

# 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**

Section 2 of Chapter 66, R. S., provides that the board "may make such rules, not contrary to law, as they may deem necessary for the performance of their duties, and shall conduct theoretical and practical examinations upon such subjects pertaining to dentistry as are hereinafter prescribed."

Therefore it is my opinion that the Board has no authority to promulgate any regulation under this provision of the Revised Statutes which would permit persons to practise dentistry in Maine, unless they had complied with Sections 3, 4, 5, and 6 of Chapter 66.

RALPH W. FARRIS  
Attorney General

April 25, 1950

To H. H. Harris, State Controller

Re: Fish Screen, Plantation No. 33, Hancock County, Resolves  
of 1949, c. 106

The Department of Inland Fisheries and Game informs me that you wish a memo in regard to paying the vouchers for labor in installing a fish screen on the west branch of the Union River at the outlet of Great Pond in Plantation No. 33, Hancock County, for which an appropriation was made by the legislature in the sum of \$655.68, the State to be liable for only one-half of the cost of said screen; providing that Frank Honey of said Plantation No. 33 shall assume all liability for the maintenance of said screen.

In view of the fact that many of the persons who did work in the installation of said fish screen have filed waivers for pay, it is suggested that the money be paid to the individuals who did the work on the screen upon their presenting proper vouchers for their labor and material, and not make payments of the full amount of the appropriation, to wit, \$655.68, to Frank Honey of Plantation No. 33.

RALPH W. FARRIS  
Attorney General

April 25, 1950

To Ralph A. Jewell, Chairman, Maine Racing Commission

In answer to your inquiry at my office Friday morning, April 21st, on which date you left a letter with me dated April 6, 1950, addressed to you from Attorney John E. Willey of Portland which related to the interpretation and definition of the word "shall" within our Revised Statutes:—

The reason for his letter was perhaps based on my memo to you dated May 17, 1949, in which I stated that the Commission "shall grant such licenses for night harness racing to such applicants only, who shall have and maintain adequate pari-mutuel facilities, etc., etc.," as provided in Section 5 of Chapter 388, P. L. 1949. I wish to state that John is right in his interpretation of the word "shall" and that his cases cited in his letter seem to be in point. I stated in my memo that the words, "The commission shall grant such licenses," are mandatory and in the plural number and I added, "to such applicants only who shall have qualified, etc." It is mandatory in the sense that you can issue licenses only to those who have qualified, but

I did not mean to imply that the wording of the statute takes away all discretionary power from the Commission in granting licenses under this provision of the statute, but that you shall grant them only to those who have qualified. It does not mean that you must grant a license to every applicant who has qualified, if in the Commission's discretion it feels that it would not be wise and would not be for the best interests and welfare of the State of Maine to do so. You have wide discretionary powers as John states in his letter. The legislature does not attempt to do away the discretionary powers of a board, commission or court in enacting legislation which contains the word "shall" as in many instances it is merely directory. . . .

RALPH W. FARRIS  
Attorney General

April 27, 1950

To Carl L. Treworgy, Clerk, Racing Commission

I have your memo of April 26th, stating that the Commission would like to know if it would be legal under the statute above cited to require licenses of sulky drivers and concessionaires who sell selection cards at pari-mutuel tracks.

There is nothing in Chapter 77 that authorizes the Commission to require licenses of drivers or concessionaires at pari-mutuel tracks. This is a matter that should be taken care of by legislation if the Commission desires to have further control on the drivers and concessionaires at pari-mutuel tracks.

The Commission also asks if it would be legal to assess a fine for the failure of any horse to appear in the paddock one hour before post time.

I wish to state that the Commission does not have power under Section 9 of Chapter 77 to assess fines. This also is a matter for legislation if you wish to have a penalty for the failure of the owner of any horse to have it appear in the paddock one hour before post time.

RALPH W. FARRIS  
Attorney General

May 1, 1950

To Col. Francis J. McCabe, Chief, Maine State Police  
Subject: Speed at Intersections and effect of the use of dolly wheels  
on registration

Under date of March 25, 1950, Troop F asked certain questions with respect to registration of vehicles equipped with dolly wheels, so-called, and under date of March 18, 1950, Troop B asked similar questions. We are answering all the questions in one memorandum and trust that your office will see that the dissemination is such as to give the answers to the respective Troops from which the questions came. These answers are being prepared in collaboration with the Deputy Secretary of State, inasmuch as it was felt that the questions more properly pertain to the laws under the jurisdiction of that department than the Attorney General's office.

In the interests of saving space we are paraphrasing the questions.