

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

for the calendar years  
**1951 - 1954**

rather than permissive. Irrespective of the fact that you may not have any applicants, I do feel that the Board should advertise this meeting to examine candidates, and if none appear, then the problem will more or less be resolved.

You state that you assume that the term "year" coincides with the fiscal year of the State. I would not necessarily agree with that assumption. The term "year", to my mind, refers to the calendar year, meaning from January 1 to December 31, rather than the fiscal year. If it is the intent of the legislature to put a board on a fiscal year basis, it generally uses that term throughout the statute. Thus, as far as this office is concerned, we feel that we could not permit you to waive the meeting for this year.

ROGER A. PUTNAM  
Assistant Attorney General

June 3, 1954

To E. E. Edgecomb, Supervising Inspector, Labor and Industry  
Re: Elevator Inspections

This is in response to your memo of some time ago, in which you recite the procedure you have followed in the inspection of elevators and the special certificates and orders for compliance that you have issued following the opinions issued by Neal Donahue, Assistant Attorney General, dated April 3 and April 9, 1951.

With respect to such procedure, and more particularly your action with regard to the Boyd Building in Portland, Maine, you have asked several questions:

1. "Did I use this Order for Compliance as was its intent?"
2. In the case of the Boyd Building "where I received a report of an insurance company inspector which listed conditions that I consider dangerous and even though he stated on this report that the elevator was safe, was it within my powers to inspect the elevator myself or have it inspected by an inspector from this Department, and use my judgment as to whether this elevator was dangerous or not? Also, in your opinion what action should I have taken in this case?"
3. "When and under what circumstances may I condemn an elevator?"

*Answer to Question No. 1.* Your use of the Order for Compliance was undoubtedly proper in view of the opinion given by Mr. Donahue. Mr. Donahue's opinions were issued to you shortly subsequent to the time of enactment of the laws in question and those opinions considered what result strict adherence to the laws would have on the elevators in the State that had not hitherto been compelled to comply with any laws of the State. For this reason the opinion of this office at that time was lenient in favor of owners of elevators. However, we feel presently and in view of the information supplied in your memo that the time has come when the statute should be complied with and there should no longer be an Order for Compliance as distinguished from the certificates contemplated by Section 99-H of Chapter 374, Public Laws of 1949. Said section authorizes the department to issue an inspection certificate when the examined elevator is found to be in con-

formance with the rules of the Board on payment of the inspection fee and the registration fee. If, upon inspection, an elevator is found to be in reasonably safe condition but not in full compliance with the Rules and Regulations of the Board, then there may be issued a special certificate, such certificate containing the special conditions under which the elevator may be operated. In effect, this special certificate will cover the same circumstances found by you to permit Orders for Compliance, but you will then be following the statute, with the use of the special certificate containing special conditions.

*Answer to Question No. 2.* The statute provides that the supervising inspector or a State elevator inspector, upon receipt of a report of an inspector who finds that an elevator is unsafe and creates a menace to the public safety, may order the conveyance out of service immediately. With respect, however, to the Boyd Building, you and other members of your department advised this office that the condemning of the Boyd Building elevator was based on the inspection and report of an inspector who worked for the owner's insurer, which inspector you planned to call as a witness at the hearing permitted where such elevator had been condemned. It was also stated to this office that the inspector for the insurer was *the* authority in the State of Maine on elevators and that he would be a valuable witness to this office in the proceeding. We then found that this inspector had, in his reports to you and to his company, stated that the elevator was "safe". The only condition upon which an elevator may be condemned is when such elevator is found to be "unsafe and creates a menace to public safety." This office would not be justified in representing your department in any court of law or equity in any proceeding for the condemnation of an elevator when the very witness upon whom we are relying states that the elevator is in such condition that it cannot be condemned.

In answer to the question as to what action you should have taken on this case, we can only say that all State inspectors should agree as to the definitions of those articles which they are inspecting. Divergence of opinion between you and the inspector for the insurer seemed to be directly as to what was the definition of the term "elevator". Perhaps this question should be solved by action of the legislature in amending the definitions.

*Answer to Question No. 3.* As stated above, an elevator can be condemned only when it is found to be unsafe and creates a menace to public safety. The determination as to whether an elevator is unsafe and creates a menace to public safety is for the inspector and must be based on the actual condition of the elevator. Its operation must be found in fact to be unsafe and, further, to create a menace to public safety. Under your laws such determination will always be subject to review and only when the court defines a certain situation to make an elevator unsafe and to create a menace to public safety can you be sure that condemning an elevator under such circumstances would be a proper determination. This, however, should not deter you from making such determination when the facts are such as to compel you to believe that the elevator is unsafe and creates a menace to public safety.

JAMES GLYNN FROST  
Deputy Attorney General