

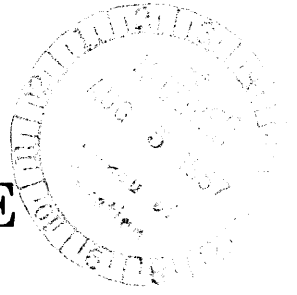
# MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1955 - 1956

the September election, next after their occurrence" were not enacted in contemplation of a special election and also refer to the regular biennial election.

FRANK F. HARDING  
Attorney General

August 5, 1955

To Harry E. Henderson, Deputy Treasurer of State

Re: Mortgaged Property

. . . Your memo of August 4 reads as follows:

"The State of Maine holds a mortgage on farm property . . . in Wayne. The principal amount of the loan has been reduced by payments from the original amount of \$1400.00 to the present balance of \$391.52.

"The Treasurer of State has notice that on February 16, 1954, the Collector of Tax for the Town of Wayne recorded with the Registry of Deeds of Kennebec County a tax lien covering an unpaid tax for 1953. This lien will expire before the date of the next meeting of the Governor and Council.

"Section 25 of Chapter 177, Revised Statutes of 1954, provides for various actions by the Treasurer of State relative to mortgages owned by the state. Does the Treasurer of State have authority under the statutes to pay the tax and costs in this instance for the purpose of protecting the state's interest as mortgagee?"

It is our opinion that the Treasurer of State is not only authorized to pay the tax and costs in this instance, but is under a duty to do so. Investments authorized by the statutes must be safeguarded whenever possible.

JAMES GLYNN FROST  
Deputy Attorney General

August 10, 1955

To Stanley R. Tupper, Commissioner of Sea and Shore Fisheries

Re: Herring under 4" Long

. . . You request that we reduce to writing an oral opinion given with respect to the provisions of Chapter 304 of the Public Laws of 1955, which law will become effective on August 20, 1955.

That part of the statute with which we are concerned reads as follows:

"Except for use as bait for fishing, it shall be unlawful for any person, firm or corporation to take from the coastal waters of Maine, or to sell, offer for sale, purchase, transfer in any manner, use, process, dispose of in any way or have in his possession for any purpose whatsoever herring less than 4 inches long, overall length measured from one extreme to another; except that when herring under 4 inches in length are mixed with longer herring and the herring of prohibited size represent less than 25% of the lot taken at any one time, sale or purchase, the foregoing provisions in this paragraph shall not apply. . ."

The question asked is whether the prohibition extends to herring under 4 inches in length which have been taken, not from the coastal waters of Maine, but from Canadian waters, or the selling, offering for sale, purchasing, etc., of such fish taken from Canadian waters.

This law, as are a great majority of the other laws contained in the Sea and Shore Fisheries chapter, is based on the theory of the conservation of fish in the waters of Maine. For this reason such a statute, limiting the consumption of fish taken from the coastal waters of Maine can be upheld.

We are of the opinion, however, that the prohibition does not extend to herring taken from Canadian waters, as we feel that such a prohibition would of necessity have to be enacted by Congress, which, under our Federal Constitution, regulates interstate and foreign commerce.

JAMES GLYNN FROST  
Deputy Attorney General

August 12, 1955

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

Re: Nonresident License

This is in response to your memo citing a case where a man lives five or six months at Crescent Lake, pays the poll tax and over \$1,000 in property taxes there, and licenses his truck there, but licenses his car in Massachusetts, where he has a residence which he probably occupies only about two months, as he goes to Florida in the winter. You state that the Town Clerk has refused to issue him a license as a resident, even though he pays a poll tax.

Though you ask the question, "Does he have to pay a poll tax if he is ruled a nonresident?" we feel that actually your problem is, Is the clerk justified in refusing the man a resident license if he displays a poll tax receipt, combined with the facts recited above?

There are two sections of law in Chapter 37 which must be read together in determining such a question. While Section 39, subsection VIII, provides that no resident hunting or fishing license or combination of same shall be issued unless the applicant shall present a poll tax receipt from the town where he resided in the year immediately preceding the date of his application, Section 68, subsection V must be also considered. This section provides that any citizen of the United States shall be eligible for any resident license required under the provisions of this chapter, providing such person is domiciled in Maine with the intention to reside here and has resided in this State during the three months next prior to the date an application is filed for any license under the provisions of this chapter.

It can be seen that the sections above referred to contemplate that to get a resident license a person must first be domiciled in Maine with the intention to reside here, and, second, he must have resided in this State during the three months next prior to the date an application is filed for any license, and, thirdly, he must comply with the provisions of Section 38 in that he must show a poll tax receipt or a valid unexpired State of Maine motor vehicle operator's license, or a certificate exempting him from payment of a poll tax, etc. The determination of