

# MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT  
OF THE  
ATTORNEY GENERAL

for the calendar years  
1955 - 1956

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

domicile is always dependent upon the fact situation involved and must, as seen in Section 68, subsection V, show the man's clear intention that he make the State of Maine his home. It would not be a proper function of this office to substitute its judgment or discretion for that of the town clerk. It is within the jurisdiction of the town clerk to determine whether or not a man is eligible to purchase a Maine resident license. If the person applying for such license is aggrieved at the decision of the town clerk, he has a proper legal remedy.

FRANK F. HARDING  
Attorney General

August 15, 1955

To Honorable Edmund S. Muskie, Governor of Maine

Re: University of Maine—Organized Labor

At your request I have reviewed my memorandum of February 2, 1954, respecting the rights of organized labor at the University of Maine, in view of a memorandum of Henry T. Wilson, Legal Assistant, representing American Federation of State, County, and Municipal Employees.

My opinion was given at the request of the President of the University, not addressed to any specific issue but describing to President Hauck what in general were the rights and duties of an administrative officer of the State of Maine dealing with representatives of organized labor.

As I would summarize my own presentation, public employees may meet, talk, petition, and appoint representatives, but no labor agreement can have any teeth in it. By "teeth" I mean remedies in a court of law or equity.

Concretely, let us suppose that President Hauck signed a labor agreement on behalf of the State of Maine, recognizing the A. F. of L. as bargaining agent, fixing conditions of employment, holidays, promotion, demotion, etc. Suppose that the agreement is violated by the State of Maine. It is my opinion that President Hauck has no authority to make such agreement. The agreement being a nullity, no suit or action could be brought to enforce it. The legislature could at any time pass legislation changing the terms of the agreement.

"Public employers cannot abdicate or bargain away their continuing legislative discretion and are therefore not authorized to enter in collective bargaining agreements with public employee labor unions."

(Editorial Summary, 31 A.L.R. 2d 1170)

President Hauck knows that he may talk to any one, including professional union organizers, about anything. However, he has been advised that the ultimate and continuing authority respecting conditions of employment must reside in the administrative heads of the University and that he cannot bind the State of Maine by what is commonly understood to be a labor agreement. By labor agreement I intend something that is legally effective. . .

BOYD L. BAILEY