STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

quarantine was based on a certain condition then existing in the State of New York, by the words of the rule and regulation as enacted quarantines thereafter placed were purportedly embraced and it is stated in paragraph 4 of the rule and regulation that the same shall continue in effect until further order.

It appears that from December 21, 1953, New York State promulgated a golden nematode quarantine, No. 9, which is the same disease in the same area as the prior quarantine upon which the rule and regulation in question was based.

You ask if the quarantine enacted through rule and regulation by the Commissioner of Agriculture of the State of Maine in 1948 still holds, so that potatoes in the newly declared quarantine area in New York can be prohibited from being transported into this State.

This rule and regulation has been promulgated, we presume, under the police power of the State and permits the seizure of property of those who violate the rule and regulation. Such a rule and regulation, permitting the seizure of property, is strictly and narrowly construed by the courts in favor of the person whose property is seized. The quarantine having been originally enacted because of a condition then existing in New York presents a doubt as to whether such rule and regulation would be in effect today, despite the words in the rule and regulation intending to have its effect carried into the future. For these reasons we would strongly recommend that a new rule and regulation be enacted, having as its basis the current quarantine in New York State.

JAMES GLYNN FROST
Deputy Attorney General

March 18, 1954

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Swan Island

We have your letter of March 3, 1954, and attached memo from W. R. de Garmo, Chief of the Game Division of your Department.

Section 128 of Chapter 33 of the Revised Statutes, as amended, being that section which sets out the game preserves and sanctuaries in the State of Maine, lists the Swan Island Game Management Area as a preserve and, with one limitation, prohibits hunting activities on the islands. It is pointed out in De Garmo's memo that such provisions are inconsistent with the authority granted by statute to the Commissioner relative to game management areas. Because of this conflict it is asked what the present status of the islands is.

We are of the opinion that the legislature, in imposing such limitations on the Swan Island Management Area, in fact removed from the Commissioner the rights which would ordinarily be his under Section 12-A to regulate game management areas. With respect to that area we feel that Section 128 alone should be considered in relation to the manner in which such area should be treated. There are some rights under Section 128 specifically granted

to the Commissioner for the regulation of certain portions of the Swan Island Area, and these are the only controls which he may exercise.

JAMES GLYNN FROST
Deputy Attorney General

March 22, 1954

To Carl T. Russell, Deputy Commissioner of Labor and Industry
Re: Tagging of Life Preserver Buoyant Cushions

We have before us an inquiry from a law firm in Pittsburgh relative to the application of Chapter 333 of the Public Laws of 1953. More specifically, they question whether a life preserver cushion is an article of bedding or an article of upholstered furniture within the meaning of I and II of Section 123 of said chapter.

After some deliberation this office has come to the conclusion that these buoyant cushions are not articles of furniture or bedding within the meaning of the act. It does not take much discussion to show that they are not articles of bedding within the meaning of the act. There may be some room for argument that they are articles of upholstered furniture, especially where the definition says, "all furniture in which upholstery or so-called filling or stuffing is used whether *attached* or not."

We find in our search of the cases that the term "furniture" generally means all personal chattels which may contribute to the use or convenience of the householder or an ornament of the house. See *Marquam v. Singfelder*, 32 P. 676, 24 Ore. 2; *Rasure v. Hart*, 18 Kan. 340.

It is plain to see that the article in question has no household use, but is manufactured primarily to be used aboard a vessel. We could argue indefinitely as to whether the purpose of this cushion is to use it as a seat or to preserve life, but it would not enhance this opinion to decide this matter. We would, however, point out the general rule of construction that where a statute imposes a tax *or other burden* on a citizen and is fairly susceptible of more than one interpretation, the courts will incline to that most favorable to the citizen. *M.U.C.C. v. Androscoggin Junior, Inc.*, 137 Me. 160; *Portland Terminal Co. v. Hinds*, 141 Me. 72.

ROGER A. PUTNAM
Assistant Attorney General

March 22, 1954

To Major Donald Herron, Deputy Chief, Maine State Police
Re: Overloading Allowance

We have a request from Lt. Mariner of Troop B relative to the following situation:—

A truck is registered for 48,000, with brakes on all three axles, 18 ft between axle extremes, and hauling forest products. The question is, "would this truck receive the benefit of a 5% tolerance?" That is, would an overload under the