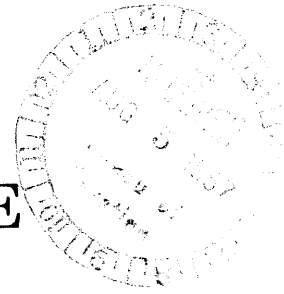
STATE OF MAINE



REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1955 - 1956

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.

Barney Shur, Corporation Counsel for the City of Portland, reports that inasmuch as the sirens are the property of the State, he does not feel that the City would have a legal right to enter into such an agreement.

With respect to this latter statement, while title to the property is in fact in the State, nevertheless the signature of the Portland City Manager on the project application subjects the City to the same compliance as the State with all applicable federal Civil Defense administrative regulations covering contributions of Civil Defense equipment, and quite likely their responsibilities are much the same.

It would appear to us that points 1 and 3 above, which call for the repair of damage to the Temple caused by the installation and maintenance of the siren and for holding the Temple harmless for any damage to the siren, would be necessarily incidental to the responsibility of the State and the City, and the Temple is justified in asking for such consideration.

It is our opinion that expenditure for such purposes would be appropriated out of the funds available for the installation of the equipment, or operational fund.

With respect to item 2, wherein the Temple desires an agreement whereby it will be held harmless for indemnification for any possible liability for injuries to personal property, we would refer you to Section 11 of Chapter 12 of the Revised Statutes of 1954, as amended. We feel that Section 11 was enacted by the legislature in consideration of just such a situation as is here presented. Section 11 reads as follows:

> "Neither the State nor any political subdivision thereof, nor other agencies, nor, except in cases of willful misconduct, the agents, employees or representatives of any of them, engaged in any civil defense activities, while complying with or attempting to comply with the provisions of this chapter or any other rule or regulation promulgated pursuant to the provisions of this chapter, shall be liable for the death of or any injury to persons, or damage to property, as a result of such activity. . ."

This office is of the opinion that the Temple is, for the purpose of the installation of air raid equipment, an agent of the State and the City of Portland, and is immune under Section 11 from liability for the death of or any injury to persons, or damage to property, as a result of the installation or maintenance of such equipment, except in the case of wilful misconduct.

It would also appear to us that, upon being informed of the existence of this statute, the Temple would no longer require the save-harmless agreement.

JAMES GLYNN FROST
Deputy Attorney General

November 7, 1955

To Francis H. Sleeper, M. D., Superintendent, Augusta State Hospital

Re: Commitment

We have your inquiry regarding a commitment from the Probate Court in and for the County of Cumberland. It appears to your satisfaction that one of