

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

for the calendar years  
**1951 - 1954**

species appears to be endangered; that such large boats fishing in such manner constitute a peril to small boats fishing in such waters; . . .”

The petitioners further allege that they

“believe that the fishing of such species in such waters in order to properly effect conservation should be limited to boats equipped with one six (6) foot drag or two (2) three (3) foot drags and with the time for such fishing limited to the period between daylight and darkness.”

You then ask three questions:

- “(1) May the Commissioner hold a hearing on this petition?
- (2) If a hearing is permissible and the results seem to be in favor of the petitioners, will the Commissioner have the authority to limit the size drags to be used?
- (3) Will the Commissioner have the authority to limit the time of fishing to daylight time only?”

The answer to Question 1 is, “Yes.” Paragraph 6, Section 5, Chapter 34, R. S. 1944, as amended, provides that the Commissioner may declare an emergency and order a hearing held at a time and place to be designated by him “when for any reason the conservation of species appears to be endangered.”

With respect to Question 2, grave consideration should be given to the possibility that the answer, “Yes,” might be a discriminatory answer against those who have expended considerable money on larger boats and consequently hire larger crews. Ultimately, a larger boat with a larger crew, using ten-foot drags, may benefit no more than a smaller boat with fewer crew members using a six-foot drag. The question is potentially a dangerous one and, though the answer may be legally, “Yes,” it might result in needless injury, whereas the problem of depletion of scallops may be rectified by the answer to Question 3.

The answer to Question 3 is, “Yes.” Paragraph 6, Section 5, Chapter 34, R. S. 1944, as amended, provides that the Commissioner may promulgate regulations providing for the *TIMES*, number, weight, and manner in which such fish . . . may be taken from such waters or flats. This provision would give to the Commissioner the right to make rules and regulations limiting the time of scallop-fishing to daylight hours.

You will note that this provision also gives to the Commissioner the right to regulate the number and weight of such fish. A proper regulation relative to number and weight of the fish should also furnish the means of conserving such fish.

JAMES G. FROST  
Assistant Attorney General

November 27, 1951

To Earle R. Hayes, Secretary, Maine State Retirement System  
Re: County Extension Associations

We have your memos of recent date relative to County Extension Associa-

tions, more particularly to that with which Mr. Richard C. Dolloff is connected.

You state in your memo that Mr. Richard Dolloff has received an opinion from this office to the effect that such county associations are eligible for benefits under Chapter 395 of the Public Laws of 1951.

I do not recall having given an opinion to this effect. I do remember Mr. Dolloff's visit to the office and our discussion concerning his constitution and by-laws; and if I recall correctly, I told Mr. Dolloff to submit his applications to your office.

In our opinion County Extension Associations are not eligible to participate in the benefits extended by the Social Security Act by virtue of the contract between the State of Maine and the Federal Government as authorized by Chapter 395 of the Public Laws of 1951.

This chapter was enacted in order to extend to employees of the political subdivisions of the State of Maine the benefits of Social Security. The employee need be an employee of a political subdivision, and this term has been defined to include an instrumentality of the State of Maine, of one or more of its political subdivisions . . . or an instrumentality of the State or one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the State or subdivision, and only if its employees are not by virtue of their relation to such juristic entity employees of the State or subdivision.

County Extension Associations are neither political subdivisions nor instrumentalities of the State. They appear to be well-meaning associations wishing to extend education to rural areas of the State, and this they have been permitted to do upon having their constitutions and by-laws approved by the University of Maine, College of Agriculture. They have also been recognized as the official body for this purpose by the legislature, but they have not in any way been designated as an instrumentality of the State or a body politic and corporate. We therefore feel that until such time as the legislature declares them to be instrumentalities of the State, their members are not eligible for the benefits extended by Chapter 395 of the Public Laws of 1951.

JAMES G. FROST  
Assistant Attorney General

November 27, 1951

To Doris M. St. Pierre, Secretary, Real Estate Commission  
Re: Lectures

We have your memo of November 9, 1951, in which you inquire whether or not the Maine Real Estate Commission may set up a series of lectures and make it mandatory for applicants for real estate licenses to attend a series of these lectures.

Please be informed that it is our opinion that you may not require applicants to attend such a course. The requirements and qualifications necessary in an applicant to apply for a real estate license are set out by statute and