

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

officer not required to be chosen by ballot; but Section 106 of Chapter 81, which you have quoted in your memo, refers to collectors who have removed or in the judgment of the municipal officers are about to remove from the State before the time for the payment of the warrant to the town treasurer. Therefore you can see that it depends upon how the vacancy occurs in the office of tax collector, as to how the appointment shall be made.

Section 106 provides that at the meeting of the committee held to settle with the collector for the money that he has received on his tax bills, they may elect another constable or collector, and the assessors shall make a new warrant, etc., and he shall have the same power as the original collector.

Then you have the question of bonds to consider in regard to commitments. The selectmen must be very careful in regard to having the assessors issue new warrants in case a new collector is delinquent and the town wishes to proceed against the sureties on the original collector's bond.

You inquire particularly about town managers who often serve as collectors. I call your attention to Section 18, Chapter 80, R. S., which provides the powers and duties of town managers, especially to subsection V which authorizes the selectmen to prescribe the duties of the town managers, such as road commissioner, town treasurer, tax collector, etc., *any other provisions of statute to the contrary notwithstanding.*

I am going to quote from "Maine Civil Officer, Eighth Edition" by Judge Francis Sullivan, page 88, under subtitle, "Appointment and Fees of Collectors":

"Collectors of taxes are elected at the annual town meetings and may be chosen by ballot, or if not so elected, they shall be appointed by the selectmen, and in case of a vacancy the municipal officers may fill such vacancy by written appointment. When towns choose collectors, they may agree what sum shall be allowed for performance of their duties. The treasurer and collector of taxes may be one and the same person, but such officers shall not be selectmen or assessors until they have completed their duties and had final settlement with the town.

RALPH W. FARRIS
Attorney General

June 21, 1950

To Marion E. Martin, Commissioner of Labor and Industry
Re: Letter from Nathan C. Fuller of H. C. Baxter & Bro., Hartland

I have studied Mr. Fuller's letter of June 2, 1950, which was referred to this office by your memorandum of June 15, 1950, which letter involves whether or not Irish potatoes are perishable products within the meaning of Section 28 of Chapter 25, R. S., as amended.

I have found no statute under which the legislature has attempted to define that which is or may be considered to be a perishable product; and with the very limited facts supplied I can say only that it would be an impossibility to give you a definition as to that which is a perishable product as a matter of law.

I would suppose that in each case where the point was in issue, it would be a question of fact as to whether or not the product being processed was

perishable and required immediate labor thereon to prevent decay or damage. This being true, the question is more one of administration than it is of law. Stated in another way, the problem simply is that if, in the administration of the labor laws, it is found that the product being processed is perishable, the law applicable thereto is clear. Accordingly you would be in a much better position to answer Mr. Fuller's letter than would this office. . . .

JOHN S. S. FESSENDEN
Deputy Attorney General

June 22, 1950

To Col. Francis J. McCabe, Chief, Maine State Police
Re: Policing Harness Racing

I am returning herewith the material which was left in our office by Lt. Hoxie, which constitutes a complete report of an episode that occurred at the Cumberland race track on June 16, 1950.

It is my opinion, in which the Attorney General concurs, that under the provisions of the harness racing statute (Section 22 of Chapter 77, R. S.) the State Police have no duty to administer or enforce the provisions of that statute on the spot, nor to exercise any judgment as to whether any particular act violates the harness Racing Commission's rules.

With respect to harness racing *per se* the law clearly contemplates that regularly constituted law enforcement officials shall act only through the Attorney General or the respective county attorneys after a complaint has been made to those officials by the harness Racing Commission.

The foregoing should not be construed to mean that the State Police do not have jurisdiction over violations of law which may occur within the confines of an area being used for harness racing and which are within the regular and customary jurisdiction of the State Police.

JOHN S. S. FESSENDEN
Deputy Attorney General

June 23, 1950

To Norman U. Greenlaw, Commissioner of Institutional Service
Re: Emil Lake Account

I think that you should instruct the superintendent to defray Mr. Lake's unpaid balance out of Mr. Lake's funds now in the superintendent's possession. An exact record of this transaction should be kept and the balance in his hands should be turned over to Mr. Lake's personal representative (administrator or executor) when appointed. On such accounting the fact that the set-off has been made should be clearly shown.

If under these conditions the personal representative then has a claim for any of the funds that have been used in set-off, any lawfully required adjustment can be made. Otherwise the State's claim will stand as satisfied.

The necessity of refunding the amount used in set-off should arise only in the case of insolvent estates, when statutory priorities of creditors would be involved.

JOHN S. S. FESSENDEN
Deputy Attorney General