

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

November 26, 1952

To C. P. Osgood, Chief, Div. Inspection, Agriculture
Re: Pack of Herring

This office has been asked to determine if it is legal to pack imported herring in 5-oz. cans with the label "herring", the same to be packed between December 1st and the 15th day of the following April.

The answer is, No. By definition in Chapter 27, section 200 of the Revised Statutes the term "sardine" shall be held to include any canned clupeoid fish, being the fish commonly called herring, particularly the clupea harengus. Section 34 of Chapter 34 provides a penalty for canning any herring less than 8" long within the above mentioned period. The fish packed are sardines notwithstanding the word "herring" is stamped upon the label.

JAMES G. FROST
Deputy Attorney General

December 2, 1952

To Ober Vaughan, Director, Dept. Personnel
Re: Rule 12.3 - Violation

You have asked this office for an opinion as to whether or not the Personnel Board has the authority, whenever a violation of Rule 12.3 occurs, to restore employees to the State service without loss of pay or seniority; also whether or not the Board has the authority, under the Personnel Law and Rules, to require departments to expend funds for this purpose whenever a violation occurs.

Paragraph 12.3, referred to above, defines the manner in which appointing authorities may lay off employees.

Section 4, paragraph V, of Chapter 59 of the Revised Statutes, as amended, provides that it is the power and duty of the Personnel Board "to enforce through the director the observance of the provisions of this chapter and the rules and regulations made thereunder."

Rule 13.1, paragraph D, states that the Board, upon receipt and consideration of the protest of an employee or appointing authority, after investigation and hearing, shall indicate to the Director such remedial action as it may deem warranted.

A reading of the statutes and of the Rules and Regulations promulgated under the statutes relating to the Department of Personnel, would indicate that it is the clear intent of the authors of the law and the rules that the various State departments and bureaus abide by these laws and rules. The above quoted section of the law shows the intent of the legislature that the provisions of the chapter be enforced by the Board through its Director and the necessary remedial action indicated to the Director, as the Board warrants.

The Board has every right under these laws and rules and regulations to demand of the appointing authority that employees who have been laid off

in violation of the laws be restored without loss of pay or seniority, and in all equity it can only be said that in such an instance the person be reimbursed from the department funds for that purpose.

JAMES G. FROST
Deputy Attorney General

December 3, 1952

To Honorable Frederick G. Payne, Governor of Maine
Re: Maine Maritime Academy – Request for Temporary Loan from Contingent Fund

By virtue of Chapter 24 of the Private and Special Laws of 1947, the Maine Maritime Academy was declared to be a public agency of the State of Maine for the purposes for which it was established.

We are of the opinion that the Maine Maritime Academy is such a public agency as can make a request upon the Contingent Fund, and if, in the opinion of the Governor and Council, the request is a necessary expense within the provisions of the law setting up the Contingent Fund, then such a transfer would be legal.

JAMES G. FROST
Deputy Attorney General

December 29, 1952

To William O. Bailey, Deputy Commissioner of Education
Re: Reimbursement to Towns for Architects' Fees

The following question has been submitted to us for our consideration and answer:

“Under what conditions, if any, is it legal for us to reimburse towns for architectural plans when such projects are financed by the Maine School Building Authority, and title is held by the Authority until the debt is amortized?”

The right to reimburse towns for architectural plans is given to your department by section 195 of Chapter 37 of the Revised Statutes of 1944, as amended. The law sets up a permanent school fund, and the interest therefrom shall be allocated to towns by the commissioner of education for the purpose of surveying school systems and developing school plans. The allocation shall not in any case exceed one-half of the cost of such survey or plans.

The problem here may arise from a misunderstanding of the true nature of the above-mentioned Authority and its relations with the towns. The Authority is merely a financing agency, and its legal relationship with the various towns is determined by a so-called lease. Under this arrangement the Authority holds legal title; the town pays rent; when the entire obligation is liquidated, the Authority must convey the property to the lessee town.

Is the lease a real lease? Our Law Court has spoken on this subject in passing upon a similar lease, designed to carry out the very purpose for which