

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

definitely shows that the legislature had in mind the impossibility of legislating as to what could, or could not, be moved, and granted to the Commission the duty of deciding what objects could be safely moved and where they should go.

Although it can be argued that these permits should cover a definite itinerary it is reasonable to argue that the major purpose of the permit is to allow the moving of the otherwise illegal object in the least hazardous manner possible.

If, in the discretion of the Commission (or its duly qualified agents) it is deemed that the movement of a trailer from A to B on certain specified roads, or types of roads, should be allowed, it would not matter whether the trip was made in one continuous drive or with a dozen stopovers. The important item would be the danger to the road or danger to traffic. It is my opinion that these permits, by the restrictions put therein, could safeguard against the hazards in the particular instance. It would seem that the time element would enter the picture only as a matter of the degree of danger. Obviously some structures may be too dangerous to permit on the highway without police escort. It is probable that some objects should be moved only at specified times (as at such times as traffic is not too dense). Certainly certain weights and widths could not safely be allowed on certain roads.

It is my opinion that these permits should be, and can be, issued for such times and places as would, in the judgment of the Department, minimize the danger. I believe it is proper to consider the relative profit or loss to the State in the individual case presented. It is certainly the intent of the act that the emergent need of the petitioner in the case of a one-trip permit should receive fair consideration.

L. SMITH DUNNACK
Assistant Attorney General

May 7, 1954

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Packed Trout

We have your memo stating that the Willard Daggett Fish Company of Portland has received a shipment of Danish trout, the trout coming in packages of 22 fish each. The question is asked if, when on sale at A&P stores, the package can be opened and the fish sold separately.

It would appear that your question is based on the provisions of Section 41 of Chapter 33 of the Revised Statutes, which section reads in part as follows:

“Such fish, whether commercially grown within the state or imported from without the state, shall be packaged at the original source which said package shall bear the name and address of the source printed on the outside thereof and the fish *shall not be removed from the original package except by the ultimate purchaser.*”

It appears clear from this wording that the ultimate purchaser only can remove the fish from the original package, and therefore packages could not be opened and the fish sold separately.

This office would appreciate it very much if in the future, when opinions are requested concerning particular provisions of our laws, reference be made to the section which gives rise to the problem. It will expedite answers and be very helpful to this office.

JAMES GLYNN FROST
Deputy Attorney General

May 7, 1954

To Nellie French Stevens, Superintendent, State School for Girls
Re: Defective Mittimus

We have your memo and copy of mittimus issuing from the Western Washington Municipal Court.

You inquire as to the legality of the commitment papers, inasmuch as that portion of the commitment which refers to notice being given to the parent or the guardian and to the Department of Health and Welfare has been x'd out.

Notice or lack of notice in such an instance goes to the jurisdiction of the court and may be ground in future for some legal action. However, I do not feel that any action should be taken by you relative to this matter.

It is our opinion that you should continue holding the girl in your custody until such time as the court might release her, otherwise until she is released under your statute. . .

JAMES GLYNN FROST
Deputy Attorney General

May 11, 1954

To A. D. Nutting, Forest Commissioner
Re: Right of Fire Wardens to Require Assistance

We have your memo in which you raise a question regarding the duties of a State District Forest Fire Warden, as outlined in Chapter 355, Section 72-D, of the Public Laws of 1949:

"The part they refer to is 'shall have and enjoy the same rights as a sheriff to require aid in executing the duties of his office.' We have always thought this referred to his rights to appoint deputy fire wardens, as a sheriff has deputies for his work. However, some of our wardens interpreted it to mean that a state district forest fire warden could appoint a person to act as a deputy sheriff or constable while serving on a forest fire.

"I would like an interpretation as to whether the law means he can appoint only deputy forest fire wardens, or can he appoint someone to serve as a constable or deputy sheriff."

In comparing the right of a fire warden to require the same aid as the sheriff may require in executing the duties of his office, consideration should be given to the statute permitting a sheriff to require aid. We therefore quote in full Section 217 of Chapter 79, R. S. 1944: