

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

May 21, 1951

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Penobscot Fishway Patrol

Under date of May 17, 1951, the Deputy Commissioner of the Department of Inland Fisheries and Game requested the opinion of this office as to whether the Commissioner has the authority to assign the Penobscot fishway patrol to various wardens whose normal districts include the various fishways along the Penobscot River, or must assign an individual whose principal function it will be to perform this patrol duty.

We have examined the history of the legislation calling for a fishway patrol on the Penobscot River and have found that the Act relative thereto was first passed in 1935, being Chapter 174 of the Public Laws of 1935. The Act reads as follows:

“The commissioner of inland fisheries and game shall establish a fishway patrol from the Bangor dam north, when said fishways shall have been rebuilt and put in usable condition.”

Under the provisions of this legislation it is the administrative responsibility of the Commissioner to determine what kind of patrol will comply with the terms of the statute.

JOHN S. S. FESSENDEN
Deputy Attorney General

May 21, 1951

To Honorable Frederick G. Payne, Governor of Maine
Re: Last sentence of Sec. 2 of Article IV, Part Third, Constitution

You have asked this office for an opinion as to the period of time contemplated by the words “within five days (Sundays excepted) after it shall have been presented to him.” (A bill, unless returned by the Governor, will be as if he had signed it.)

The key word which must be construed in ascertaining what constitutes the five-day period is “after”.

Section 16 of Article IV, Part Third, of the Constitution provides for the effective date of non-emergency legislation, the same being ninety days after the recess of the legislature passing it. Ever since this became a part of the Constitution of the State, it has been construed that in computing the ninety days, the day of adjournment has been excluded and the count starts on the day after adjournment.

By analogy, under Section 2 of the same Article of the Constitution, with respect to the returning of bills by the Governor to the legislature within 5 days after presentment to him, the count of the 5 days would start on the day following the date of presentment.

There are no Maine cases construing either one of these sections of the Constitution. However, the case of *Flint v. Sawyer*, 30 Maine, page 226, states the rule on page 229 as follows: