

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

for the calendar years  
**1951 - 1954**

department. Thus, expenditures by a department for a purpose outside the sphere of its activity, as delineated by the statute would be improper. By our interpretation, the phrase, "and other expenses incident to the administration of said department," might read: "incident to the *managing in a manner not inconsistent with the statutes relating to* said department."

It is our opinion, applying the principles above stated, that any extended educational program including the accompanying public relations and publicity over and beyond the accompanying public contact customarily engaged in by a department of the State must first receive the approval of the legislature.

Our attention has not been directed to, nor have we been able to find, any provision in Chapter 33 which would permit of a full-time educational service.

JAMES G. FROST  
Assistant Attorney General

May 2, 1952

To H. B. Peirson, State Entomologist  
Re: Tree Surgery Licenses

This office has your memo of April 24, 1952, relative to Sections 51 and 52 of Chapter 32 of the Revised Statutes, especially:

" . . . and may be renewed by the board for succeeding years without further examination, upon payment of the fee hereinafter required, provided any person, firm or corporation receiving such certificate shall be responsible for the acts of all employees in the performance of such work."

You state that if an applicant has dropped his license to go into other work and has applied within a two or three year period for his renewal, your Board feels that it may issue the renewal certificate upon requiring the applicant to pay back fees over the years for which he held no license, without taking another examination. You ask if this is a proper procedure under the law.

The rules and regulations promulgated by your Board provide that if application is made within one month following the expiration date of a certificate, a demit covering a period of two years may be issued without charge, entitling the holder to obtain a renewal certificate for one year upon the payment of the regular \$3. fee; and again at the discretion of the Board an applicant whose license has expired may be permitted to pay for the intervening years and thus be granted a renewal certificate without examination.

The authority to make rules and regulations is a delegation of authority from the legislature to particular administrative authorities. This power has never been considered a power to make law, but a power to carry into effect the law of the lawmaker as expressed by statute. Delegation of power cannot be extended to the making of rules which subvert the statute reposing such power or which are contrary to existing laws or which repeal or abrogate statutes.

You will note that the above quoted phrase from Section 52 of Chapter 32 provides that the license may be renewed by the Board for the succeeding years. Applying the general rule with regard to power to promulgate rules and

regulations we must conclude that demits or the granting of renewals on payment of fees for years in which no license has been held is contra to the sentence which reads that the certificate "may be renewed by the board for succeeding years." The term "succeeding" means the next regular or subsequent term, in this case, year. It is therefore our opinion that renewals must be granted for "succeeding" years and that when a person does not hold a license for a period of a year or longer he must be required under your law to submit to another examination.

We recommend that, if you desire to continue the practice of granting renewals in the event an applicant has been without a license for not more than two or three years, this privilege be granted in your law by the next legislature.

JAMES G. FROST  
Deputy Attorney General

May 7, 1952

To Harry E. Henderson, Deputy Treasurer of State

Re: Attestation of Signature of Treasurer of State on Certain Bonds

We have your memo of April 29, 1952, in which you state that in so far as registered bonds are concerned the attesting officer is the Finance Commissioner and in which you ask who is the proper person to attest the signature of the Treasurer of State on unregistered bonds.

There is no doubt that the Finance Commissioner is the proper person to attest the signature of the Treasurer of State on registered bonds. With respect to unregistered bonds we have found no statute which provides for signatures on such bonds. There being no statute regulating the signatures on unregistered bonds, we feel that in the Council Order authorizing and empowering the Treasurer of State to issue bonds there should also be a provision authorizing the signatures to be affixed to the bonds. In other words, there should be a paragraph in the Council Order stating that such bonds shall be signed by: 1) The Governor; 2) the Treasurer of State; and 3) attested by either the Auditor or the Finance Commissioner. We feel that there should be some authorization for such signatures, and in the absence of any authorization by statute that it should be by order of the Governor and Council. A choice should be made between the Auditor and the Finance Commissioner, and in view of the statute relative to registered bonds we feel that the Finance Commissioner is a proper person to attest the signature of the Treasurer of State on unregistered bonds.

JAMES G. FROST  
Deputy Attorney General

May 7, 1952

To Roland H. Cobb, Commissioner of Inland Fisheries and Game

Re: Liability – Swan Island

This office has received your communication inquiring as to the State's liability in case of accident to visitors to Swan Island. You state that you have