

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

It is our opinion, therefore, that employees of the Water Commission would come under the agreement negotiated by the South Paris Village Corporation and that they would not be eligible to enter into a separate agreement for coverage.

JAMES GLYNN FROST
Deputy Attorney General

April 28, 1954

To Peter W. Bowman, M. D., Superintendent, Pownal State School
Re: Subpoena to Inmate

I am returning the subpoena sent to you which commands that a patient at Pownal appear on Tuesday, May 11, 1954, at a time certain to testify for the State in Lincoln County.

I have talked to the County Attorney, who informed me that it is a question relative to whether this girl was raped or not, and therefore she is definitely a material witness to the cause.

The question of her mental deficiency, if she have any, will be primarily for the grand jury. We suggest therefore, as you have technical physical custody of this girl, that you comply with the request of the court and that if further instances of this nature arise, you do the same.

In view of her questionable mental ability I do not think it necessary that she be actually served with the process. Its being sent to you should be sufficient. All members of the State family must cooperate in order to see that justice is done.

ROGER A. PUTNAM
Assistant Attorney General

May 4, 1954

To Paul MacDonald, Deputy Secretary of State
Re: "Convicted"

You have asked this office for an interpretation of the word "convicted" as it appears in Section 121, Chapter 19, R. S. 1944, as amended, and as it relates to the case of P. Edward DeBery. The said section reads as follows:

"The license or right to operate motor vehicles of any person *convicted* of violating the provisions of this section shall be revoked immediately by the Secretary of State upon receipt of an attested copy of the court records, without further hearing."

Mr. DeBery had been tried in the Superior Court for the County of Sagadahoc on the charge of operating a motor vehicle while under the influence of intoxicating liquor. After verdict of guilty and sentence, Mr. DeBery perfected exceptions previously taken to the refusal of the Court to direct a verdict of not guilty. The Supreme Court overruled the exceptions and entered judgment for the State.

In conformity with other provisions of our statutes, where exceptions are allowed, DeBery had personally recognized for his appearance in the Superior

Court from term to term, and a term has not as yet been held at which he could appear and abide the decision and order of the Superior Court in the county in which he was tried.

Under such a fact situation the question now arises as to whether or not DeBery's license should be revoked. Mr. DeBery is of the opinion that there is no such "conviction" as would permit his license to be revoked under the provisions of Section 121, Chapter 19, until he appears at a term of the Superior Court and final sentence is imposed.

We are of the opinion that in DeBery's case there has been such "conviction" as places upon the Secretary of State the mandatory duty of revoking his license to operate motor vehicles.

We would draw attention to a rescript of another decision recently handed down by our court which also involves Mr. DeBery. Subsequent to the verdict of guilty and sentence imposed in the case already mentioned, and while DeBery's exceptions to the Law Court were pending, the Secretary of State took steps to revoke DeBery's license. DeBery was later found operating a car and was charged with the offense of operating a motor vehicle in Maine after his right to operate motor vehicles had been revoked by the Secretary of State. In holding that DeBery's license had not been legally revoked at that time, our court considered at length the word "convicted", and that decision is clearly determinative of the question presented to this office. We herewith quote a few extracts from the rescript which we feel clearly indicate that there has been a conviction:

"The meaning of the word 'convicted' or the word 'conviction' when used in a criminal statute varies with the context of the particular statute in which it is used. *Donnell v. Board of Registration*, 128 Me. 523. In a case such as this, (driving under the influence) the defendant is not deemed to have been convicted so that the Secretary of State may summarily revoke his license until the case has reached such a stage that no issue of law or fact determinative of his guilt remains to be decided."

In overruling DeBery's exceptions it is clear that our court has resolved all issues of law or fact determinative of his guilt.

"It goes without saying that the determination of the Law Court may not end a criminal case which is before it on exceptions. The exceptions may be sustained and a new trial granted . . . The case is unfinished and still pending until finally disposed of by plea, trial, or otherwise. *On the other hand, if the Law Court overrules the exceptions judgment is to be entered of record.* (Underline ours.) . . . However, once the guilt of the defendant has been finally determined, for the purposes of R. S. (1944), c. 19, Sec. 121, he is deemed to have been convicted 'whether or not he was placed on probation without sentence or under a suspended sentence or the case was placed on file or on a special docket.'"

JAMES GLYNN FROST
Deputy Attorney General