STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

July 31, 1951

To Norman U. Greenlaw, Commissioner of Institutional Service
Re: State Hospital Records

In your memo of July 20, 1951, you ask if Dr. Sleeper, Superintendent of Augusta State Hospital, was within his authority in refusing an attorney permission to examine the case history and report made by the hospital on an inmate of the Maine State Prison, a client of the attorney.

Relative to this question, you are advised that certain records required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, made by a public officer authorized to perform that function, are public records. The fact that records are public does not, however, subject such records to the inspection of all persons.

While you are required by statute to keep public records at the State Prison and perhaps at certain other institutions with regard to matter relative to parole, we find no such requirement in connection with State Hospitals.

Therefore, a rule of thumb which this office believes can be safely followed with regard to attorneys who may inspect such hospital records, is: An attorney should be granted permission to inspect any record which is open to the inspection of that attorney's client. If the request of a person to see records may be refused, then that person's attorney has no stronger right to inspect such records.

This answer would place upon the individual in charge of such records the discretion of ascertaining whether or not the records are such as are not open to the inspection of interested persons.

This office is of the opinion, therefore, that the Superintendent was within his authority in refusing an attorney permission to inspect records which in Dr. Sleeper's opinion were confidential.

With respect to this matter, and perhaps other information of interest to you, we refer you to an opinion written to your office by Abraham Breitbard, Deputy Attorney General, February 9, 1944.

JAMES G. FROST
Assistant Attorney General

August 2, 1951

To Raymond C. Mudge, Finance Commissioner
Re: Chapter 2, Public Laws of 1951

Your memo of July 26, 1951, relative to the Self-Imposed Tax on Sardines, has been received by this office.

You specifically ask:

> "Whose signature may the Commissioner of Finance accept as having authority to sign Work Programs and Requests for Allotments collateral to the operations of the Maine Sardine Tax Committee under the provisions of this Act?"

The problem arises because of the failure of the legislature to include in the statute provisions designating the officers necessary to carry out the functions

of the said committee. There being no such officers designated, you ask who has authority to sign Work Programs and other incidental documents.

It is our opinion that, in the absence of specific provisions, there is an implied power, necessarily present, permitting the members of the committee to elect such officers as are required to execute successfully the statutory duties of the committee.

The proper person, then, to sign such papers as you refer to in your question, would be that member of the committee to whom such power would be delegated, as evidenced by the election of that member as an officer of the committee.

JAMES G. FROST
Assistant Attorney General

August 2, 1951

To W. Earle Bradbury, Deputy Commissioner, Inland Fisheries and Game
Re: Interpretation of the word "Keeper", in Ch. 342, P. L. 1951

This office has received your memo of July 25, 1951, in which you ask if a man should "appoint a person not otherwise employed by him and not a member of his immediate family to patrol his orchard from time to time and kill any deer which he might find doing damage thereto," would a person thus appointed be a keeper in our interpretation of the law?

Chapter 342 of the Public Laws of 1951 amends section 84 of Chapter 33, R. S. 1944, by allowing, in subparagraph I, any person to kill deer where the deer is doing substantial damage to crops, and expressly permits a person to authorize a member of his family or a person employed by him to take such deer.

Paragraph II of the law allows a cultivator, owner, mortgagee, or keeper of said crops to kill deer or other protected wild animals doing damage, as provided in subsection I.

The question you have propounded is whether a person appointed by an owner of crops, not a member of his family or otherwise employed by the owner, comes within the term "keeper".

A "keeper" is one who has the care, custody, or superintendence of anything, or one who has or holds possession of anything. We do not feel that a person, such as you referred to, who would "from time to time" patrol the orchard, should rightfully be designated a keeper.

Another factor which tends to direct us to this conclusion is that the word "keeper" in subsection II of Chapter 342, is not intended to include a part-time patroller, in that the word "keeper" follows the terms cultivator, owner and mortgagee, all of which are such persons who have more than a temporary interest in the welfare of the property.

JAMES G. FROST
Assistant Attorney General