STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

supplied to us does not comply with the statute in that it warns the licensee of nothing except the time and place of hearing. We believe that in order to constitute an adequate warning within the meaning of the statute, the notice should set forth with sufficient particularity all that is necessary to apprise the licensee as to that which he must be prepared to establish in order to retain his license.

Also, while not strictly a matter of law, being more a matter of administration, we would seriously recommend that in all cases where the statutory procedure is predicated upon a confidential complaint, it would be well to make independent inquiry as to the sincerity of the complaint and in so far as administratively possible to secure information not of a confidential nature.

JOHN S. S. FESSENDEN
Deputy Attorney General

December 18, 1951

To Honorable Frederick G. Payne, Governor of Maine
Re: Licensing of State Agencies under Milk Control Law

Reference: Milk Commission memo to you, dated October 19, 1951. .

The Commission's memo of October 19, 1951, refers to a memo which you presumably addressed to the Commission, inquiring as to the possibility of licensing the Department of Institutional Service as a "Dealer" under the provisions of the Maine Milk Commission Law.

We assume that your memo was prompted by the fact that the Commission has licensed the University of Maine as a dealer. That institution having been licensed, it is reasonable to inquire as to the status of institutions within the jurisdiction of the Department of Institutional Service.

So far as the Attorney General's office is concerned, to my knowledge, there is nothing in writing as to the licensing of the University of Maine. We recall that in the spring of 1951 Mr. Fessenden, Deputy Attorney General, was asked by Mr. Chenevert as to whether the Commission could issue a dealer's license to the University. It was pointed out that the University produced milk in the agricultural department, but that the production was insufficient to meet demands. Therefore a considerable amount of milk had to be purchased for the cafeterias and the campus store. It was also pointed out that the milk used in the University outlets was on a sale basis in that the students bought their meals and bought at the campus store whatever they consumed.

As we remember it, it was stated to Mr. Chenevert that this office was not interested in the problem of licensing the University because as a pure proposition of law we had advised them in 1949 that the State itself, meaning the governmental instrumentalities thereof, were not subject to control under the terms of the Milk Commission Law. It is a fundamental principle of law that the State itself is not bound by regulatory legislation unless specifically included in the terms of the legislation.

The Milk Commission Law defines a dealer as a person. . . A person in the same law is defined:

" 'Person' means any person, firm, corporation, association or other unit." The State is not mentioned. For a clear illustration of the principle involved, see the definition of 'employer' in Chapter 26, R. S. 1944 section 2, subsection I:

" 'Employer' shall include corporations, partnerships, natural persons, *the state*, counties, etc."

In view of this pronounced opinion as to the law which, when given, created considerable furor in the industry, it was stated to Mr. Chenevert that this office did not believe the University needed any license to buy milk at the best price it could get. We believe that the issuance of a license to the University altered in no way its legal status, as it had a legal right to buy competitively anyway. In other words, the whole transaction amounts to doing under the color of a license that which can be done anyway.

We are not familiar with the operations of the various institutions and therefore wonder if there may not be a difference between them and the University of Maine as to milk consumption, in that at the University it is actually dispensed through the cafeterias and the campus store, which may not be the case in the institutions.

We should like to suggest as a matter for practical consideration that the licensing of the Department of Institutional Service might create as much furor in the industry as did our orginal opinion referred to above.

So far as any question of law is concerned, we still hold that the institutions don't need licenses to buy competitively. If they do purchase or receive milk for sale, and the Commission chooses to issue a license, it would be of no concern to the Attorney General's office, since such license neither adds to or alters the legal status of the institution.

JAMES G. FROST
Assistant Attorney General

December 18, 1951

To Honorable Frederick G. Payne, Governor of Maine
Re: Indian Reservations

In response to your memo of November 20, 1951, an attached letter from Mr. Edward E. Chase, directed to Mr. Fessenden, relative to the status of Indian lands, the following information is supplied, attention being primarily directed to the possibility of an Indian's owning land on a reservation, no opinion being expressed relative to the sale or lease of appurtenances to the land.

Under the Treaty of 1794 between the Commonwealth of Massachusetts and the Passamaquoddy Indians and connected tribes, certain lands, including Pleasant Point, were assigned to the Indians and confirmed to the said Indians and their heirs forever.

Thus it would seem that the fee simple title to that land is today in the Indians. However, the State, from time to time, has taken control of these lands to the extent that their alienation has been restricted.