STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

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.

The result is, therefore, that there are two penalty sections for violations of provisions of Sec. 100, Ch. 348, P. L. 1947, one of which, Sec. 100-B, Ch. 323, P. L. 1951, is to apply where the limitations of gross weight are violated, the other, Sec. 135, Ch. 348, P. L. 1947, is to remain as the general penalty section, providing for penalties where there is no such specific provision.

JAMES G. FROST
Assistant Attorney General

July 13, 1951

To H. H. Chenevert, Milk Commission
Re: Fees on Certain Sales

Question 1. Facts: A Maine milk dealer with a plant in Waterville buys milk from H. P. Hood (Boston) plant in Newport, Maine. H. P. Hood buys milk from Maine producers f.o.b. Newport and ships to Boston by trailer tanks. No collection of fee (2c per hundredweight) is made on this transaction. H. P. Hood sells a part of this milk to Maine dealers in Maine for fluid consumption in Maine. The question: Can the Milk Commission collect 2c per hundredweight fee on the latter transaction and if so from whom?

Opinion. The fact that H. P. Hood sells milk to the Waterville dealer at Newport, Maine, makes H. P. Hood a dealer within the provision of Section 1 of the Maine Milk Control Laws. As such dealer H. P. Hood is liable under the provisions of Section 6 of said Act, to pay the fee of 2c per hundredweight based on quantity of milk purchased and sold in Maine. The fact that H. P. Hood buys the milk in Maine and may transport some or all of it to Boston and then back into Maine and sell it in Maine does not affect the operation of the law. H. P. Hood can recover 1c from the producer in Maine for such milk as H. P. Hood sells in Maine.

Question 2. Facts: A Maine dealer sells surplus milk to another Maine dealer to be used for manufactured products (not to be resold for fluid consumption). This milk would normally be Class II to dealer, being that part of his total receipts which he was unable to sell at retail or wholesale for fluid consumption (Class I use). The dealer contends that since the milk is Class II anyway, and so computed in his blend price to the producers, selling it to another dealer for Class II use does not affect his price to his producers and does not place this milk in Class I category. Question: Does this mean that such dealer-to-dealer sales are Class I only in such areas where dealer-to-dealer prices are established?

Opinion. Section 4 of the Milk Control Laws provides:

> "The dealer-to-dealer prices for all sales shall be established only in such market areas as are necessary for the stabilizing of market conditions, but all such sales between dealers shall be considered Class I milk."

This means that the prices in all dealer-to-dealer sales can be established only in those market areas deemed and found to be necessary for stabilizing the market conditions, but in any event all such sales between dealers are considered Class I milk. In other words, such sales between dealers are to be considered Class I milk although the stabilizing price element does not apply;