

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

Question 2. You inquire further with regard to the status of the Commission created by Chapter 437, Public Laws, 1949, "An Act to Provide Financial Assistance to Cities and Towns in the Construction of School Buildings," and that Commission's relation to the Commission set up by Chapter 405, Public Laws, 1951, under "An Act Creating the Maine School Building Authority."

Answer. The 1949 Act, which to all intents and purposes appears to be completely encompassed by the new 1951 Act, was not directly repealed, and its continued presence is due to the Act's ability, by its provisions, to accept Federal funds, in the event such funds are made available to the State.

Because of this and the further fact that the members of the Commission contemplated by the 1951 Act are composed of certain individuals of a different status than the members of the Commission of the 1949 Act, it would seem that the same Commission would not continue as the Commission under the 1951 Act, but that it will be necessary for a new Commission to be appointed.

There would be no objection to an individual's serving on both Commissions, provided he is eligible under both Acts.

JAMES G. FROST
Assistant Attorney General

June 29, 1951

To: The Mayor and Municipal Officers,
City of Lewiston (Water Department)

An opinion having been requested of the Attorney General as to whether or not the City of Lewiston is subject to, and bound to register as a retailer under the provisions of the "Sales and Use Tax Law", so-called, as contained in Chapter 250, Public Laws 1951, in connection with the sale and distribution of water, you are advised as follows:

The City of Lewiston has been, and still is, authorized by the laws of Maine (in a series of Private and Special Laws), to furnish and supply water to its inhabitants, and this office understands that the city itself is, in fact, the supplier of such water, there being no separate water district or water company.

Section 3 of the Sales and Use Tax Law provides in part:

"A tax is hereby imposed at the rate of 2% of the value of all tangible personal property, sold at retail in this state on and after July 1, 1951, measured by the sale price. . ."

That the statute in question contemplates a tax on the sale of water is clearly evidenced by the following language which also appears in section 3 thereof:

"The tax imposed upon the sale and distribution of gas, water or electricity by any public utility, the rates for which sale and distribution are established by the public utilities commission, shall be added to the rates so established."

From this language, it is clear beyond the need of construction that the Legislature contemplated a tax on the distribution of water by any public utility.

Chapter 40 of the Revised Statutes, section 15, defines "public utility" in subsection XXVI:

"*Public utility*' includes every . . . water company . . . as those terms are defined in this section, and each thereof is declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter."

In the same section, XXII, appears a definition of "water company";

"'Water company' includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any water-works for compensation within this state."

In the same section appears a definition of "corporation":

"'Corporation' includes municipal and quasi-municipal corporations."

The above language clearly indicates that the City of Lewiston is a public utility and that its rates are subject to the jurisdiction, control and regulation of the Public Utilities Commission of the State of Maine.

The rates charged by the City of Lewiston for supplying water to the inhabitants thereof are determined by the Public Utilities Commission of the State of Maine, and are intended by said Commission to compensate the City of Lewiston for the supplying of such water. Some of the rates are based on the number of water outlets, and some are meter rates. Just as is the case with a water district or water company the charges increase proportionately by the number of fixtures or by the water flowing through the meter. The charge thus permitted by the Public Utilities Commission is intended to be compensatory rather than a general tax. Sales to the city of such water would be exempt. There is no exemption respecting sales by the city for the reason that the Sales and Use Tax is intended basically to be on the consumer.

In view of the language of the Sales and Use Tax Law, Chapter 250, Public Laws of 1951, and the other statutes herein before referred to, it is the opinion of the Attorney General that the City of Lewiston is subject to and must register as a retail seller under said Sales and Use Tax Law.

If this office can be of further assistance to the City we would be very glad to extend our facilities.

BOYD L. BAILEY
Assistant Attorney General

July 6, 1951

To Division of Animal Husbandry, Department of Agriculture
Re: Change of Name of Licensee – Livestock Dealer Licensee.

Relative to your communication of July 5, 1951, concerning the change of name on the livestock dealer license of Arthur Bickford, it would seem impossible to accede to the wish of Morris Bickford that the 1949 license be