

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

for the calendar years  
**1951 - 1954**

You inquire if the above quoted paragraph, pertaining to boats furnished by owners or operators of state licensed boys' and girls' camps includes canoes as well as other boats.

Actually, the first sentence of the above quoted paragraph is susceptible of two interpretations, one of which borders on the ridiculous: — that is, requiring that oars be furnished to canoes. We are of the opinion that such is not the intent of the law, but that a proper interpretation of that paragraph would exclude canoes from the definition of boats which are required by the owners of state licensed boys' and girls' camps to be properly painted, repaired, and fitted with oars.

JAMES G. FROST  
Assistant Attorney General

February 6, 1952

To Honorable Frederick G. Payne, Governor of Maine  
Re: Portland Municipal Court

With respect to whether or not the Acts establishing a Municipal Court for the City of Portland demand that the judge should be a resident of the City of Portland, it is our opinion that there is no part of those Acts which can be used to show that the judge must be a resident of Portland.

The Municipal Court of the City of Portland was established by an Act of the Legislature in 1825 (Chapter CCXCIV, Public Laws).

This Municipal Court was abolished in 1855 (Chapter 159) and in its stead there was established a police court in that city. Here again no provision was made with respect to residency of the judge of that court.

In 1856 the Police Court was abolished and a Municipal Court reestablished (Chapter 204, Public Laws 1856).

Under the Revised Statutes of 1841 there was a general provision (Section 1, Chapter 116) to this effect:

“Every justice of the peace, except those residing in any city or town, within which a municipal or police court now is, or may be established, and the judge of such court is not interested, shall have power to hold a court within his county. . .”

Basically, the jurisdiction of the Justices of the Peace and of the Municipal Courts, at the time in question, was concurrent. The effect of the above quoted section and of Section 14 of Chapter 204, Public Laws 1856, was to prohibit the Justices of the Peace residing in the City of Portland from exercising jurisdiction.

Section 13, Chapter 204, Public Laws 1856, merely provides that, in the event there is a vacancy in the office of the Municipal Court Judgeship, the Justices of the Peace in that city may again exercise their jurisdiction and hear civil and criminal trials.

It is upon consideration of the provisions of the Revised Statutes of 1841 and their relationship to Section 13 of Chapter 204 of the Public Laws of

1856 that we are directed to the conclusion that Section 13 in itself cannot be construed to mean that a judge should be a resident of the City of Portland. . . .

JAMES G. FROST  
Assistant Attorney General

February 11, 1952

To W. Earle Bradbury, Deputy Commissioner, Inland Fisheries and Game  
Re: Fish Screen at Bear Pond

We have your memo of January 24, 1952, relative to Chapter 85, Resolves of 1951.

That part of the Resolve with respect to which you submit your question reads as follows:

“. . . Provided, however, that the Waterford Fish and Game Association shall assume all liability for the keeping of said screen at all times free from sticks, leaves and all debris, so that the same will not become clogged and prevent the free running of water through the same; . . .”

You ask: “If the screen is not kept clean and the water in the pond is raised to a level such as to cause damage to land owners adjacent thereto, who is the liable party in case of a civil suit for damages?”

It is the opinion of this office that the State is held free from liability in such a matter and that, properly, the Association or any one or more of its members are the liable parties.

JAMES G. FROST  
Assistant Attorney General

February 12, 1952

To Harland A. Ladd, Commissioner of Education  
Re: Status of Academies and Institutes

By your memo of February 5, 1952, this office is asked to determine the eligibility of academies and institutes in Maine to participate in the Federal vocational educational program as administered by your department.

You call attention to the fact that subsidization of such a program through funds made available to the State through Federal legislation is available only to public schools and not to those institutions of learning which are private in character, and you state that the United States Office of Education has requested that the status of academies and institutes be resolved with respect to their receiving this aid.

This office has felt for some time that the academies and institutes within the State of Maine cannot arbitrarily be classified as private on the basis of their names or titles. There is always the possibility that a school bearing the title “Academy” is, in fact, for some reason or other — perhaps under the provisions of Section 103, Chapter 37, R. S. 1944 — a public school.