

MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT
OF THE
ATTORNEY GENERAL

for the calendar years
1955 - 1956

April 12, 1956

To George F. Mahoney, Insurance Commissioner

Re: Compatibility of Certain Employments and Offices

. . . The propriety of the appointment of certain employees of your department to various positions outside State employment is questioned.

Among the positions accepted by Insurance personnel are bail commissioner, deputy sheriff in two counties, and member of a school committee. The question was asked if the holding of such positions was compatible with their positions in your department.

Aside from express provisions in the Constitution or statutes where it is stated that certain offices are incompatible, there is common-law incompatibility, to the effect that

“two offices are incompatible when the holder cannot in every instance discharge the duties of either . . . as if one be under the control of the other.”

No facts come immediately to our minds as to the incompatibility of the offices mentioned above except as to bail commissioner; but we would consider that such questions could be determined in your office as a matter of policy, particularly where such outside position interfered with the performance of the State employee's duties.

With respect to bail commissioner, it is our opinion that such office is incompatible with that of law enforcement officers. A bail commissioner must be a justice of the peace and our court has held that the offices of constable or deputy sheriff and justice of the peace are incompatible. *Pooler v. Reed*, 73 Me. 129.

JAMES G. FROST
Deputy Attorney General

April 12, 1956

To Richard E. Reed, Executive Secretary, Maine Sardine Industry

Re: Sardine Canning License

In your memo of April 4, 1956 you refer to two sections of our law which require in each instance a separate license which must be obtained by a sardine canner:

1. Section 111, Chapter 38, R. S. 1954 (Wholesale Sea Food Dealer's and Processor's License, to be obtained from the Department of Sea and Shore Fisheries), and
2. Section 258, Chapter 32, R. S. 1954 (Sardine Packer's License, to be obtained from the Department of Agriculture).

You further state that certain of the sardine canners complain that this dual licensing is unfair and is an unnecessary tax for the privilege of conducting a business enterprise. As a result of the canners' complaint you ask for an opinion as to whether the licensing requirement of the Department of Sea and Shore Fisheries must be complied with if they wish to operate during the coming season.

The constitutionality of the statutes referred to, which is the underlying basis for your request, must be assumed by this office; and it is therefore our opinion that such licensing requirement must be complied with by the canners before commencing business.

JAMES GLYNN FROST
Deputy Attorney General

April 26, 1956

To Samuel H. Slosberg, Director, Legislative Research

Re: Milk Control

We have your memorandum of April 3, 1956, stating:

"The Legislative Research Committee requests an opinion of the Office of the Attorney General as to whether or not the State of Maine is subject to milk control, so called, under the provisions of Chapter 33 of the Revised Statutes of 1954."

More specifically, your question relates to Section 1 of Chapter 33, which defines "person" as meaning, "any person, firm, corporation, association or other unit."

This office has on two previous occasions given its opinion that this definition does not include the State, and therefore that the State is not subject to the provisions of this law. Those two previous opinions are attached hereto for your information.

We have not at the present time found any reason to reverse the previous opinions of this office. The case of *Maine v. Crommett*, 151 Maine 193, which states in part:

"It is the general rule in Maine that the State is not bound by a statute unless expressly named therein."

rather strengthens our opinion to the effect that the State is not subject to the provisions of this statute.

FRANK F. HARDING
Attorney General

April 27, 1956

To Earle R. Hayes, Secretary, Maine Retirement System

Re: Col. Raymond E. Morang

This is in response to your request for an opinion as to whether or not Col. Raymond E. Morang should be given credits toward retirement for his military service.

Col. Morang began employment with the State in April of 1932 and left the service on the 24th day of February, 1941, to enter the Army. He was retired from the Army for reasons of physical disability on the 1st day of November, 1945. From November of 1945 to March 15, 1947, Col. Morang worked part-time in the City of Gardiner in the capacity of advisor to returning veterans. He returned to State employ in September, 1947.