

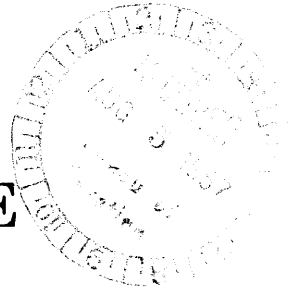
MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT
OF THE
ATTORNEY GENERAL

for the calendar years
1955 - 1956

June 22, 1955

To Edward L. McMonagle, Director of Administrative Services,
Department of Education

Re: Chapter 321, Public Laws of 1955

We have before us the request forwarded to you from the Regional Office, Bureau of Old Age and Survivors Insurance, regarding the right of the Department of Education to enter into an agreement with the Secretary of Health, Education and Welfare in regard to Chapter 321, which is an Act relating to the determination of physical disability by the Department of Education. More specifically, the federal agency involved is questioning the right of the department to enter into the agreement.

We feel that Section 202-A is a complete answer and should lay to rest any problem relating to the right to enter into the agreement. This statute provides in part:

“ . . . The executive officer of the State Board of Education (this would be the Commissioner of Education), subject to approval of the Governor, is hereby authorized and empowered to enter into an agreement on behalf of the State with the Secretary of Health, Education and Welfare to carry out the provisions of Title II of the Federal Social Security Act relating to the making of determinations of disability.”

You will note that it is the Legislature which has determined the State agency to handle this matter and it is not for the Governor to assign the duty to any particular department.

ROGER A. PUTNAM
Assistant Attorney General

July 5, 1955

To Richard E. Reed, Executive Secretary, Maine Sardine Industry

Re: Advertising

You inquire whether the Tax Committee has authority to allocate to individual packers a percentage of their tax payments to be used by them to advertise their individual brands.

In my opinion the Tax Committee does not have authority to do so.

Section 267, Chapter 16, R. S. 1954, provides for the expenditure of sardine tax revenues. The pertinent language is:

- “1. For the collection of the tax and enforcement of all provisions of sections 260 to 269, inclusive.
- “2. The balance in such amounts as shall be from time to time determined by the Maine Sardine Tax Committee:
 - A. For the purpose of merchandising and advertising *Maine sardines* for good, under the joint direction of the Maine Development Commission and the Maine Sardine Tax Committee.” (Underlining supplied.)

The concept of the legislature is that the State of Maine, not the sardine packers, levies a tax upon packers, the proceeds of which tax must be used for public purposes. It is not a public purpose to advertise any individual brand. The money may be used for highways, for schools, etc., except as restricted by the sardine tax statute. The advertising of an individual brand is a private purpose.

You also inquire whether the Tax Committee has authority to match individual advertising budgets with tax funds. For the same reason, the answer is that the Tax Committee does not have power to do so.

You also inquire whether the Tax Committee may directly advertise a given brand. The Tax Committee may not do so.

I am sorry to come up with a wholly negative reply but see no alternative as the Constitution and statute are worded.

BOYD L. BAILEY
Assistant Attorney General

July 20, 1955

To Ernest M. White, Esq.

Re: Old Age Assistance

. . . For many years the Department of Health and Welfare has operated under the laws relating to Old Age Assistance as set forth by the legislature. . . . Revised Statutes 1954, Chapter 25, Section 287 is the law which applies to the situation involved in this case. The interpretation which has always been placed upon the words "reasonable consideration" has been full value. It has always been the interpretation that this law must be read in connection with Section 295 which calls for a claim against the estate of a deceased recipient. It has been the opinion of this department for many years that the legislature intended that persons applying for or receiving Old Age Assistance should not dispose of any type of property for less than its full value, thereby escaping the claim of the state for Old Age Assistance.

Therefore, the question arises in this case as to whether Mrs. J. did divest herself of any property after January 1, 1950 without receiving full value. The following appear to be the facts as understood by the Department of Health and Welfare.

Mr. J., the husband, died in September, 1953. Mrs. J., although separated from her spouse, was still his legal wife. After considerable discussion with the other heirs, sometime after or during August of 1954 Mrs. J. either executed a deed of her interest in her husband's property to the heirs or joined in a bond for a deed. As to which is the exact fact . . . is not a material point. The property was then sold on a bond for a deed for \$2,000.00, thereby establishing the value of the property.

Under the provisions of Revised Statutes 1954, Chapter 170, Section 1, "in any event one-third shall descend to the widow or widower free from payment of debts, except as provided in Section 22 of Chapter 163." Therefore, Mrs. J. was entitled to one-third of the value of the property free and clear of indebtedness. I understand there was a mortgage on the property in the amount of \$433.50. It is further my understanding in computing the value of the property that you deduct the amount of the mortgage from the sale price, which leaves