

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

There is no question that under the provisions of Chapter 102, P&SL 1949 you have authority to approve a contract calling for an augmented tuition charge over and above the standard charge prescribed by the general laws, to help reimburse the Town of Brunswick for additional expense to which the Town of Brunswick is put in the alteration of any existing building. Whether or not the connecting of a structure to an existing high school building by a corridor or breezeway constitutes an alteration to an existing building would be a question of fact, in which all pertinent circumstances would have a bearing in determining whether the enterprise constituted an alteration or new construction. Since this is a question of fact, we are unable to advise you whether, as a matter of law, the connection by a corridor or breezeway would constitute an alteration within the meaning of the statute.

JOHN S. S. FESSENDEN
Deputy Attorney General

May 5, 1950

To Col. Francis J. McCabe, Chief, Maine State Police
Re: Motor Vehicle Inspection

I acknowledge receipt of your memo of May 3d, in which you ask for an interpretation of Paragraph 5 of Section 35, Chapter 19, R. S., relating to the inspection of motor vehicles. This statute reads as follows:

“No dealer in new or used motor vehicles shall permit any such vehicle owned or controlled by him to be released for operation upon the highways until it has been inspected as herein provided and a proper sticker certifying such inspection placed thereon. If such vehicle bears thereon a certificate showing a prior inspection, the same shall be removed. The provisions of this paragraph shall not apply to sale of vehicles as junk or to those which are to be repaired and put into condition so as to pass inspection by the purchaser thereof.”

It seems to me, after reading this paragraph of Section 35, that the intent of the legislature is very clear. When a used-car dealer takes a motor vehicle in trade with the inspection sticker thereon obtained by the previous owner, he must remove said sticker and have the car reinspected under the provisions of this statute before the car is again put on the road. In other words, the certificate of the previous owner is not sufficient in the case of a dealer in new and used cars.

RALPH W. FARRIS
Attorney General

May 9, 1950

To Brig.-Gen. George M. Carter, The Adjutant General
Re: Plane Insurance

With reference to your memorandum of April 14, 1950, relative to the study that has been made as to insuring against bodily injury and property damage which may result from the operation of aircraft flown by Maine Air National Guard pilots, you are advised that the Attorney General and I have conferred on the problem and that he has suggested that I write you along the following lines:

As you know, the liability for a bodily injury or property damage to others as a result of the operation of a vehicle depends upon the proving of negligence by the operator and the lack of contributory negligence by the injured party. So far as we know, liability of one piloting an airplane would be determined upon the same principles as are applied to the operators of any other kinds of vehicles. Whether this will always be so, we do not know, as it would seem strange if one had to prove the negligence of a pilot in order to recover damages for having the roof taken off his house by an airplane which was out of control. Perhaps there will some time be either statutory or case law giving more protection to persons who are injured by airplane accidents.

As we see it, at the present time, as a matter of law, the carrying of insurance to protect innocent third parties might not afford those third parties any real protection, if they are required to establish negligence of the pilot. Whether or not your prospective insurance would afford a broader protection to innocent third parties is a matter that we cannot tell, since the terms of the prospective contract for insurance have not been presented to us for analysis.

It is of course a principle of law that the State cannot be sued without the consent of the legislature. We have assumed that in this prospective liability insurance for aircraft operation you have been proceeding by analogy with the fact that the State covers liability from motor vehicle accidents by insurance and that possibly aircraft operation should be covered in the same way. This would be a matter of administrative policy decision, rather than a question of law to be determined by the Attorney General. If it were determined as a matter of policy that such insurance should be carried, may we point out that the planes themselves are owned by the United States Government and are lent to the Maine National Guard, and that the planes are subject to changes and replacements practically without notice. This being the case, the insurance policy should be of such a blanket nature as to cover any planes being operated by Maine National Guard personnel rather than the usual type of policy which would cover the planes by specific identification, for it is a rule of law that in the specific-type policy, if the vehicle is not correctly identified, the insuring company has no liability.

While the actual cost of operating and maintaining these planes, as we understand it, is defrayed by federal grants, we have ascertained that no federal funds are available for insurance premium purposes; therefore the entire cost of insurance would have to be met by State funds.

Except for the few legal observations made above, we should like to repeat that the decision is entirely a matter of administrative policy and we would only suggest that if the insurance is to be procured, this office and the Insurance Commissioner's office should carefully scrutinize the terms of the policy before it is actually issued.

JOHN S. S. FESSENDEN
Deputy Attorney General