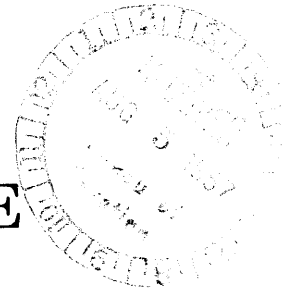
STATE OF MAINE



REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1955 - 1956

July 10, 1956

To George Mahoney, Insurance Commissioner

Re: Contracts with Mutual Insurance Companies

Inquiry has again been made of this office as to the legality of the State's entering into a contract with a mutual insurance company to cover State of Maine risks.

Opinions on the subject have been issued by this office on three occasions: May 1, 1929, September 1, 1943, and May 16, 1944. All are to the effect that the State may properly enter into contracts of insurance wtih mutual companies.

Contracts of insurance on a strict mutual plan would probably be in violation of Article IX, Section 14, Constitution of Maine, which provides that "The credit of the State shall not be directly or indirectly loaned in any case."

It is our opinion that the State may lawfully enter into contracts of insurance with properly licensed mutual companies covering State property, if the premiums to be paid are definitely certain and no contingent or additional liability is created by virtue of possible future assessments. See Section 85 of Chapter 60, R. S. 1954, for authority of domestic mutual fire insurance companies to issue non-assessable advance cash premium policies.

JAMES GLYNN FROST
Deputy Attorney General

July 13, 1956

To Paul MacDonald, Deputy Secretary of State

Re: Revocation of Licenses

We have your recent request for an opinion as to the proper date from which to determine when the license to operate a motor vehicle shall be revoked upon a person's conviction of driving under the influence.

It appears that the respondent in the instant case which gives rise to the question pleaded guilty in the Bar Harbor Municipal Court on June 13, 1955, to the charge of operating a motor vehicle while under the influence of intoxicating liquor. After sentence was imposed respondent appealed.

Thereafter, at the September term in the Superior Court in and for the County of Hancock, respondent again offered a plea of guilty and was sentenced $100 and costs, which was paid.

Pending respondent's appeal to the Superior Court, he retained his license to operate by virtue of court order authorized under the provisions of Section 150, Chapter 22, R. S. 1954.

Upon receipt of an abstract of the Superior Court Record concerning the case you issued an order under date of September 23, 1955, revoking the respondent's right to operate motor vehicles for a two-year period beginning with the date respondent's license was received in your Department.

Under these circumstances the question is asked if revocation for a two-year period should begin on September 16, 1955, the date of conviction and sentence in the Superior Court, the same being the date upon which you based your de-

cision, or whether such revocation should begin on June 13, 1955, the date of conviction and sentence in the Bar Harbor Municipal Court.

It is the contention of the respondent, through his attorney, that, having been convicted upon his own plea of guilty on June 13, 1955, the appeal goes only to the sentence and does not result in a trial *de novo,* with the result that conviction was of June 13, 1955, and therefore that revocation of license should properly become effective on that date, not as of September 16, 1955.

Without determining whether appeal from the sentence, after a plea of guilty, is "conviction" for the purpose of revoking a license after receipt of the abstract of Court Record, we are of the opinion that you properly based your decision revoking respondent's license upon receipt of the Abstract of the Superior Court record, thus making September 16, 1955, the governing date, rather than June 13, 1955.

We believe you are utterly without the power to revoke a license retroactively to cover a period when that license was retained by respondent on authority of a court order. While

> "The license or right to operate motor vehicles of any person convicted of violating the provisions of this section shall be revoked immediately by the Secretary of State upon receipt of an attested copy of the court records, without further hearing," (Sec. 150, Chapter 22, R. S. 1954)

this right is limited, in favor of a respondent by the first sentence in the next succeeding paragraph:

> "If any person convicted of any violation of the provisions of this section shall appeal from the judgment and sentence of the trial court, his license and right to operate a motor vehicle in this state shall be suspended during the time his appeal is pending in the appellate court, unless the trial court shall otherwise order."

The next above quoted section is the *only* provision authorizing retention on court order by the respondent of his license to operate after conviction, and the privilege is one accorded when and if the trial court so orders, and in the event the person convicted *"shall appeal from the judgment and sentence of the trial court."* (Underline ours.)

In the instant case, the trial court, under authority of this section, permitted the respondent, despite conviction, to retain his license pending appeal.

There cannot be any revocation of a license which would permit a respondent to retain and use that license. The very meaning of revocation of license is to deprive one of the privilege of using such license. Having used the license from June to September, 1955, it is now impossible to revoke the right to use that license to cover that same period.

To further consider respondent's contention, and if he were right it would have to be said, in order to make revocation effective June 13, 1955, that the above quoted section of law permitting retention of license pending appeal did not apply to respondent, and his license should have been immediately revoked.

However, we note that in the attorney's letter dated July 9, 1955, he asserts that the section does apply, that the Municipal Court Judge had endorsed the record to the effect that respondent was "allowed to retain operator's license pending appeal," and the same should be honored by the Secretary of State.

This endorsement prevented the Secretary of State from revoking the license then; respondent had the benefit of his license during that period, after which his revocation would go into effect. See *State* v. *DeBery,* 150 Me. 28, for discussion of revocation and suspension.

Respondent cannot be heard to say that "appeal from the judgment and sentence" gives authority to the trial Judge to permit retention of license pending appeal, thereby preventing revocation, and then, after appeal, that the same clause now means that revocation should have been from date of initial conviction. One cannot take the benefits of a statute and at the same time deny the liabilities of the same statute.

We would also point out that in the next to the last paragraph in Section 150 as amended, revocation is for a period of two years after the conviction of a person violating the provisions of this section. We cannot see how you, administratively, can make a revocation effective for a period of less than two years, except as authorized by statute, or over a period which by judicial action the court has prevented an earlier revocation.

Inasmuch as counsel for respondent has indicated an intention to file a petition for declaratory judgment *re* the matter, in the event of a ruling from this office adverse to respondent's interest, we would add that under the decision of *Steves et al.* v. *Robie,* 139 Me. 361, such a petition might be improper.

JAMES GLYNN FROST
Deputy Attorney General

August 7, 1956

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

Re: Baxter State Park

. . . You state that a Resolve to simplify the open-water fishing laws by counties was enacted by the 97th Legislature and that under Piscataquis County you have:

"Baxter State Park. Daily limit 5 fish from any of the waters."

You ask whether that means 5 fish in the aggregate from any or all of the waters, or only that it is unlawful to take more than 5 fish from any one of the waters.

It is our opinion that this law means that only 5 fish in the aggregate may be taken from any or all of the waters.

JAMES GLYNN FROST
Deputy Attorney General

August 7, 1956

To Paul A. MacDonald, Deputy Secretary of State

Re: Expenses of Party Headquarters

This is in response to your memo of July 11, 1956, to which you attached a letter from Donald Nicoll, executive secretary of the Maine Democratic Party.