

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

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

law until a court of competent jurisdiction decides otherwise. I base this opinion on the assumption that there is no standard fixed by law for any grade of sardine that provides for the beheading of the fish by snipping or pinching with the fingers. Therefore you have the authority to make this rule and regulation uniform in regard to fixing a standard for cutting the heads off all sardines packed in Maine. However, this is only an advisory opinion and I suggest that the industry and your office prepare to take care of this by proper legislation in 1951.

RALPH W. FARRIS
Attorney General

January 17, 1950

To Fred M. Berry, State Auditor
Re: State Contracts under Section 17, Chapter 122, R. S. 1944

I have your memo of August 16th relating to the provisions of Section 17 of Chapter 122, R. S. 1944, entitled, "Public officers forbidden to have pecuniary interest in public contracts." You call attention to my opinion issued on January 9, 1945 to Joseph P. Grenier, Superintendent of Public Printing. He had inquired as to my opinion whether Section 17 of Chapter 122 applied to members of the legislature, and I answered in the affirmative. There is no question in my mind but that a State legislator is a State officer, but whether he holds a place of trust in the State is another question. However, I have never written any opinion as to the application of Section 17 of Chapter 122, R. S., under our present statute setting up competitive bidding under the provisions of Chapter 14, R. S. 1944, especially Sections 35-53, inclusive, which have to do with the powers and duties pertaining to the purchasing and the making of contracts for the State. The provisions of these sections of Chapter 14 were enacted by the 1931 Legislature and were not effective until July of 1931, three months after the adjournment of the legislature on April 2, 1931.

You call my attention to the fact that H. H. Harris, State Controller, points out that a conflict exists in the rulings of the Attorney General's department and he cites an opinion dated February 18, 1944, written by Deputy Attorney General Abraham Breitbard, which can be found on page 117 in the Report of the Attorney General for 1943-44.

In this opinion he quoted from a letter written by former Chief Justice, W. R. Pattangall while he was Chief Justice of the Supreme Judicial Court, in which he stated informally that he could "hardly see how a member of the legislature could be said to be either a trustee, superintendent, treasurer, or other person holding a place of trust in any state office or public institution of the State."

Commenting further on this matter I wish to call your attention to the fact that the so-called Code Bill had not become law when Chief Justice Pattangall wrote the letter to former Attorney General Clement F. Robinson, March 23, 1931, giving his idea of the wording of the statute in question, which was then Section 11 of Chapter 131, R. S. 1930 and is now Section 17 of Chapter 122 of the 1944 Revision. It appears to me that Mr. Breitbard,