

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

November 3, 1952

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Shooting at Cars in Attempt to Stop Them

Your memo recites the following factual situation: "Two wardens attempt to stop a car in the night time, after seeing the occupants spot an orchard, using a flashlight. They are in full uniform, in the middle of the road, and signal the driver to stop. Instead of stopping, the driver accelerates his speed and the wardens have to jump, narrowly missing being hit by the automobile," You then ask: "Do the wardens have a right, after the car has gone by, to shoot at a tire?"

The answer is in the negative.

Section 68 of Chapter 33 prohibits hunting by aid or use of any light or lights carried on, in or attached to an automobile. There appears to be no specific penalty section attached to this violation, so it therefore comes within the general penalty section, section 119 of Chapter 33. As a Result, this violation of our laws is a misdemeanor, and no officer has a right to shoot to kill or to perform an act which may well be presumed to result ultimately in the killing of one who has committed a misdemeanor. The action of the driver resulting from an attempt of the wardens to stop him should, of course, be considered, but we remain of the opinion that under such circumstances, arising from the committing of a misdemeanor, firearms should not be used to prevent escape.

JAMES G. FROST
Deputy Attorney General

November 4, 1952

To Allan L. Robbins, Warden, Maine State Prison
Re: Time out on Bail

You state that a present inmate of your institution was admitted to the prison on November 14, 1950, to serve 5 to 10 years, that on July 30, 1951, he was released on bail, having presented an application for habeas corpus, and that the case was referred to the Law Court for determination. Apparently the Law Court ruled adversely to the inmate and he was returned to the prison on November 23, 1951, by court order to serve the remainder of his sentence. You ask whether his time goes on while he was out on bail just the same as though he were within the prison serving his sentence, or whether it would stop when he was released on bail and start anew on his being returned to serve his sentence.

A sentence of imprisonment is satisfied only by the actual suffering of the imprisonment imposed, unless remitted by death or by some legal authority.

We are of the opinion that time elapsing while a man is released from prison on bail until re-imprisonment cannot be counted as time in prison. See *State v. McLellan*, 83 Tenn. 52.

JAMES G. FROST
Deputy Attorney General