

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

September 11, 1950

Norman Weed, Budget Director
State Highway Commission

I have your memo of September 7th, relating to tolls collected from the Augusta Bridge as to the cash collected which the Highway Commission would like to transfer to Highway Funds.

You state that the money for the bridge was paid from the Highway Loan Fund, Appropriation 9095, and you feel that the money should be paid back to the appropriation from which it was spent rather than to the General Highway Fund Surplus, and you request my opinion on this matter.

In view of the fact that the Highway Loan Fund, Appropriation 9095, was set up under the statute with the approval of the Governor and Council, the revenue received from tolls on the Augusta Bridge should be transferred to the General Highway Fund Surplus and, in case a further Highway Loan Fund appropriation is necessary, the matter can be presented to the Governor and Council asking authority to set up another Highway Loan Fund or supplement the present appropriation Number 9095.

RALPH W. FARRIS
Attorney General

September 20, 1950

To George J. Stobie, Commissioner of Inland Fisheries and Game
Re: Qualifications of the State of Maine to participate under the Dingell-Johnson Federal Aid to Fisheries Act of August 9, 1950

Reference is made to the letter dated September 6, 1950, addressed to you by Mr. Albert M. Day, Director of the Federal Fish and Wildlife Service, about which you and I conferred on the afternoon of September 19, 1950.

The first paragraph appearing on page 2 of this letter reads in part as follows:

“It is possible that, while assent legislation is mandatory, your existing State laws provide prohibitions against the diversion of license fees and no additional legislation in that regard is necessary. On the other hand, it is possible that your State will have to qualify through the assent of your Governor, until assent legislation can be enacted. In either event, you are requested to secure and forward an opinion from your Attorney General, with appropriate reference to State laws covering the question of your State qualifying for this program. Such opinion will be requisite to approval of your State for participation in the program.”

The referenced portion of the letter of September 6, 1950, quoted above, presents two questions as to this State's ability to qualify immediately for participation under the Dingell-Johnson Act: 1) Provisions of law with respect to the disposition of license fees collected by the Fish and Game Department; and 2) The right or authorization to qualify immediately without additional legislation.

With respect to the first question you are advised that subsection X of Section 63 of Chapter 33 of the Revised Statutes of 1944, as amended by the Public Laws of 1945, 1947, and 1949, which for reference purposes is known as the Tenth Biennial Revision of the Inland Fisheries and Game Law, printed at the back of the Laws of Maine for 1949, reads as follows:

"All funds derived from the sale of licenses under the provisions of this chapter shall be used for the propagation and protection of all bird life, animal life and fish life and other expenses incident for the administration of these functions.

"Provided, further, that if any of such funds are not expended during the year in which they were collected the unexpended balance shall not lapse, but shall be carried as a continuing account available for the purposes herein specified, until expended."

In addition to the foregoing section of law, Section 110 of the same chapter provides that all fines, fees and penalties for violations of said chapter recovered in any court action shall also accrue to the credit of the Department of Inland Fisheries and Game for similar purposes, and that these funds, so collected, if unexpended, shall not lapse, but shall be carried as a continuing account available for such purposes.

In view of the foregoing cited sections of law, it is my opinion that no additional legislation is needed in the State of Maine to meet the provisions of Section 1 of the Dingell-Johnson Act with respect to prohibition against the diversion of license fees paid by fishermen for any other purpose than the administration of the State Fish and Game Department.

With respect to the second question presented, you are advised that Section 14 of Chapter 11 of the Revised Statutes reads as follows:

"The governor, with the advice and consent of the council, is authorized and empowered to accept for the state any federal funds or any equipment, supplies, or materials apportioned under the provisions of federal law and to do such acts as are necessary for the purpose of carrying out the provisions of such federal law. The governor, with the advice and consent of the council, is further authorized and empowered to authorize and direct departments or agencies of the state, to which are allocated the duties involved in the carrying out of such state laws as are necessary to comply with the terms of the federal act authorizing such granting of federal funds or such equipment, supplies, or materials, to expend such sums of money and do such acts as are necessary to meet such federal requirements."

This section of law is clearly sufficient authority for the participation of the State of Maine in the benefits of the Dingell-Johnson Act by and through the Department of Inland Fisheries and Game upon the approval of the Governor with the advice and consent of his Council.

It is therefore my opinion that both questions presented are clearly resolved in favor of the State's present ability to participate in the benefits of the Dingell-Johnson Act upon the basis of existing State legislation.

In view of the contents of Section 1 of the Dingell-Johnson Act, particularly that part thereof which would require a legislature to "have assented to the provisions of this Act * * * except that, until the final adjournment

of the first regular session of the legislature held after passage of this Act, the assent of the governor of the State shall be sufficient," you are requested to inquire from appropriate Federal authority whether or not additional State legislation will be required. It is possible that, in view of the broad powers already enacted by the Maine legislature and cited above, additional legislation might not be necessary. However, if such additional legislation is required, we should receive notification thereof in ample time to present a bill to that effect to our session of the legislature which will convene on the first Wednesday in January, 1951.

JOHN S. S. FESSENDEN
Deputy Attorney General

September 28, 1950

To the Honorable Frederick G. Payne, Governor of Maine
Re: Pollen and Fungus Survey

I have your memo of September 27th stating that your office has been asked if the pollen and fungus survey can be extended to December, 1951, as it cannot be completed by the summer of 1951 and there are sufficient funds to take care of this activity, if so extended.

Chapter 140 of the Resolves of 1949 makes this activity a carrying account, and it is my opinion that if it cannot be finished in the summer of 1951, the survey can be extended into December of 1951.

RALPH W. FARRIS
Attorney General

September 29, 1950

To Ernest H. Johnson, State Tax Assessor
Re: Fertilizer Tax Law, Chapter 378, P. L. 1949

I have your memo of September 28, 1950, relating to the tax on commercial fertilizer prescribed by Chapter 378 of the Public Laws of 1949, in which you ask the question:

"Under the law imposing a tax on commercial fertilizer (P. L. 1949, Chapter 378) is a corporation selling mixed fertilizer to the Federal Government in this state required to pay the fee of 1c per ton on such fertilizer?"

Answer. After a careful reading of the statute it is my opinion that there is no exemption to a manufacturer, distributor or transporter of commercial fertilizer from the tax on sales of such fertilizer and that it makes no difference in this regard whether the sale is to the Federal Government or to a private corporation. It would seem that it was the intent of the legislature that the fee be applicable to the manufacturer or shipper, regardless of the status of the purchaser.

RALPH W. FARRIS
Attorney General