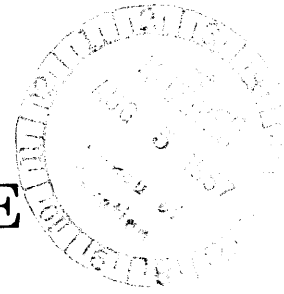
STATE OF MAINE



REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1955 - 1956

December 20, 1955

To Paul A. MacDonald, Deputy Secretary of State

Re: Partnership

We have your request for an opinion concerning the following fact situation:

Under date of July 27, 1953, Guy Agreste and Edward L. Caron combined to form a partnership for the purpose of buying and selling used cars in the City of Biddeford under the partnership name of Elm City Motors. A certificate to this effect was duly filed with the clerk of the City of Biddeford, in compliance with the statute.

On the 1st day of September, 1955, Caron and Agreste agreed to bring into the partnership one Romeo A. Lambert. Under the conditions of the agreement the original conditions of partnership were to remain unchanged and binding on all three of the partners.

The next day, the 2nd day of September, 1955, by written agreement, Edward Caron withdrew from the partnership.

All such actions were properly recorded in the city clerk's office, Biddeford.

You have asked this office if, under the above circumstances, the partnership now remains the same as that originally formed in 1953.

It is our opinion that the withdrawal of Edward L. Caron from the partnership on the 2nd day of September resulted in the dissolution of the partnership. See to this effect *Cumberland Co. Power & Light Co.* v. *Gordon,* 136 Maine 213. Considered in that case was Section 4 of Chapter 44, R. S. 1930, now seen as Section 12 of Chapter 171 of the Revised Statutes of 1954. This section provided that whenever any member of a partnership withdrew therefrom he might certify under oath to such withdrawal, the certificate to be deposited in the clerk's office.

In arriving at its decision the Court found itself faced with this question: "To what extent does this statute, enacted in 1915, modify the common law as to the effect of the dissolution by the withdrawal of the partner?" The answer was contained in the last paragraph of the case and is here quoted:

> "The purpose of the statute is effected when we interpret it to mean only that one who withdraws from the partnership and does not file a certificate of withdrawal (there being no actual estoppel) is conclusively presumed still to be a member of it when carrying on the business within either its actual or apparent scope."

It is our conclusion that this decision clearly holds that withdrawal of a partner dissolves the partnership.

JAMES GLYNN FROST
Deputy Attorney General

January 4, 1956

To Fred J. Nutter, Commissioner of Agriculture

Re: Loans and Mortgages between Soil Conservation District and Farmers Home Administration.

You ask if the Soil Conservation District formed under the provisions of Chapter 34, R. S. 1954, as amended, has the authority and power to contract for

loans, mortgage property, and segregate income from that property to pay indebtedness.

All questions may be answered by a determination of whether or not this District has the power to mortgage its property.

In a prior, unofficial opinion rendered to Mr. C. Wilder Smith, State Director, Farmers Home Administration, under date of November 17, 1954, we indicated to him that the District was not empowered to mortgage its property.

We have had an opportunity to check this opinion and we are still of the opinion that, in the absence of legislative authority to mortgage its property or to pledge income from its property to repay a loan, a conditional sales agreement or what have you, a quasi-municipal corporation such as this District does not have the power to mortgage or pledge its property.

Municipal corporations receive their powers from two sources: from their charters or special legislation dealing with the corporations and from the Constitution of Maine and the general statutes. We do not find any power from any of these sources, and therefore will have to answer your questions in the negative.

We would suggest that, in order to broaden the function of the District and in order to pass on to the farmers the benefit of some liberal farm legislation by the Congress, this matter of mortgaging and purchasing be presented to the next legislature, so that the power of the District may be broadened within the discretion of the legislature.

ROGER A. PUTNAM
Assistant Attorney General

January 4, 1956

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

Re: Embden Lake Property

We have your memo of December 12, 1955, in which you ask a question which has arisen as a result of a contemplated gift of property at the foot of Embden Lake, North Anson, for a salmon rearing station.

The Devereux Foundation, riparian owner, owns a dam site and dam on a river running out of the lake. The dam has not been kept in a state of good repair and is presently not in use as a mill dam.

"Question: What are the riparian rights of the Devereux Foundation who own the dam and operate a children's summer camp on the lake? If the station goes in and the water level should be lowered, would they have legal cause for complaint?"

Answer. If the salmon rearing station is built and the water necessary to maintain the station causes the water level of the lake to be lowered, or the water level in the river to be lowered, there would, in our opinion, be no legal cause for complaint against the State. We consider your question to be: "Would the State be liable for damages to riparian owners if it caused the waters of the lake to be lowered in maintaining the fish rearing station?" and the answer to that question is, No.