

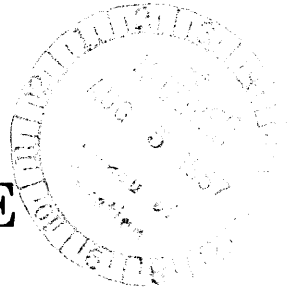
MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT
OF THE
ATTORNEY GENERAL

for the calendar years
1955 - 1956

October 14, 1955

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

Re: Marine Worms

You ask for an interpretation of Sections 5 and 125-A of Chapter 39, Revised Statutes of 1954, as amended.

You ask whether or not, acting under authority of Section 4, you may close an area where shellfish are endangered, to the taking of all species including marine worms, and this despite Section 122-A *re* marine worms.

The first paragraph of Section 5 of Chapter 39 reads:

“Whenever any existing conditions endanger the conservation of fish, shellfish, lobsters, crabs, shrimp or marine worms in any coastal waters or flats of the state, the commissioner, with the advice and approval of the advisory council, shall make such rules and regulations as he may deem necessary providing for the times, number, weight and manner in which such fish, shellfish, lobsters, crabs, shrimp or marine worms may be taken from such waters or flats, in the manner hereinafter provided.”

Section 125-A was enacted by the 97th Legislature and appears in Chapter 110 of the Public Laws of 1955. It reads:

“Marine worms, taking. It shall be lawful for any person, firm or corporation, who legally possesses a commercial shellfish and marine worm license, to dig, take, buy or sell marine worms, clamworms, bloodworms and sandworms in any tidewater area of the State, except those areas which are closed to all digging for the conservation of marine worms by the department.

“No area shall be closed for the purpose of conservation to the digging or taking of marine worms, clamworms, bloodworms and sandworms except as provided in section 5.”

In considering the problem presented it should first be recognized that the legislature has the power to enact laws regulating the common right of fishery. The legislature could, if it saw fit, declare a perpetual close time on fishing. Thus, if the legislature desired to close an area to marine worm fishing in order to save the clams in that area, such would be within their power. The question here presented then is, whether the legislature in enacting Sections 5 and 125-A of Chapter 38 has indicated that in order to conserve one species of fish or shellfish the Commissioner may, by rule and regulation, close the particular area to other types of fishing, where closing is not necessary in order to conserve the latter type of fish.

Our answer is in the negative.

Reading Sections 5 and 125-A together we interpret such sections to mean that if existing conditions endanger the conservation of shellfish, then by proper rule and regulation the Commissioner may with the advice and approval and the Advisory Council control the taking of such shellfish, similarly with other species of fish.

We do not believe that the legislature has directly or indirectly delegated the power to determine if one industry is more in the interest of the people of the

State than another industry, which would of necessity be the case if, in order to conserve clams in a particular area, the digging of marine worms could be prohibited in that area.

JAMES GLYNN FROST
Deputy Attorney General

October 18, 1955

To Colonel Robert Marx, Chief, Maine State Police

Re: Insurance Status of Men Enlisted prior to July 9, 1943

We have your request regarding the status of men enlisted in the Maine State Police prior to July 9, 1943, as regards their eligibility for group life insurance under the provisions of Chapter 451 of the Public Laws of 1955.

The laws applicable to this situation are:

Section 24 of Chapter 63-A, Revised Statutes of 1954, as enacted by Chapter 451 of the Public Laws of 1955, through subsection I, reads as follows:

“Group life insurance shall be made available to state employees and teachers, subject to the following provisions:

I. Except as provided herein, each appointive officer or employee of the State of Maine, or teacher, who is eligible for membership in the Maine State Retirement System, shall at such time and under the conditions of eligibility as the Board of Trustees may by regulation prescribe, come within the purview of this section. Such regulations may provide for the exclusion of employees on the basis of nature and type of employment or conditions pertaining thereto, such as, but not limited to, emergency, temporary or project employment and employment of like nature; which regulation shall be issued only after consultation with the appointing authority concerned; provided that no employee or group of employees shall be excluded solely on the basis of the hazardous nature of employment.”

Section 1 of Chapter 64, R. S. 1954, in part:

“‘Employee’ shall mean any regular classified or unclassified officer or employee in a department, including teachers in the state teachers’ colleges, normal schools and Madawaska training school, and for the purposes of this chapter, teachers in the public schools, but shall not include any member of the state legislature or the council or any judge of the superior or supreme judicial court who is now or may be later entitled to retirement benefits under the provisions of section 5 of chapter 103 and section 3 of chapter 106, nor shall it include any member of the state police who is now entitled to retirement benefits under the provisions of sections 22 and 23 of chapter 15. In all cases of doubt the board of trustees shall determine whether any person is an employee as defined in this chapter.”

This definition of “employee” is seen unchanged in the reenactment of the Retirement Law in Chapter 417 of the Public Laws of 1955.

The first paragraph of Section 22 of Chapter 15, R. S. 1954:

“Any member of the state police who shall have served as a member thereof for 20 or more years with a good record shall upon request in