

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

January 5, 1950

To Honorable Frederick G. Payne, Governor of Maine
Re: Insurance on Automotive Equipment Used by the State

Some time late in the fall the Insurance Department circulated a mimeographed letter relating to a proper arrangement of insurance coverage in regard to ownership and use of automotive equipment used by the State. You call my attention especially to this item in this mimeographed sheet:

"Under the existing insurance coverage, the State has seen fit to insure its liability respecting use of employees' cars on State business but has not provided the same coverage for the identical risk which applies respecting hired trucks used on State business."

I have taken this up with Insurance Commissioner Soule and asked him if he had made any estimate of what the increased premium would be to cover trucks working for the State owned by private citizens; and he stated approximately \$4000.

You asked me to let you know what I thought of this proposition.

Under the Constitution and statutes of Maine, the State cannot be sued. Having checked with the State Highway Commission, I find that all trucks used by private owners on State work carry their own insurance. In my experience, when any person was injured as a result of negligence on the part of the operator of a truck used on State business, which was privately owned, the suit has always been against the owner of the truck, and the insurance company always comes in and defends. I do not feel that we should go to this additional expense and waive sovereignty in cases of this kind, and allow suits to be brought against the State on accidents occurring as a result of the negligence or carelessness of private truck owners or operators. We are not having any trouble at the present time, and I believe that we should let well enough alone.

RALPH W. FARRIS
Attorney General

January 13, 1950

To David H. Stevens, Commissioner of Health and Welfare
Re: State's sending a nurse to a pediatric school out of the State

I have your memo of January 6th quoting Section 4, "Employment and Other Qualifications for Training" from Part 14-2 of the USPHS Grants-in-Aid Manual, to the effect that training may be authorized by State health authorities if the proposals conform to the standards which you set forth in your memo to me. Under this State-Federal program you propose to send a nurse from the Maine General Hospital in Portland to a pediatric school out of the State, this nurse to be paid on a stipend basis at the rate of \$125 a month by the State of Maine from Federal funds made available to your department by the Children's Bureau for Maternal and Child Health purposes. If you send a nurse to school under this program, it is proper to bill your department rather than have the nurse on the payroll where she is not a State employee, but is rather on a stipend basis. Your department will approve the bills and certify them to the Controller, so that the money will be available from Federal funds to pay for this tuition.

I am sending a copy of this memo to the State Controller, so that he will know my attitude on this matter.

I understand that this arrangement has the oral approval of the Federal agency involved and will have its written approval.

RALPH W. FARRIS
Attorney General

January 17, 1950

To A. K. Gardner, Commissioner of Agriculture
Re: Sardine Packing

A. M. G. Soule, Chief, Division of Inspection in your department, has requested an opinion as to the authority granted to the Commissioner of Agriculture for making uniform rules and regulations with reference to the enforcement of the so-called sardine law as outlined in Section 201 of Chapter 27, R. S. 1944. Mr. Soule states in his letter to me of January 16th that this sardine inspection law has been on the statute books since 1929 and that at various times certain packers have favored cutting the heads of all fish before packing. Such a standard is not at present fixed by law, however; but he states that at least 85% of the packers, or packers who make at least 85% of the pack, would favor an order that the heads of all fish be removed by cutting before packing. This order would insure uniformity and fair competition. Upon this statement of law and fact Mr. Soule asked the following question:

“Has the Commissioner of Agriculture, who is Chief Executive of the sardine law, authority to make a ruling, ordering that all the fish packed for all grades, have the heads removed by cutting, and would such a ruling have the force of law?”

My answer to this question is as follows: Section 201 of Chapter 27, R. S., to which Mr. Soule called my attention, provides that the Commissioner “shall make uniform rules and regulations for carrying out the provisions of said sections (198-205, inclusive) and shall fix standards of quality when such standards are not fixed by law; . . .”

While the standards for contents of certain sardine cans provide that the heads of all fish shall be removed by cutting, namely cans packed with less than eight fish and fancy grade sardines for which the minimum count per can is specified, these do not apply at present to the cheaper grades. The definition of cutting contained in Section 203-A enacted by Chapter 78, P. L. 1945, is “removing the heads of the fish packed, either before or after flaking and steaming, by some implement or device operated by hand, or by a machine or mechanical device operated by power. The operation of ‘cutting’ does not mean the practice of beheading the fish by ‘snipping’ or ‘pinching’ the heads off the fish with the fingers.”

Therefore it is my considered opinion, after a study of the laws relating to the packing of sardines and to licenses and standards, that under the provisions of Section 201 you, as Commissioner, have authority to make a rule and regulation ordering that all fish packed of all grades shall have their heads removed by cutting, and that such a ruling would have the force of