

MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT
OF THE
ATTORNEY GENERAL

for the calendar years
1955 - 1956

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.

Under the provisions of Section 28 of Chapter 63 of the Revised Statutes of 1954, the same being a section under the chapter entitled "Personnel Law," it appears that if a person does not return to employment with the State within a 90-day period from the date of his discharge from the military or naval forces of the United States, he may not receive credit on his pension rights for the time during which he was in the service.

However, the Maine State Retirement System Law was amended by the 1955 Legislature, and the last sentence of Section 3-VI of Chapter 63-A now reads as follows:

"No member who is otherwise entitled to Military Leave credits shall be deprived of this right if his return to covered employment is delayed beyond the 90 days after his honorable discharge if the delay is caused by a military service incurred illness or disability."

Thus it would appear that under the existing state of our laws in 1947 Col. Morang could not have received credit for the time he was in the service unless he had returned to State service within 90 days from the date of his discharge. The issue now appears to be if the colonel can avail himself of the 1955 amendment cited above. It is our opinion that this amendment is not retroactive and that the colonel may not now receive the credit which he might have received if he had returned to State employment within 90 days after his discharge.

JAMES GLYNN FROST
Deputy Attorney General

May 8, 1956

To Donald K. Maxim, Chairman, Harness Racing Commission

Re: Licenses for Consecutive Weeks

You request our opinion on the following question:

"If a race track is permitted to hold a two-week racing meeting, June 11 to 16 and June 18 to 23, 1956, must the Commission issue two licenses, one for each week or would 1 license for the two weeks be sufficient?"

In 1935, being the year of the enactment of the State Racing Commission, it was provided that any person, association or corporation desiring to hold a harness horse race or meet for public exhibition could apply to the Commission for a license to do so. Such license expired on the 31st day of December, and each license contained the designation of the place where the races or meets were to be held and the time or number of days during which racing might be conducted by the licensee. At that time, with the exception of Sundays, and between the dates of August 1st and October 20th, meets could be held for no more than six days in any 30-day period. Under such laws the licensee could have eight or nine meets per year.

In 1937 the statute was amended to provide:

"Not more than 3 licenses shall be issued authorizing the holding of harness horse races or meets for public exhibition, with pari mutuel pools, on any 1 track in 1 year."

Chapter 187, Public Laws of 1937.