STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

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

amended so as to indicate a partnership relation between Arthur and Morris Bickford.

Application for the license was made by Arthur Bickford in his name and was thus granted. When a partnership relation is intended, the parties must so state publicly by depositing in the office of the town clerk of the town where the business is to be carried on a certificate to such effect. It is a relationship that must be intended and publicly attested to by the parties involved.

In the matter at hand, Arthur Bickford, as an individual, applied for a license and made no mention of a partnership relation. Morris Bickford evidently did not object to this at the time. Then, no State department has the right, after the decease of Arthur Bickford, to establish any other status.

JAMES G. FROST
Assistant Attorney General

July 9, 1951

To Lieut. John de Winter, Director, Traffic Division, State Police
Re: Section 100-B, Chapter 323, P. L. 1951.

Your memo of July 5, 1951, in which you request an interpretation of the penalty in Sec. 100-B, Ch. 323, P. L. 1951, as it applies to the provisions of Sec. 100, Ch. 348, P. L. 1947, has been received by this office.

Chapter 19, R. S. 1944, as amended by Sec. 100, Chapter 348, P. L. 1947, sets a gross weight limit for trucks, a maximum load in pounds carried on any group of axles according to the distance in feet between the extremes of the group of axles, weight per axle, and weight limit per inch width of tire.

The penalty for violation of this section is provided in Sec. 135, Ch. 348, P. L. 1947, a section to be invoked where no other penalty is specifically provided.

Ch. 323, P. L. 1951, adds two new sections, 100-A and 100-B, to Chapter 19, R. S. 1944, as amended. These two sections speak of excess weight, and Section 100-B provides that

> "Any person who violates any provision of section 100 shall be guilty of a misdemeanor on account of each such violation. . ."

The question, then, is how the new penalty provision, Sec. 100-B, Ch. 323, P. L. 1951, which applies only to gross weight, affects Sec. 100, Ch. 348, P. L. 1947, the penalty for which section is presently Sec. 135, Ch. 348, P. L. 1947, which penalty section relates to any violation of any provision of Section 100, Ch. 348, P. L. 1947.

It is our opinion that the Legislature, in enacting Ch. 323, P. L. 1951, and the penalty provision therein contained, had no intention of applying Sec. 100-B of Ch. 323, P. L. 1951, as the only penalty provision for violations of Sec. 100, Ch. 348, P. L. 1947, thereby permitting other provisions of Sec. 100 to be violated with impunity, but that the intent was that violations not covered by Sec. 100-B would still be blanketed by Ch. 348, Sec. 135, P. L. 1947.