STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

July 7, 1953

To A. D. Nutting, Forest Commissioner
Re: Contract for Prospecting

Enclosed herewith please find copy of agreement between the Cassidy Estate and the Freeport Sulphur Company, which we are returning to you.

This agreement was presented to this office with a request to ascertain whether or not the Forest Commissioner was authorized under our statutes to enter into a similar agreement with the Freeport Sulphur Company whereby that company might prospect for minerals and whereby, ultimately, under that agreement, the company might proceed with major mineral operations.

We wish to advise that we can find no authority for the Forest Commissioner to enter into such an agreement.

It is the opinion of this office that any negotiations relative to mining must be carried on with the Maine Mining Bureau, the statutes relating to such Bureau apparently authorizing an agreement which ought to be satisfactory to the Freeport Sulphur Company.

We regret the delay in answering this question, but we have been out of town on court cases.

JAMES G. FROST
Deputy Attorney General

July 10, 1953

To Raymond C. Mudge, Commissioner of Finance
Re: Encumbrance

We have at hand your memo of June 30, 1953, in which you ask the following question:

"Does the passage of a Council Order directing the State Controller to carry forward from one fiscal year to the next fiscal year a sum of money for the use of a State department or agency constitute an encumbrance within the meaning of the Appropriation Act as cited above?"

As background to the question your memo contains the following information:

"The General Fund Appropriation Acts in the past and the current Act which is effective tomorrow (Chapter 145 of the Private and Special Laws of 1953) contain language as follows:

> "At the end of each fiscal year of the biennium all unencumbered appropriation balances representing state monies, except those that carry forward as provided by law, shall be lapsed to unappropriated surplus as provided by section 23 of chapter 14 of the revised statutes of 1944. At the end of each fiscal year of the biennium all encumbered appropriation balances shall be carried forward to the next fiscal year, but in no event shall encumbered appropriation balances be carried more than once."

In connection with this language, several years ago considerable discussion was had by the Finance Department with the Department of the Attorney General with respect to what part of the several appropriations shall be carried forward into the ensuing fiscal year and what part shall be lapsed to Unappropriated Surplus. It has been the understanding of the Department of Finance as a result of the discussions with your Department that all unencumbered and unexpended appropriation balances representing State monies, unless otherwise provided by law, shall be lapsed to the General Fund Surplus each June 30, and that only those amounts which are encumbered or carry forward under the provisions of law shall be brought forward and be made available in the next fiscal year.

"It is the further understanding of the Department of Finance that an encumbrance may be represented by a contract requiring payment of a sum of money, an outstanding purchase order requiring payment of a sum of money, or an agreement to pay a sum of money as shown by an exchange of letters or other evidence that there is a definite obligation on the part of some State department or agency to pay a sum of money at a future time. The question has been raised as to whether or not there may be within the meaning of the above Appropriation Act language, a further method of creating an encumbrance; namely, by securing passage of a Council Order directing the State Controller to carry forward from one fiscal year into the next fiscal year a certain sum of money."

In answering your question we must state that we are in complete agreement with the understanding that you already have to the effect that an encumbrance exists in the presence of a contract requiring payment of a sum of money, an outstanding purchase order requiring payment of a sum of money, or an agreement to pay a sum of money as shown by an exchange of letters or other evidence that there is a definite obligation on the part of some State department or agency to pay a sum of money at a future time.

There may be evidences of an encumbrance other than those mentioned above, but such evidence should be consistent with the definition of the term as it is commonly understood.

An encumbrance exists when there is such a charge or liability arising from negotiations, that there results, on the part of the State or one of its departments or agencies, an obligation to pay a sum of money for a particular purpose.

The term "encumbrance" has a particular meaning when used in governmental accounting. See "A Dictionary for Accountants," Kohler, where encumbrance is defined as:

"A proposed expenditure, evidenced by a contract or purchase order, or determined by administrative action."

There must be, as we view the problem, an actual, existing obligation, which is ascertainable upon an examination of the facts surrounding the transaction.

Answering your specific question, it is our opinion, based upon the above discussion, that a Council Order directing the State Controller to carry forward from one fiscal year to the next fiscal year a sum of money for the use of a State department, without additional facts, would not constitute a legal encumbrance within the meaning of the Appropriation Act.

We do not say that a Council Order may not be evidence of an encumbrance. For instance, a Council Order accepting a bid, which bid has been duly and properly received, would be a further step in firmly encumbering a sum of money needed in anticipation of a contract to be executed as a result of the acceptance of the bid.

We are saying that, in the absence of a particular transaction resulting in a legal obligation on the part of the State, a Council Order merely intending to carry forward a sum of money from one fiscal year to the next, would not, in our opinion, constitute a legal encumbrance.

ALEXANDER A. LaFLEUR
Attorney General

July 13, 1953

To Marion Martin, Labor Commissioner
Re: Employment of Minors in Garages and Filling Stations

We have before us a request from your department for an opinion as to whether or not garages and filling stations, either with or without grease lifts, or other mechanical devices, come within the term "mechanical establishment" as used in Section 2 of Chapter 290, P. L. 1949, which prohibits employment of minors under 16 years of age in certain business establishments.

The test for a manufacturing or mechanical establishment is, according to the authorities, whether or not the mechanical element predominates. The mere fact that machinery, mechanical labor or mechanical appliances are used does not necessarily characterize the establishment as a mechanical one.

It therefore appears that a distinction should be made between garages and filling stations. A garage is normally a place where repairing and storing of motor vehicles is carried on. A filling station is a place where the principal business is the sale of gasoline and motor oil.

It is therefore the opinion of this office that garages are within the prohibition of the section referred to and are not suitable places for children to work. Filling stations, however, would not be within the prohibitions of the section and are suitable.

JAMES G. FROST
Deputy Attorney General

July 27, 1953

To General Spaulding Bisbee, Director, Civil Defense
Re: Compensation of Auxiliary Firemen

Your memoradum of July 8th propounds questions relative to Section 20 of Chapter 298 of the Public Laws of 1949, having to do with compensation for injuries received in line of duty.

You say that a question arises as to whether or not auxiliary firemen who are sent out to fight a forest fire and who are members of the Civil Defense would be protected by the fact that the mission was called a training period.