

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

August 29, 1957

To W. H. Bradford, Right of Way Engineer

Re: Legal Status of School House on Powers Farms

It appears that a former owner of the whole property conveyed this school house lot, so-called, to the School District of Easton with a reversion to one Israel Dodge, if the property was not used as a school lot.

The Powers Farms purchased the contiguous property in 1952 and the deed exempted the school house lot from the transfer.

Although it was not recorded, it seems that the Powers Farms had obtained a bill of sale from the District of the building on the lot and that it did not remove the building from the lot.

I am informed that the State has taken a portion of the land in front of the building and that Powers Farms claims damages for change of grade.

Obviously, there are no damages. In the first place, Powers Farms is a trespasser on the property of the heirs or assigns of Israel Dodge, this school house lot having reverted to them by the terms of the original deed. The building is personal property by law and is now in no better legal position than a parked automobile on a neighbor's land. Even the subsequent purchase of the property from the Dodge heirs would not make the building realty for the purposes of this condemnation. At the time of the taking the building was personal property and had no lawful right to be where it was! The State cannot pay damages based on an unlawful trespass.

The rule of damages in this case is that the heirs or assigns of Dodge are entitled to the value of the land taken, plus the damages to the remainder, if any, minus any increase in the value of the remainder by virtue of the improved road.

The Joint Board has no authority to pay any damages in regard to the building.

L. SMITH DUNNACK

Assistant Attorney General

September 3, 1957

To W. H. Bradford, Right of Way Engineer

Re: Outdoor Advertising

You have requested my opinion as to whether a sign reading, "For Goodness Sake Eat Chickens and Eggs—Compliments of Wirthmore Feed Company" requires a permit under section 138 of Chapter 23.

In my opinion the sign advertises two things:

1. The eating of chickens and eggs in general, and
2. The Wirthmore Feed Company.

Although part of the sign advertises eating of chickens in general, it might pass under the exception. I would hesitate to rule on the question.

However, the second part of the sign is an obvious advertisement of the

company and has nothing to do with the business transacted on the premises.

It is my opinion that the sign requires a license.

L. SMITH DUNNACK
Assistant Attorney General

September 3, 1957

To Honorable James C. Totman

Re: Change of Residence of Member of the Legislature

. . . You inquire as to your eligibility to serve as State Representative in view of your change of residence.

Your question would seem to be answered by Article IV, Part First, Section 4, of the Maine Constitution, which reads as follows:

“Qualifications of members.—No person shall be a member of the house of representatives, unless he shall, at the commencement of the period for which he is elected, have been five years a citizen of the United States, have arrived at the age of twenty-one years, have been a resident in this state one year; and for the three months next preceding the time of his election shall have been, and, during the period for which he is elected, shall continue to be a resident in the town or district which he represents.”

I understand that it is necessary for you actually to change your residence and that it is not reasonably possible to raise the question of your intention to be a resident of Bangor or a resident of another State.

I believe that under your circumstances, as I understand them to be, this Constitutional provision would preclude you from acting as a Representative from Bangor during any special session of the Legislature. Personally, I very much regret that this is so, but the Constitution seems to be very plain in regard to this.

FRANK F. HARDING
Attorney General

October 10, 1957

To Honorable Edmund S. Muskie, Governor of Maine

Re: Appointment of Members of the Board of Examiners of Podiatrists

Reference is made to your inquiry with regard to Section 9 of Chapter 111 of the Public Laws of 1957, amending Chapter 74 of the Revised Statutes of 1954, and providing for a new Board of Examiners of Podiatrists.

The Board consists of four members: Two members of the Board of Registration of Medicine, i. e., the Chairman and the Secretary-Treasurer of said Board, and two podiatrists to be appointed by the Governor with the advice and consent of the Council. The law specifically states that the term of podiatrists shall be four years. The next sentence provides that appointments shall be so spaced that the term of one of the podiatry members of the Board shall expire every two years. It is obvious that, in order to carry out the intention of the