STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

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

provisions of Section 100 have a 5% tolerance given in Section 27, both being parts of Chapter 19 of the Revised Statutes, as amended?

We would answer that the 5% tolerance is not allowable where the truck is charged with a violation of Section 100.

Section 100 is a statute prohibiting certain overloads on axles. Various maximum loads are allowable, which vary directly in relation to the distance in feet between extremes of axles. There are certain exceptions in Section 100, and we are considering one of them, more particularly that relating to the direct weight in certain instances where hauling forest products.

Section 27 deals with loads greater than specified on the registration certificate. This section allows a 5% tolerance on vehicles of gross weight over 15,000 lbs.

One can readily see that there is a distinction between the crimes involved in Section 100 and those involved in Section 27. Violations of Section 100 are punishable by fines that are set out in Section 100-B and they vary directly to the amount of the overload in each case. One should note that there is a tolerance allowed in Section 100-B of 1000 lbs. To buttress our point that Section 27 and Section 100 involve entirely different matters, one should note that at the end of the last paragraph of Section 100-B there is provision that certain penalties in Section 27 shall be applicable to violations of Section 100. If the legislature itself did not believe that there were distinct offenses, why would they have taken the time to set forth that certain penalties in Section 27 should be applicable to breaches of the law in Sections 100 and 100-B?

ROGER A. PUTNAM
Assistant Attorney General

March 22, 1954

To Herbert G. Espy, Commissioner of Education

Re: Status of Superintendents of Schools

We have your memo of March 15, 1954, regarding the status of superintendents of schools in the State of Maine, in which you ask the following questions:

"1. Is there any provision in the law to prevent or bar the position of superintendent of schools from being considered as a teaching position?

"2. Is there any provision in the law to prevent the position of a superintendent of schools from being considered that of a state employee?"

The only law with which we are familiar relative to superintendents of schools and their right to be State employees and their being considered as teachers is contained in Chapter 60, Section 1, of the Revised Statutes of 1944, as amended. Under this section of the law, for the purposes of retirement only, "employees" of the State of Maine participate in the Maine State Retirement System: "employees" include teachers, and teachers are defined to include the superintendent employed in any day school within the State. We know of no other statute which would consider a superintendent of schools as being either a teacher or a State employee.

JAMES GLYNN FROST
Deputy Attorney General