

MAINE STATE LEGISLATURE

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December 11, 1950

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Sale of Brook Trout in East Millinocket, Maine.

I received your memo of December 7th enclosing a letter from the Slade Gorton Co., fish packers of Boston, Mass., addressed to the Governor of Maine, which letter was referred to you by the Governor, relating to the sale of Danish brook trout in East Millinocket. You request a ruling on this question under Section 41 of the Tenth Biennial Revision of Inland Fish and Game Laws, 1949.

On reading the letter addressed to the Governor I note that the writers are dealers in frozen fish in Boston and that they are engaged in selling brook trout imported from Denmark to a merchant in East Millinocket. I respectfully advise you that it is lawful for the Slade Gorton Company or the Rocky Bay Fishing Company to sell brook trout in interstate commerce to anyone in the State of Maine; but once the brook trout are taken out of the original package and placed in the merchant's case or on his shelves for sale in Maine, Section 41 of the Inland Fish and Game Laws, about which you inquire, applies. This section provides:

"It shall be unlawful for any person to sell or buy directly or indirectly any landlocked salmon, trout, togue, black bass, white perch or pickerel except that pickerel may be sold in Washington County. A violation of this section shall be punishable by a fine of not less than \$10, or more than \$30, and costs, for each offense, and in addition thereto, \$1 for each fish sold or purchased."

This applies to State of Maine fish in intrastate commerce.

In the letter to the Governor the writer says that the action of the game warden has tended to injure his business and also the business of his customer in Millinocket, and the writer requests the Governor to inform him whether the game warden was right or wrong in doing what he did.

Section 41 prohibits any person in Maine from selling trout in Maine after it is out of interstate commerce. Bourcois v. Chapman, Attorney General, 301 U.S. 183, re interstate commerce. In the case of Bowman v. C. & N.W.R.R., 125 U.S. 465, the Court held that the statute, which was prohibitive, was constitutional. In that case the Court said, "There is great difficulty in drawing the line precisely where the commercial power of Congress ends and the power of the States begins;" but by the weight of authority, once the product shipped in interstate commerce has been removed from the original package and placed on the shelves or in cases in the merchant's store, it is in intrastate commerce and is subject to the laws of the State.

So trout that were shipped into Maine by frozen fish companies outside the State, whether from another State or from Canada, once they have been placed in stores for sale, would come within the provisions of Section 41 of the Fish and Game Laws of the State of Maine. The weight of authority in both Federal and State cases is that States have the power to regulate and forbid the sale of a commodity after it has been brought within its limits. State v. Lewis, 87 Maine 498.

I enclose a carbon copy of this opinion for the Governor's use in answering his letter from the Slade Gorton Fish Company, which letter I return herewith.

Ralph W. Farris
Attorney General