

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

October 4, 1950

To Lester E. Brown, Chief Warden, Inland Fisheries and Game
Re: Moosehorn Migratory Bird Refuge—Jurisdiction

I have your memo of October 4, 1950, calling my attention to Chapter 85 of the Resolves of 1937 by which the State Legislature ceded to the United States of America certain land in Washington County lying within the exterior boundary of the Moosehorn Migratory Bird Refuge area, "reserving to the State of Maine and the people thereof all civil and criminal jurisdiction over said lands and waters, not inconsistent with the use, control, and regulation, by the United States of America, of said lands and waters as a part of said refuge."

You call my attention especially to the fact that the area ceded is described as a migratory bird refuge area. In view of this fact and in view of the reservation of jurisdiction to the State of Maine and the people thereof, you ask my opinion as to whether or not the trapping of beaver, muskrat and other fur-bearing animals and the hunting of deer in this area would be under the jurisdiction of the State of Maine.

I have no background for giving an opinion as we have no copy of regulations for use and control of the area by the United States of America; but it is my offhand opinion that the legislature reserved to the State and the people thereof all civil and criminal jurisdiction over said lands and waters as stated in the Resolve. If that is so, any trapping, hunting and fishing should be subject to the jurisdiction of the Inland Fisheries and Game Commissioner, if it is not inconsistent with use, control and regulation by the United States of America. Now that is the rub, because it is a question of fact as to whether or not the situation about which you talked with me yesterday, namely the presence of beaver in this area, would be inconsistent with the use and control of the area as a bird refuge by the United States of America.

RALPH W. FARRIS
Attorney General

October 11, 1950

To Honorable Frederick G. Payne, Governor of Maine
Re: Sunday Stock Car Racing

In your memorandum of October 10, 1950, you make inquiry as to the legality of Sunday operation of stock car racing.

Generally speaking, stock car racing, as it is conducted in Maine, is in the field of "amateur sports." While there may be some professional stock car racing in Maine now or in the future, up to the present time I know only of amateur stock car racing.

Several of those engaged in this "sport" have organized corporations under the provisions of Chapter 50 of the Revised Statutes of Maine as non-profit corporations engaged in a social and recreational activity. Consequently, those who operate stock car racing on Sunday within the limits of such charters and who operate on an amateur basis would come within the provisions

of Section 40 of Chapter 121, R. S. 1944, which is the section of the law which provides for local option and legalized Sunday sports. The only recreational or competitive amateur sports or games prohibited on Sunday in this section are boxing, horse racing, air circuses, and wrestling.

Under date of September 7, 1949, the Attorney General advised the Chief of the Maine State Police that in towns or cities which had accepted by local option the Sunday amateur sports law, amateur stock car racing would be legal when the races are conducted before 7 p.m.

JOHN S. S. FESSENDEN
Deputy Attorney General

October 17, 1950

To Francis G. Buzzell, Chief, Division of Animal Industry,
Department of Agriculture

Re: Chapter 429, P. L. 1949, Part C thereof

Under date of October 10, 1950, you submitted a memorandum to this office reading as follows:

"We are in doubt as to whether we can force farmers with reactor cattle to slaughter them under Section 73A of Chapter 27. It is our understanding that all we can do is to place these cattle under quarantine and then take action if they violate any of the later provisions of the Section. Can we compel such farmers to slaughter their reactors?"

Chapter 429 of the Public Laws of 1949 amended Chapter 27 of the Revised Statutes of 1944 by adding thereto a new section to be numbered 73-A, which section contains legislative authority for three alternative plans pertaining to the eradication of Bang's disease. As I understand your question, as confirmed by a conversation with you, you are interested solely in whether or not cattle held under the provisions of Plan C may be slaughtered.

You will note that in the last paragraph of Section 73-A it is stated that "the owner shall continue with this plan or one of the other official plans ***" Since you have stated that you are interested only in Plan C, it must be assumed that you are not concerned with any case in which an owner has continued, or brought himself within, some other official plan. Confining our answer, then, solely to the procedure to be followed under Plan C, it would appear that each and every requirement of Plan C must apply to an owner operating thereunder and that it is a condition precedent to the right to remove his cattle and cause the same to be slaughtered that the department be able to prove affirmatively that the owner of the cattle, operating under Plan C, has violated one or more of the conditions specifically set forth in the statute.

I notice in your question that you use the words, "Can we compel such farmers to slaughter their reactors?" The statute makes no reference to compelling the farmer to slaughter his reactors. On the contrary, the statute states, "if the owner does not so continue, the department of agriculture or its duly authorized agent is authorized to remove and cause to be slaughtered the reactor animals without payment of the indemnity."

JOHN S. S. FESSENDEN
Deputy Attorney General