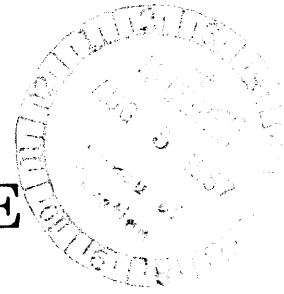
STATE OF MAINE



REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1955 - 1956

pelled to pay for the use of the waters that constitute the natural flow of the stream. We think such millowner is entitled to that use without paying compensation therefor, although in some cases its full enjoyment may be secondary to that of the domestic needs of a municipality or other public uses."

While our Court recognizes that private property cannot be taken for public uses without making compensation for it, it also clearly states that the waters of great ponds and lakes are not private property.

> "They are owned by the state; and the state may dispose of them as it thinks proper."
>
> *Auburn* v. *Water Power Co., supra,* at 587.

Our conclusion is based upon the premise that water taken by the Department of Inland Fisheries and Game for the purpose of supplying a fish rearing station, under a Legislative Act authorizing the Department to construct and maintain such a station, would be for a public purpose. It would in any event be a taking of the water by the State for a State purpose, and a taking of its own property. See Chapter 37, Section 19, R. S. 1954, authorizing the Commissioner of the Department to perform such function as above contemplated.

Further evidence to the effect that such a taking would be a public purpose for which no damages would be payable can be seen in Section 15 of Chapter 37. Section 15 authorizes the Commissioner, after hearing, and for the use of the State for prosecution of the work of fish culture and scientific research relative to fish, to set aside any inland waters for a term not exceeding 10 years.

JAMES GLYNN FROST
Deputy Attorney General

January 10, 1956

To Honorable Edmund S. Muskie, Governor of Maine

Re: Trustee Process

In response to your memorandum in regard to the request of Mr. Gallahan of the Internal Revenue Service to have the State recognize trustee process, I submit the following information:

Approximately a year ago we had one or two conferences with local officials of the Internal Revenue Service and one conference with Regional officials. These conferences were at their request and were for the same purpose as their letter of November 18th to you, namely to have a former opinion of this office overruled.

It has been, and is, the ruling of this office that our State laws prohibit the service of trustee process upon the State. It is the contention of the officials of the Internal Revenue Service that a federal law permits service of such process. We have denied that this is so and suggested that they bring an action against us in order to obtain a court ruling.

I note that Mr. Gallahan's request to you is that you take action that will permit State fiscal officers to honor levies made by the Internal Revenue Service.

I submit that our suggestion of court action is a better proceeding, in that it would result in a ruling by the court on which any future action could be based.

FRANK F. HARDING
Attorney General

January 16, 1956

To George W. Bucknam, Deputy Commissioner, Inland Fisheries and Game

Re: Opening Areas Closed by Commissioner

Under Section 119 of Chapter 37 of the Revised Statutes of 1954, as amended, the Commissioner of the Department of Inland Fisheries and Game may, after due notice, close areas to beaver trapping. You inquire if he may rescind such action and at a later date open that area which had been closed in accordance with the provisions of Section 119.

It is our opinion that the Commissioner may open an area which he has closed.

The same procedure should be followed in opening an area as should have been used in closing it.

JAMES GLYNN FROST
Deputy Attorney General

January 16, 1956

Adam P. Leighton, M. D., Secretary, Board of Registration of Medicine

Re: Requirement of Internship

This is in reply to your letter stating that you have an application from a Chinese physician to take the examination to practice medicine, but that he cannot show compliance with the latest amendments to your law, in that he has had no internship in an approved hospital in the United States. You ask if you can accept extensive post-graduate work in lieu of internship.

It is our opinion that Chapter 66, Sections 3 and 4 of the Revised Statutes of 1954, as amended, require as a condition precedent of the taking of the examination that the applicant shall have interned for twelve months in a hospital approved by the American Hospital Association and the American Medical Association, and that such condition cannot be dispensed with.

JAMES GLYNN FROST
Deputy Attorney General

January 27, 1956

To Kermit Nickerson, Deputy Commissioner of Education

Re: Salary Increases

We are returning herewith the letter written to you by Earle M. Spear, in which he asks the following question: