

# MAINE STATE LEGISLATURE

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April 3, 1953

To Leon L. Spinney, Judge, Brunswick Municipal Court  
Re: Shellfish Laws

We acknowledge receipt of your letter of March 24<sup>th</sup> 1953, in which you request our interpretation of section 90 of Chapter 34 of the Revised Statutes and state the following situation:

"A is a clam digger. B is a buyer. I can easily understand that the statute in question applies to A. Does it apply to B?"

We realize that any opinion expressed by us to you is not binding upon you in your capacity as Judge of the Brunswick Municipal Court, and this is therefore an unofficial opinion. We are, however, pleased in this instance to give you our interpretation of the statutes.

Section 90 of Chapter 34 applies equally, in our opinion to A, the digger, and to B, the buyer. In other words, it is our opinion that the word "or", as used in the first sentence of section 90, means "or" and not "and".

It may be helpful in considering this problem to set out briefly the history of this section of the law.

1) It provided, in its original form enacted by Chapter 120 of the Private and Special Laws of 1920: "W

"Whoever digs or has in his possession or offers for sale soft shelled clams less than 2 inches in the longest diameter, to the amount of more than 15% of any batch, shall be punished by a fine of not less than \$10 nor more than \$50 for each offense, provided however that the commissioner of sea and shore fisheries in his discretion may, however, issue permits to persons who dig clam seed for propagation purposes."

2) In 1937, the wording of this first sentence was changed as follows (Chapter 109, Public Laws of 1937):

"No person, firm or corporation shall dig or have in his possession or offer or expose for sale soft-shelled clams. . ."

The penalty clause read:

"Any person, firm or corporation who digs or has in his possession or offers for sale soft-shelled clams in violation of any of the provisions herein stated. . . shall be punished. . ."

3) Chapter 168 of the Public Laws of 1943 amended paragraph 2 above by inserting the word "or quahogs" after "soft-shelled clams" and it appears in this amended form as section 83 of Chapter 34 in the Revised Statutes of 1944.

4) Subsequent to 1944 this statute was further amended. Thus, in 1947, the first sentence of section 83 was amended to read as follows:

"Whoever digs or has in his possession  
quahogs or soft-shell clams less than 2 inches  
in the longest diameter. . ."

This amended, with the exception of the insertion of the term "quahogs", changed the section back to what it was substantially in 1920. It should be noted that as yet the provision whereby the commercial shellfish license of the offender would be suspended on conviction was not present.

5) In 1951, this section was amended to provide that on the second and subsequent convictions thereof, the commissioner might in his discretion suspend the offender's commercial shellfish license for varying periods of time according to the number of offenses committed.

You state that your opinion that the statute applies to A and not to B is at least partially based upon the fact that the penalty provides that the offender's commercial shellfish license may be suspended, and that B, a good faith purchaser, not having such a license, is not considered under the law.

To return to 1) above, such suspension of license was not then (1920) provided for. We think it would be a fair statement of the law, under such circumstances, to state that either A or B would have been liable for a violation of that law in 1920. This law remained in effect without the additional license suspension provision until 1951. It would be your contention, then, that by adding the license suspension provision of 1951, such provision in effect eliminated non-commercial shellfish license holders from being considered under the statute.

We do not think that after so many years of interpreting this law to include both A and B, the primary purpose of all Sea and Shore Fisheries Laws, conversation, should be defeated by such an interpretation of the amendment.

While we can find no reference in the Legislative Record to the intent of this statute, inquiry among legislators, ex-commissioner of Sea and Shore Fisheries, and the Director of Legislative Research reveals that the intent was clearly to include B as well as A. From a conservation point of view, it is much easier to regulate the clam industry at a level where the "big" business is done, rather than on the beach or the shore with individual clam-diggers. If the purchase and transportation of "short" clams can be controlled; if the person in the business knows he may not possess "short" clams, then the State has taken a long step in conserving its seed

clams, because that person will be more certain to purchase clams from a digger who tries to sell legal size clams.

Again, a clam is a pretty difficult thing to identify with relation to the digger. From the point of view of proving beyond a reasonable doubt that clams in the possession of B were dug by A, such proof would, in the vast majority of cases, be impossible. If the State were forced to limit itself to action against A, then any and all statutes attempting to conserve our clam industry might well be completely discarded.

In considering all these factors we feel compelled to an interpretation that "or" must mean "or", or else its use has little or no effect at all.

With respect to the thought that the legislature could not have meant it to be a crime for B or B's wife to go to a market and buy clams in good faith and then find himself in the position of having in his possession "short" clams, we would draw attention to the "short" lobster law.

Section 117 provides that no person shall buy, sell, expose for sale, give away, transport or have in possession any lobster except that which is of legal length as determined by the State measure. Probably neither you nor I have in our possession the State double-gauge lobster measne; but there is no doubt in my mind but that if either of us are found with "short" lobsters in our possession, then we face the consequences.

Reference to section 131 reveals that any one having a license to take lobsters may lose his license by action of the commissioner, if he has short lobsters. This makes this statute the same as section 90, except that the license suspension provision is contained in a separate statute; but it nonetheless does not mean that if you don't hold a license, then the statute is not applicable.

A further reason for our conclusion is due to another result that would be reached if the statute were interpreted to apply to A only, because he has a commercial shellfish license.

Assume that A, the digger, has no license. The only answer under such an interpretation would be that A, not having a commercial shellfish license, could dig clams up to 1/2 bushel each day (section 110-A), dig only seed clams (clams of illegal length) and be immune from the law if he is found with such clams in his possession, because he has no license to dig; and this where even a batch or lot of less than a peck is considered to be within section 90. (See last clause of first paragraph.)

It is for these reasons that we believe that section 90 should be interpreted literally, with the words given their ordinary, well-understood meaning.

In conclusion we would say that if B is a purchaser in good faith and a final consumer, then special consideration should be given to his circumstances. But not when B intends to negotiate a further sale of the clams he has purchased.

James Glynn Frost  
Deputy Attorney General

jgf/c  
cc: Commissioner, Sea and Shore Fisheries