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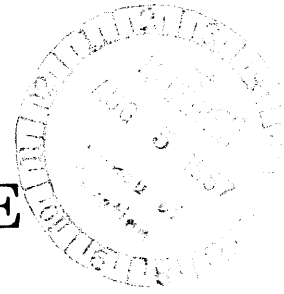
STATE OF MAINE



REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1955 - 1956

Commissioner has determined that the permit is to be used for the purposes enumerated in the statutes, then such permit should issue. We do not feel that it is within the discretion of the Commissioner to refuse such permit without just cause.

"2 (a) If Mr. X is granted a permit to 'take' or 'have' seed, are we authorized to give him seed quahogs dredged by the *Venus M.?*

(b) Are we authorized to sell seed to him?"

We answer both parts of this question in the negative.

"3. If we are not authorized to give or sell seed to Mr. X dredged by the *Venus M.,* can he or his agents come into Bridgham's Cove and take seed quahogs with his own equipment to be put in the flats leased by him from the town of Phippsburg?"

We answer this question in the affirmative, always conditioned upon the fact that the proper licenses and permits have been obtained.

Our answers are based on the premise that the request concerns giving or selling seed quahogs to a private individual for his own business purposes. It is our opinion that before the State can give or sell property, which belongs to the State as a whole, to a private individual for commercial purposes, an act of the legislature would be necessary.

JAMES GLYNN FROST
Deputy Attorney General

January 4, 1955

To Roland H. Cobb, Commissioner, Inland Fisheries and Game

Re: Moosehorn Refuge, Beaver Trapping

. . . We understand that the Moosehorn Refuge is wholly owned by the Government of the United States, excepting a certain portion which is the railroad right of way and which was made a game preserve under the provisions of Chapter 34 of the Public Laws of 1953.

Mr. de Garmo informs me that there are various reasons why it is necessary for the Refuge manager to remove the beaver on this game refuge. They are flooding out certain areas which are important to the woodcock studies that are being carried on by the U. S. Fish and Wildlife Service.

From all that I can ascertain there is reasonable ground for opening up the area for the taking of beaver. The question arises as to whether or not this federally owned area is subject to the provisions of Section 100 of your chapter. This section provides for the opening of a limited season on beaver, for the various reasons why this trapping may be allowed, and for the marking of the skins, along with certain other provisions. It is the opinion of this office that this law has no application in this particular instance, where the United States Government owns and operates this Refuge. In many instances a State has sought to enjoin the very acts which are here complained of and in every instance has been rebuffed by the federal courts. See *Hunt* v. *U. S.,* 278 U. S. 96, 19 F 2d, 634; also *Chalk* v. *U. S.,* 114 F. 2d, 207.

A check of the federal statutes shows that the United States Government has prescribed certain laws relating to game preserves of this nature. See Section 683 of Title 16, U. S. Code Annotated. Paraphrasing: This provision allows the President to designate areas on lands taken and held by the United States for

the purpose of protecting game animals, birds, and fish. That section further provides that it is a crime to hunt, trap, etc., on these lands except under such rules and regulations as the Secretary of the Interior may from time to time prescribe.

It would appear to me that if the manager is authorized by the Department of the Interior or its properly designated agent to remove the excessive amount of beaver on this Refuge, he is fully empowered to do so under federal law, and that federal law supersedes State law.

Covering a point not requested in your inquiry, from the above it follows that it is not necessary to tag the beaver so taken, under the provisions of Section 100 of your chapter. In order to protect the individuals taking same, however, Mr. Radway should give some sort of certificate to the trapper in order to protect him from prosecution under Section 100; otherwise he may find it rather hard to prepare his defense.

ROGER A. PUTNAM
Assistant Attorney General

January 10, 1955

To William P. Donahue, County Attorney, York County

Re: Medical Examiners' Fees

. . . You ask for an interpretation of Section 252 of Chapter 89 of the Revised Statutes of 1954, which section reads in part as follows:

> "Every medical examiner shall render an account of the expense of each case . . . and the fees allowed the medical examiner shall not exceed the following, viz: review and inquiry without an autopsy, $15; for review and autopsy, $50."

You inquire if a medical examiner who first conducts a review and inquiry without autopsy and later an autopsy at the request of this office is entitled to collect both the $15 fee and the $50 fee or whether he is entitled only to the $50.

We believe that the clear wording of this statute precludes any determination other than that the combination of view and autopsy calls for a $50 fee. We do not believe that the fact that the Attorney General has, in a particular instance, authorized the autopsy should call for the medical examiner's receiving both fees. It fairly often happens that the Attorney General authorizes the autopsy because the County Attorney is for the time being unavailable.

JAMES GLYNN FROST
Deputy Attorney General

January 14, 1955

To Colonel Robert Marx, Chief, Maine State Police

Re: Failure to forward Appeal Seasonably

We have your memo . . . requesting an opinion from this office.

It appears that a person was arraigned before a trial justice, found guilty, and sentenced to imprisonment and to pay a fine with costs. The respondent appealed to the September term of the Cumberland County Superior Court, but the trial justice through an oversight failed to send the appeal papers in time for the matter to be heard at that term of court, in fact after that term had closed.