STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

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,

in writing his opinion to Mr. Greenleaf, Commissioner of Institutional Service, in 1944, did not take into consideration the provisions of Sections 35-53, inclusive, of Chapter 14, relating to purchases by the State.

When the provisions of Section 17 of Chapter 122 were enacted into law several years ago, the Governor and Council had the power to let out contracts for State purchases under the provisions of Chapter 155, P. L. 1905, which authorized the Governor and Council to contract in behalf of the State on the basis of competitive bidding for State printing and all other miscellaneous printing authorized by law for each department of the State government, including the legislative printing.

Under this statute the Governor and Council awarded a contract for certain State printing to the Waterville Sentinel Publishing Company. Cyrus W. Davis, then Secretary of State and also Secretary of the Executive Council, was a stockholder and the treasurer of the Waterville Sentinel Publishing Company. Governor Frederick W. Plaisted at that time requested an opinion from the Maine Supreme Judicial Court as to whether or not the provisions which are now Section 17 of Chapter 122 made void the contract between the State and the Waterville Sentinel Publishing Company. The Court held that the contract was void, on the basis:

> "If a member of the Executive Council should be a bookseller and stationer, and the Secretary of State be a printer and publisher, one of the situations probably contemplated by the legislature, would exist, affording an opportunity for mutual favoritism."

The Court further stated in its opinion in 108 Maine at page 553:

> "It was obviously impracticable to anticipate and specify in the statute the great variety of situations that might arise, and in order to accomplish the purpose of the statute and prevent the mischief designed to be remedied, the legislature was compelled to declare in general terms that no State officer should have a pecuniary interest in 'any contract' made in behalf of the state."

It is my opinion that, when the legislature in 1931 set up the Bureau of Purchases under the Administrative Code Bill, which provided the scope of the purchasing authority of the Bureau of Purchases, institutional supplies were to be bid for separately. The Code Bill also authorized the State Purchasing Agent to purchase in the open market specific supplies and equipment for immediate delivery to meet unforeseen causes, including delays by contractors or in transportation and unanticipated volume of work. The legislature set up a provision of statute for a standardization committee composed of the Governor, the Chairman of the State Highway Commission, the Commissioner of Health and Welfare, the Commissioner of Education and the State Purchasing Agent, with authority to advise the State Purchasing Agent and the Commissioner of Finance in the formulation and modification of the rules and regulations which shall prescribe the purchasing policy of the State, and to assist in the formulation, adoption and modification of standard specifications which shall apply to State purchases.

At the time when former Chief Justice Pattangall wrote this letter to Mr. Robinson, then Attorney General, in 1931, we had no Finance Commissioner.

Under Section 42 of Chapter 14, contracts shall be let to the lowest responsible bidder, taking into consideration the qualities of the articles to be supplied, their conformity with the specifications, the purposes for which they are required, and the date of delivery. Bids are received in accordance with certain standards adopted by the State Purchasing Agent with the approval of the Commissioner of Finance, and any or all bids may be rejected. A bond for the proper performance of each contract may be required in the discretion of the State Purchasing Agent, with the approval of the Commissioner of Finance.

Section 53 of Chapter 14, R. S., 1944, provides in regard to unlawful purchases.

> "Whenever any department or agency of the state government, required by this chapter and the rules and regulations adopted pursuant thereto applying to the purchase of supplies, materials, or equipment contrary to the provisions of this chapter or the rules and regulations made hereunder, such contract shall be void and of no effect."

Therefore it is my opinion that the Code Bill, so-called, especially Sections 35-53, inclusive, of Chapter 14, have changed the manner of making State purchases and provided safeguards in the purchasing of State supplies, and has in part impliedly repealed Section 17 of Chapter 122, R. S. 1944, which you cite in your memo. This matter should be presented to the next legislature, so that this statute can be amended to conform to the provisions of Chapter 14, R. S. 1944.

You will note that the language of Judge Pattangall did not express any opinion as to whether members of the legislature or of the Governor's Council came within the provisions of Section 17 of Chapter 122, R. S. 1944. He stated in his original letter, which I have before me, "I *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. I am not even *sure* that this section applies to members of the Governor's Council. The wording is quite different than I supposed."

I interpret the language of Judge Pattangall's letter of 1931 to mean that the members of the legislature and of the Governor's Council were not officers of trust of the State who were charged with purchasing supplies for departments or public institutions of the State. That is, it would not be supposed that they had any pecuniary interest, directly or indirectly, so that there would be any opportunity to receive any drawbacks, presents, gratuities, or secret discounts to their own use on account of such contracts made with the State. His language, "I am not sure," indicated that he was in doubt as to the interpretation of this statute as applying to members of the legislature and of the Governor's Council before the Administrative Code was effective.

I am of the opinion that if the Administrative Code Bill had been law at the time he wrote this letter, he would have been more explicit in his language in this respect.

If this statute were strictly construed, as you intimate in your memo and as pointed out by the State Controller, it would be impossible to facilitate the State's business in a reasonable and practical manner, and I agree with

his conclusion in this respect, because many members of the legislature are officers of corporations which are furnishing to the State materials and supplies under competitive bids through the Bureau of Purchases, and if this statute were strictly construed, without considering the Administrative Code Statute, the State would be cut off from purchasing from its own citizens valuable materials, supplies and equipment which are manufactured or sold within our State and this would seriously impair the functioning of our institutions and departments when they were faced with emergency purchases and could best secure them from corporations of which members of the legislature may be stockholders or directors. Consequently any such corporation, selling or manufacturing supplies that the State is sometimes forced to purchase on emergency purchase orders, should not be barred.

RALPH W. FARRIS
Attorney General

January 19, 1950

To Ober C. Vaughan, Director of Personnel
Re: Reinstatement

I have your memo of January 18th, stating that a former State employee has requested a meeting with the Personnel Board in connection with his reinstatement rights. You state that he had previously been informed by your office that due to the fact that he had been out of State employ for some four years his term of eligibility for reinstatement had run out. This was based on Rule V of the Personnel Law and Rules and the policy of the Board to maintain original entrance and reinstatement lists for no longer than a two-year period.

You then state that he contends that under Rule VI: "Any person holding a permanent position in the classified service who has been separated therefrom by resignation or otherwise, without delinquency or misconduct on his part, shall have his name entered on the proper reinstatement list upon such former employee's application and if a satisfactory service report is filed by the department head under whom such former employee worked." He contends that Rule VI is not restricted by the terms of Rule V.

You state that the Board feels that they would have authority to conform to his request, but that it would be a direct violation of the general policy which has been in effect for several years. Upon this basis you ask my opinion as to whether Rule VI is restricted by the terms of Rule V.

Rule V refers to the eligibility and Rule VI to the reinstatement lists. Eligibility naturally has to do with reinstatement, however. Rule V provides: "The term of eligibility of individuals on reinstatement lists shall begin with the termination of permanent service and shall last for a period of one year therefrom and may be extended in the same manner as the eligibility of applicants on the original entrance lists." So you see that Rule V deals with reinstatement as well as the original entrance lists. Therefore it must be read in connection with Rule VI which provides for the lists.

As in this case application was not filed within the specified period of one year, the Board may extend the eligibility as provided in Rule V, so that the applicant may be reinstated. From my reading of Rules V and VI it seems