

MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1955 - 1956

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

\$1566.50. One-third of this figure is \$522.15. This is the amount to which Mrs. J. was entitled under this statute. I think if you will also read the cases of *Whiting v. Whiting*, 114 Maine, 372 and *Longley v. Longley*, 92 Maine, 395 you can come to no other conclusion than that she was entitled to this one-third interest.

It appears that Mrs. J. conveyed her one-third interest for the sum of \$300.00 which, under the interpretation which has always been given the statute cited above, means that she received less than full value for her interest.

It would therefore appear that Mrs. J. did not receive full value for her property, and did divest herself of property without reasonable consideration after January 1, 1950.

We are all very sorry that these decisions have to be made, but inasmuch as this is a categorical type of assistance which is governed by statute and regulations, there are occasional instances where persons have placed themselves in a position so that they are not eligible for such assistance. It is not always possible to bail them out of a situation into which they have got themselves. This appears to be one of those situations and I am sorry that there is nothing that I can tell you which will be of benefit to Mrs. J. in this instance.

GEORGE C. WEST
Assistant Attorney General

August 2, 1955

To Allan L. Robbins, Warden, Maine State Prison

Re: Withholding of Confession of one Prisoner from Another

I have your memorandum relative to your withholding a confession from further transmittal to a prisoner. It further appears that both men are serving time for breaking, entering and larceny and that X. was implicated in these crimes by a statement made to the police by Y.

We are of the opinion that you do have a right to withhold further transmittal of this document. It is your job to maintain security within your institution and to keep the peace therein. This document, in the hands of the addressee, would be a powerful weapon to coerce the writer and might cause physical violence.

Your withholding of this document will not impair any legal rights that X. might have. An attested copy is in the hands of his attorney, who will undoubtedly make such use of it as he sees fit in any legal proceeding that he might want to bring. This is all that is necessary to protect X.'s rights.

ROGER A. PUTNAM
Assistant Attorney General

August 3, 1955

To Peter W. Bowman, M. D., Superintendent, Pownal State School

Re: Residence

. . . Your first inquiry relates to residence as the word is used in Section 145, Chapter 27, Revised Statutes of 1954. . . Although the word is not defined in the