

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

for the calendar years  
**1951 - 1954**

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.

This opinion does not in any way affect the rights of certain institutions to continue functioning under their statutes, which may permit instalment paying for board and room.

JAMES G. FROST  
Deputy Attorney General

June 9, 1952

To Clyde N. Manwell, Park Planner  
Re: Fire Insurance on Buildings under Construction

This will acknowledge receipt of your memo of May 22, 1952, to which you attached a paragraph from your standard specifications covering the contractor's responsibility for work. You state that it is your opinion that this paragraph protects you with respect to fire coverage while buildings are under construction.

The paragraph referred to reads in part as follows:

"Until final acceptance of the work by the Engineer, it shall be under the charge and care of the Contractor, and he shall take every necessary precaution against injury or damage to the work by the action of the elements, or from any other cause whatsoever. . . The Contractor shall bear all losses resulting to him on account of the amount or character of the work . . . or on account of the weather, elements, or other causes. . ."

"Injury or damage by the action of the elements" is a somewhat uncertain expression. Injuries to buildings by wind, rain, frost and heat are spoken of as injuries by the elements, but courts have stated that unless fire is caused by lightning or other superhuman agency, then the injury is not within the meaning of "element".

It is the opinion of this office that to protect such property properly, the provision should be expressly stated in the specifications. Paragraph 11 does not adequately protect the State, in that there is no positive provision placing the liability upon the contractor in the event the building is consumed by fire resulting from causes other than an "Act of God".

While you are perhaps right in your opinion that you are covered by this paragraph, in that we feel that a court of law would so interpret paragraph 11, we also feel that the burden is upon the State to provide expressly for such fire coverage, because suit should not be necessary in order to interpret the provisions of our contracts.

We would therefore recommend that a provision be inserted in paragraph 11 expressly placing the liability upon the contractor in case fire should consume or damage the building prior to the time it is completed.

JAMES G. FROST  
Deputy Attorney General

June 10, 1952

To Marion B. Stubbs, State Librarian  
Re: Files of the State Paper

This will acknowledge your memo of May 21, 1952, in which you state