STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

the intent of our statutes and within the intent of the Soldiers' and Sailors' Relief Act. This Act, briefly, provides that soldiers do not lose their residence or domicile solely by being absent therefrom in compliance with military or naval orders. A soldier is not deemed to have acquired a residence or domicile in or to have become a resident of another State while and solely by reason of being so absent; but the Act contemplates that, with respect to automobiles the license fee or excise required by the State, Territory, or Possession of which he is a resident or in which he is domiciled, has been paid.

We sincerely hope that these answers have been helpful to you and we should like to hear from you in the event that you disagree with this letter.

JAMES G. FROST
Deputy Attorney General

May 26, 1952

To Harland A. Ladd, Commissioner of Education
Re: Six-hour Credits

This office has been asked if our opinion of May 8, 1952, relative to Section 201 of Chapter 37, R. S. 1944, can be interpreted to mean that teachers who do not acquire six semester hours of study within each period of five years are precluded from teaching in the schools of the State of Maine.

Relative to this question it appears that there are several different permits granted teachers in this State, ranging from a certificate to substandard teaching permits. Our opinion of May 8th merely states that the five-year period required in Section 201 cannot be extended further; that is, a year of grace may not be granted in hardship cases. Such a decision does not preclude teachers from being granted substandard permits until such time as they have fulfilled the requirements of Section 201 relative to obtaining another certificate by virtue of their having completed certain educational requirements.

JAMES G. FROST
Deputy Attorney General

June 3, 1952

To Allan L. Robbins, Warden
Re: Anthony Rockford

You request me to advise you respecting your letter dated May 29, 1952, with regard to a writ of habeas corpus issued by a Federal judge in Massachusetts in order to bring a prisoner from Thomaston to a special grand jury hearing to be held in Boston on June 5th.

The United States Code, Title 28, 2241, gives the power to issue writs of habeas corpus to any Federal judge, Supreme, Circuit, or District. The statute provides that no writ of habeas corpus shall be issued respecting a prisoner except in five enumerated cases. The first four relate to prisoners in Federal courts, those in custody for violating Federal law, those in custody for violating the Federal Constitution or a treaty, and foreign citizens claiming right or authority under the law of foreign states and the law of nations.

The fifth subdivision reads:

"(5) It is necessary to bring him into court to testify or for trial."

I have telephoned the Hon. Edward Harrigan, Assistant District Attorney, who advises me that the writ in question is a habeas corpus ad testificandum. The writ is directed to three persons, according to Mr. Harrigan — the Marshal in Massachusetts, the Marshal in Maine, and the Warden of the Thomaston Prison. The Warden is directed to turn the prisoner over to the Maine Marshal, who is directed to turn him over to the Massachusetts Marshal. The Massachusetts Marshal is directed to produce him before the Grand Jury in order that he may testify. After the testimony is given, the writ directs the Massachusetts Marshal to turn the prisoner over to the Maine Marshal who, in turn, is directed to return the prisoner to the State Prison.

I find no case involving the conflict between Federal and State jurisdictions in the matter of a writ ad testificandum. Having made independent search, I note that the editor of Annotated Cases 1915 D. 1028 also notes no decision regarding the power of a State to decline to obey such a writ.

Initially, the writ is issued as a matter of discretion. *In re Thaw*, 1908, 172 Fed. 288. In this case the judge declined to issue a writ of habeas corpus ad testificandum to the superintendent of the New York State Hospital for the criminal insane to produce the body of Harry K. Thaw in order that Mr. Thaw might testify in a bankruptcy proceeding. The court found it had power to issue the writ but declined to issue it since it appeared that Thaw's deposition would do just as well.

Chief Justice Marshall considered such a writ as early as 1807 in *Ex Parte Bollman v. Swartout*, 4 Cranch 97. He said, *obiter*,

> "This writ might unquestionably be employed to bring up a prisoner to bear testimony in a court, consistently with the most limited construction of the words in the act of congress. . ."

Respecting the responsibility of the marshal having the prisoner in charge, there seems no question to some of the judges that the writ of habeas corpus ad testificandum is for the extremely limited purpose of getting the prisoner into court where he is to testify and that afterward the prisoner is to be returned in accordance with the wording of the writ. *U. S. Ex rel. Marsino v. Anderson*, 1927, 18 Fed. 2d. 133. Here the prisoner was taken from a Federal penitentiary to Illinois in order to testify in a bankruptcy proceeding. While he was there his prison term expired. He had been convicted in Massachusetts and was due there to serve a term under the State law. Being out on the writ of habeas corpus ad testificandum, he sought to have the writ amended so that he would not have to return to the Federal penitentiary. Nevertheless, the court held that he must return to the Federal prison. The court further stated that whether, by good behavior, he was then entitled to be released is a matter for the prison authorities. The court indicated regret that not all the facts had been known when the writ was framed. The court clearly stated that the writ may not be used to prevent justice.

It is my opinion that the Warden of our State Prison should honor the writ of habeas corpus. All he is doing in effect is to permit the taking effect of Federal process. The writ takes the place of an ordinary subpoena. The Federal court via its marshals will have absolute responsibility for the safety and

custody of the prisoner. It is the responsibility of the United States Marshals to return the prisoner.

ALEXANDER A. LaFLEUR
Attorney General

June 9, 1952

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Beaver Damage

You have asked this office what action a warden can take to eliminate beaver from those areas in which they are causing damage. You state that their activity floods roads and fields where people raise meadow hay, and ask if it is possible for the wardens to trap or shoot beaver when they are doing such damage.

Section 100 of Chapter 33 is that section relating generally to beaver, and the fifth paragraph of subsection III thereof states that no person shall take beaver anywhere in the state at any time except during such open season as may be declared by the commissioner in accordance with the provisions of this section.

Section 84, subsection II provides that under certain conditions set out in the first paragraph of 84 any protected wild animal *except* beaver, or birds may be killed by the owner or keeper of the property mentioned in subsection I. Subsection I, however, states that such animal may not be killed when the only damage done is to grass.

It is therefore the opinion of this office that special legislation must be enacted before you can move in the direction of eliminating beaver which are causing damage to hay.

JAMES G. FROST
Deputy Attorney General

June 9, 1952

To Fred M. Berry, State Auditor
Re: Extension of Credit

This office is in receipt of your memo requesting the opinion of this office relative to the legality of the extension of credit by State agencies in instances where sales of material or services are involved. You draw our attention to a memo dated November 25, 1949, written by the former Attorney General, Ralph W. Farris, in which he stated that he was of the opinion that the State Prison did not have authority to do a credit business.

It is the opinion of this office that the memo of Mr. Farris in 1949 relates not only to the State Prison, but is the general rule with respect to all State departments. We can find no general law authorizing a State department to extend credit for the sale of materials or for services, and we feel that such extension of credit is in reality an extension of the credit of the person authorizing such credit.