

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

licensed so to do, means employees regularly working for the owner of the land in question at other occupations than the sale of real estate, their sales being incidental to their employment and not their whole employment. The exception is not intended to and does not permit full time engagement in the business of selling real estate such as is contemplated by subdivision of lots and engagement in the real estate business.

A seller of another's lots as an occupation, if not a real estate salesman employed by a real estate broker, is himself acting as a broker and should be so licensed.

NEAL A. DONAHUE
Assistant Attorney General

September 2, 1952

To R. C. Mudge, Finance Commissioner
Re: Contingent Fund – Pier at Bar Harbor

Your inquiry concerns payment from the Contingent Fund for items in connection with construction of a terminal or pier at Bar Harbor to be the Maine terminal of an International Ferry.

This work was authorized to be done by the Directors of the Maine Port Authority, which by section 2 of Chapter 219, P&SL 1951, is a "public agency of the State of Maine".

The said Directors have satisfied the Governor of the need for these funds wherewith to carry out the direction of the Legislature and they have not the money available. The work to be done presently appears in the nature of an emergency. It is therefore the opinion of this office that use of the Contingent Fund is legal for the purpose.

The question of indebtedness issued or liabilities incurred by said Port Authority becoming an obligation of the State of Maine is not here involved.

NEAL A. DONAHUE
Assistant Attorney General

September 3, 1952

To Robert L. Dow, Commissioner, Sea and Shore Fisheries
Re: Cutting up of Lobster Meat for Processing Purposes

Your inquiry, bearing date September 2, 1952, asks: "Is it legal for a person, firm or corporation to cut up the tail meat of lobsters in the preparation of a quick frozen lobster product?"

Aside from the right of hotels and restaurants to cut up such lobster meat immediately prior to and for the purpose of serving it to customers on the premises, the right to cut it up is by R. S. Chapter 34, section 120, restricted to the further and final exception that "any person may cut up such lobster meat (the tail section) immediately prior to and for the purpose of *canning*".

Lobster meat may be sold canned, frozen or fresh, but the tail section may not be cut up for freezing as is permitted for canning. By canning is meant, as used in said section, "processed and hermetically sealed in all metal or metal and glass containers."

With the exceptions here noted, the statute provides:

"It shall be unlawful to possess, sell, offer for sale, deliver, ship or transport any tail section of lobster meat that is not whole and intact as removed from the shell."

The word "canning" is thus defined in Funk and Wagnall's New Standard Dictionary: "The act, process, or business of preserving fruits, vegetables, or meats by partial cooking, or other process, and hermetically sealing in tin cans, glass jars," etc.

Webster's New International Dictionary (1929) defines "can" as follows: "To put in a can or cans: to preserve by putting in sealed cans; to tin."

In other editions of Webster's Dictionary the verb "can" is defined as signifying: "To preserve by putting in sealed cans. Canned goods, a general name for fruit, vegetables, meat, or fish, preserved in hermetically sealed cans."

NEAL A. DONAHUE
Assistant Attorney General

September 9, 1952

To Earle R. Hayes, Secretary, State Retirement System
Re: Participating District — rights of employee.

Reference to the law brings out that the system at present is composed of two kinds of membership, which may be adopted by a city for its employees or such groups of its employees as it may decide.

An employee is a member of such group as the city chooses to provide for as regards retirement rights and benefits. His rights accrue only by membership.

The city, as participating district, elects which of the two Acts it will operate under, the 1942 Act, or the 1947 Act as amended. The 1942 Act is without amendment at present; a future legislature may amend it except as to any vested rights.

A participating district is authorized to extend any benefits of the Act extended to State employees.

You inquire whether there is any way for an employee of a participating district, electing to come into the State Retirement Plan, who has had prior service to apply towards his eligibility for benefits, to compel the district to give him full credit for such prior service.

It may be sufficient to say that it is the city and not the employee that decides under which Act the benefits will be derived. The employee is but one member of the participating group. Moreover, during the period when there was an option to join or not to join, the employee was entitled only to such creditable prior service as the local district was willing to match. This covers a period when the Act was not in effect and the employee is