he will buy similar to the sample, the price that he will pay and any variations in sizes, dimensions, colors or type that he would buy.

In this connection I wish again to call your attention to Section 37-B of Chapter 283, P. L. 1949, which provides that all homeworkers shall be presumed to be employees and not independent contractors or self-employed persons. Therefore they cannot take materials and manufacture them under a contract of manufacture and call themselves independent contractors, if the goods are returned to the manufacturer for other than his personal use, etc. If the person who is directing the homework, tells the workers what kind of material to purchase and where to purchase it, and the homemaker manufactures these articles and sends them to the employer to be sold by him in the market or otherwise disposed of, he should be considered an employer under this Act and should be required to secure a license from your department before homeworkers are allowed to send him any goods that they have manufactured under his direction. It does not matter whether the manufacturer does this directly from the home plant or has agents in the field who direct the workers as to what the manufacturer would like to have. If the manufacturer denies that he is a manufacturer and employer under the terms of this Act, you should cite Section 37-J to these skeptical manufacturers, so that they may know they are employers and not merely letting out contracts to homeworkers and thereby escaping their responsibilities as employers.

You state in the last sentence of your memo that this leaves a definite loophole, not contemplated when the law was drafted, and you ask if there is no way that you can bring such people under the Act.

In reply I will say that there is no way that you can bring anyone under the Act who does not want to come under it; but if a manufacturer directs work in the home personally or through agents and receives back a manufactured article, he is an employer. There is no question about it; and the homeworkers are employees. The statute is specific in this regard.

RALPH W. FARRIS

Attorney General

December 28, 1949

To Marion E. Martin, Commissioner of Labor and Industry

Re: Promulgation of Elevator Rules

I have your memo of December 27th, stating that under Section 99-C of Chapter 374, P. L. 1949, public hearings have been held and rules and regulations will be finally adopted by the Board of Elevator Rules and Regulations on January 6th. You state that the requirements of law have been met by the Board so far, and you now wish to know what procedure you should follow to have the rules properly promulgated.

Section 99-C provides that such rules and regulations formulated by the Board shall become effective 90 days after the date they are adopted, except that rules and regulations applying to the construction of new elevators shall not become effective until six months after the date they are adopted. Not having a copy of the rules and regulations which you have formulated, I cannot give you an opinion whether the regulations shall become effective 90 days or six months after their adoption.

In view of the fact that you have had a public hearing after suitable notice had been published in at least three daily papers in the State before these rules and regulations were adopted, the language of the statute which I have quoted, in Section 99-C, takes care of the effective date of said rules and regulations relating to elevators.

RALPH W. FARRIS
Attorney General

December 28, 1949

To Harold A. Pooler, M.D., Superintendent, Bangor State Hospital
Re: Commitment of Resident of one town by another town

I have your letter of December 27th, stating that you appeared before Justice Edward P. Murray on a writ of habeas corpus on December 27th and in reviewing the commitment papers the Justice advised that a ruling should be made by my office relating to the following:

"A person is in jail at Caribou. He becomes insane and has to be committed to Bangor State Hospital. His place of residence is Wade, Maine. A complaint is made by a Justice of the Peace at Caribou, and two Caribou doctors certify that he is insane. Must this complaint be sent to Wade, causing the Municipal Officers to serve papers to hold a hearing to complete commitment proceedings, or should the total proceedings for commitment be carried out in the town of Caribou, where the mentally ill person is confined?"

It is my opinion that under Section 105 of Chapter 23, the complaint should be made by a Justice of the Peace in the town where the insane person is found, and the doctors in that town can certify that that person is insane. The complaint need not be sent to the town of the person's residence. A Justice of the Peace has jurisdiction in all counties and all towns, and the municipal officers have jurisdiction in a town to inquire into the condition of any person in said town alleged to be insane. If this were not so, a person might be found in a town, alleged to be insane, and the Justice of the Peace and the municipal officers might not know his residence. Therefore in my opinion Judge Murray was correct in stating that the hearing should be held in the town where the person is found rather than to require the person to be transported to another town. Your letter was very clear, and when I see Judge Murray in Bangor I will talk this matter over with him.

This question comes up often in small towns, where a person is found in said town to be insane, and the municipal officers thereof sometimes, knowing where the person resides, try to get him into his own town and have the officers there make the complaint; but they have no legal right to seize a man alleged in one town to be insane and take him to another town and try