

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

been reduced by an amount equivalent to the number of such weeks of disqualification times his weekly benefit amount.

"The Commission's Regulation 9, M, states that the weekly benefit amount to be used in disqualification is the weekly benefit amount in effect for the actual week of disqualification.

"The question arises as to whether we should redetermine the amount of disqualification for all such cases subsequent to April 1, 1953, applying the new benefit schedule which becomes effective August 8, 1953."

In our opinion the answer is, "Yes," for substantially the same reasons as stated in answer to Question 2.

Under Chapter 326, P. L. 1953, approved May 6, 1953, entitled, "An Act Relating to Benefits for Partial Unemployment under Employment Security Law," amending Section 13, subsection III, R. S. 1944, Chapter 24, as repealed and replaced by Section 1 of Chapter 430, P. L. 1949, which provides a new schedule of deductions for partial unemployment, this schedule is effective retroactive to April 1, 1953, whereas the amendment becomes law on August 8, 1953, and you raise the following question.

"Was it the intent of the Legislature that the Commission review all partial claims filed prior to August 8, 1953, the effective date of this legislation — (a) setting up overpayments or by effecting adjustments, as the case may be, or (b) should this schedule be applied after August 8, 1953, only?"

"If answer to (a) is yes, a further question arises as to whether or not the Commission would be carrying out the intent of the Legislature by effecting redeterminations involving this schedule of deductions at an earlier date, say June 15, 1953. Would any overpayments resulting therefrom be collectible under any circumstances?"

It is our opinion that the answer to (a) is, "No." The Commission should not attempt to collect payments made under the present law which on August 8, 1953, because of an amendment which is retroactive, are in excess of the then rate of payment. This would violate the intent of the law as referred to in answer to Question 2 above. This new schedule should be applied to the law retroactive to April 1, 1953 but no attempt should be made to collect the overpayments, if any.

ALEXANDER A. LaFLEUR

Attorney General

June 25, 1953

To Ronald W. Green, Chief Warden, Sea and Shore Fisheries

Re: Penalties under Section 131 of Chapter 34, R. S., as revised

We have been asked for a written opinion relative to Section 131, Chapter 34, R. S., as amended. It appears that there are three questions relative to said section which are treated separately as follows:

"If a person is the holder of licenses issued under Sections 111, 113, 114 and 115 and is arrested for having short lobsters and appeals after being found guilty in municipal court, must the Commissioner suspend all licenses?"

The third paragraph of Section 131 says:

“When an appeal has been taken by any person from a sentence imposed for an alleged violation of the provisions of this chapter, or of any rules and regulations adopted by the commissioner pursuant thereto, the commissioner shall suspend, until final disposition by the court, the license of such person to conduct the particular activity in which he was engaged at the time of the alleged violation, and may suspend for the same period all licenses held by him that have been issued under authority of this chapter.”

The answer to your first question is, “No.” The Commissioner is directed to suspend only the license to conduct the particular activity in which the alleged violator was engaged at the time of the alleged violation. If the activity is present in all sections, of course the Commissioner would be required to suspend all the licenses you mention. He *may* suspend, if he wishes, all licenses issued under this chapter until final disposition by the court.

“Question 2. If a person is convicted of transporting lobsters without a license, must the Commissioner wait fifteen days before issuing the licenses issued under the following sections – 111, 112, 113, 114 and 115?”

The fourth paragraph of Section 131 says:

“If, at the time of committing a violation of any of the provisions of this chapter or of any rules and regulations of the commissioner, the offender shall not be the holder of a license to conduct the particular activity in which he was engaged at the time of such violation, the commissioner shall not issue such a license to said person until 15 days have elapsed from the day of final determination of any complaint or legal proceedings instituted as a result of the violation.”

This question must be answered, “Yes.” All the sections mentioned permit transportation; therefore the Commissioner would have to wait 15 days before issuing any of these licenses, the reason being that these sections all permit the same activity this person was convicted of violating.

“Question 3. If a person is the holder of licenses issued under Sections 110-A, 115, 111 and 120 and had recently been convicted for digging clams in a polluted area (rule and regulation), for having lobsters that were less than 3 ½ inches in length (Section 117), and for transporting lobsters beyond the limits of the state without a license (Section 116), must the Commissioner revoke or suspend all the licenses which were issued to this person?”

This question is rather involved and requires more details and facts than are supplied in your question. We will be happy to rule on this particular situation upon receipt of more detailed information. A re-reading of your question will probably reveal to you the deficiencies: i.e., In what activity was respondent involved when found with short lobsters,—retail dealer, fishing, etc.?

JAMES G. FROST
Deputy Attorney General