

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

Section 116 of Chapter 80 is that section which provides that upon petition of 10% of the legally qualified voters of any city, town, etc., the State Department of Audit shall make *another* audit.

It is the opinion of this office that the second paragraph of section 116 presupposes a prior audit having been taken for the year which the petition seeks to be re-audited. As a result, your department should not audit the books of the town for any year in which a previous audit has not been made.

You quote Chapter 57 of the Private and Special Laws of 1947, amending Chapter 43, section 5, of the Private and Special Laws of 1927:

“The town of Dedham shall annually pay over to the treasurer of said village corporation out of the taxes collected from the inhabitants and estates within said corporation’s territory a sum equal to 45% of all the town taxes, exclusive of the state and county tax, collected from said inhabitants and estates.”

You then state that the interpretation which has been placed on this statute is that the town pays over to the Lucerne-in-Maine Village Corporation only 45% of actual moneys collected, and you ask if this is a proper interpretation.

A close reading of Chapter 43, P&SL 1927, as amended, shows that in all instances the word “collected” rather than the word “assessed” is used. This office is of the opinion that the interpretation hitherto given to the above quoted section of Chapter 43 is a correct one and that the Town of Dedham should pay to the Lucerne-in-Maine Village Corporation only a sum equal to 45% of all the town taxes collected.

JAMES G. FROST
Deputy Attorney General

August 6, 1952

To Honorable Frederic H. Bird, Councillor, Fifth District

This office has been asked to ascertain what rights a beneficiary under the Maine State Retirement System plan for State Employees has with respect to receiving income upon the death of a retired member under the following circumstances:

The husband retired on May 16, 1952, and died on July 16, 1952, without having made a selection as to his optional allowances permitted under the law.

Chapter 367 of the Public Laws of 1951, section 8, provides that under just these circumstances, where a member dies after attaining eligibility for retirement but before an election becomes effective (here no election was made), benefits payable on his account shall be the same as though he had elected Option 2.

Option 2, found in Chapter 384, section 10 of the Public Laws of 1947, provides that a reduced retirement allowance shall continue after the death of the retired member for the life of the beneficiary nominated by him by written designation duly acknowledged, etc.

It therefore appears that the law clearly embraces the situation outlined above with respect to your constituent and that she does not have power or right to request a lump sum payment, but will receive a monthly allowance.

ALEXANDER A. LaFLEUR
Attorney General

August 12, 1952

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Permits to Hunt and Fish on Property of Dow Air Force Base

Copies of your letter of August 6th to Captain Robert L. DeMunck and his to you have been carefully considered.

His letter suggests opening certain areas owned by the Base to hunting and fishing by permits to be granted at or by the Base.

Hunting and fishing in the State are regulated by the legislature except for certain delegation of regulation to you and your department.

The legislature has provided closed time and, by inference at least, open season and the specified locations where fish and game may or may not be taken.

It is provided that members of the owner's family may hunt on their owned farm premises without license.

It does not appear that a permit to hunt or fish can be issued by any but your department and then but for the time and place authorized by the legislature.

It may be suggested that, if there is any restriction of hunting or fishing in the areas mentioned which might well be eliminated or relaxed, a change in the direction desired be suggested to the incoming legislature for consideration.

If, however, the present problem is the admission of legally licensed hunters and trappers to this area by the party who has the right to restrict or prevent them from hunting and fishing in that particular spot and it is desired merely to restrict the numbers who may exercise the privilege for reasons which appear to you to be valid, then we think that your cooperation could be given as requested by the official at the Dow Base.

NEAL A. DONAHUE
Assistant Attorney General

August 22, 1952

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Fishing Rights on Streams

. . . You ask if a man owning property on both sides of a stream running from Pleasant Pond may post the stream, "No Fishing," and prevent people from wading the stream while fishing.

The undisputed general rule is that the public has the *prima facie* right to