

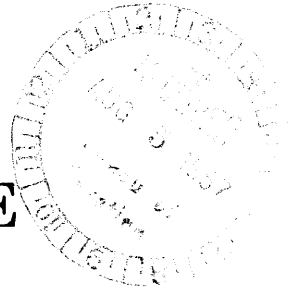
# MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT  
OF THE  
ATTORNEY GENERAL

for the calendar years  
1955 - 1956

the Secretary of State. This section contemplates a compact as separate and distinguished from the statute, and it contemplates legislative ratification of such a compact. Ratification by our legislature is contained in the statute.

FRANK F. HARDING  
Attorney General

November 1, 1955

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

Re: Sardines

We have at hand a copy of a letter dated October 17, 1955, from Richard E. Reed, executive secretary of the Maine Sardine Industry, addressed to you as Commissioner, Department of Sea and Shore Fisheries, with respect to which you ask our opinion.

Mr. Reed's letter in part reads as follows:

"Several sardine canners in the Eastport and Lubec area are considering the possibility of operating their plants during the winter months and have asked us to obtain from you an interpretation of Section 22 of Chapter 38 of the Revised Statutes of 1954 as follows:

- "1. Can a Maine plant operator legally can herring of any size, taken from Canadian waters and delivered to his place of business from December 1 to April 15, providing he does not label or market the finished product as sardines?
- "2. Can a Maine plant operator legally can herring of any size taken from Maine waters from December 1 to April 15, providing that the finished product is not labeled or marketed as sardines?

"For your information, these packers have expressed the feeling that they definitely should be permitted to handle Canadian-caught fish as outlined in Question 1, in view of the August 10, 1955 ruling by the Attorney General's office covering the importation of Canadian herring under four inches in length."

Section 22 of Chapter 38, R. S. 1954, referred to above, reads as follows:

"Whoever takes, preserves, sells or offers for sale between the 1st day of December and the 15th day of the following April any herring for canning purposes less than 8 inches long, measured from one extreme to the other, or cans herring of any description taken in the coastal waters of Maine between the 1st day of December and the 15th day of the following April forfeits \$20 for every 100 cans so packed or canned and for every 100 herring so taken. . ."

Briefly, the essence of Section 22 is to the effect that herring for canning purposes may be taken, preserved or sold between the 1st day of December and the 15th day of the following April, provided such fish are longer than 8 inches and provided that they are not taken from the coastal waters of Maine.

This office has arrived at the same conclusion as a prior opinion dated November 17, 1952, to the effect that there is no prohibition against canning herring over 8 inches in length, so long as they have not been taken from the coastal waters of Maine.

To proceed to your questions:

The answer to Question 1 is, No.

The answer to Question 2 is, No.

We think that an examination of the case of *State v. Kaufman*, 98 Maine 546, and the statute under consideration in that case clearly shows the legislative intent with respect to the present law. The law, as amended by Chapter 240 of the Public Laws of 1901, reads as follows:

“Whoever catches, takes, preserves, sells or offers for sale between the 1st day of December and the 10th day of the following May, any herring for canning purposes less than 8 inches long . . . or packs or cans sardines of any description, between the 1st day of December and the 10th day of the following May forfeits \$20 for every 100 cans so packed or canned and for every 100 herring so taken; . . .”

The Court, in *State v. Kaufman, supra*, comments upon the logical inconsistency in holding that a person is liable to a penalty for canning fish which he may lawfully catch for canning purposes (herring over 8 inches) and stated:

“There is a seeming ambiguity which requires the construction of this statute.”

The Court then went on to hold that the general prohibition against packing or canning “sardines of any description” took precedence and even prohibited the catching, taking, etc. of herring over 8 inches long. This situation went along pretty much the same until 1949, when our law was amended and the words, “taken in the coastal waters of Maine,” were inserted in the second prohibition. The legislature thereby clarified the apparent ambiguity with the result above stated, that the proper interpretation of the statute would seem to be that the canning of herring in excess of 8 inches long taken from waters other than the coastal waters of Maine is proper.

JAMES GLYNN FROST  
Deputy Attorney General

November 1, 1955

To George R. Petty, Assistant Director, Civil Defense and Public Safety

Re: Sirens on Masonic Temple, Portland

This office is in receipt of your letter of October 19, 1955, and attached copy of a letter from Julian H. Orr, City Manager of Portland.

It appears that part of the program of installing air raid sirens in the City of Portland calls for the installation of such equipment on the Masonic Temple. Mr. Orr states that the attorney for the Temple has been insisting that the City enter into an agreement where the City would agree:

1. To repair any damage to the building caused by the installation or maintenance of the siren;
2. To hold the Temple harmless and to indemnify the Temple against any possible liability to any personal property injured or damaged as a result of the installation; and
3. To hold the Temple harmless for any damage to the siren.