

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

Legislature, where the appointment of two podiatrists must be made at the same time, the term of one of them must be for two years and the other may be for four years.

This is a situation where the intent of the Legislature must govern over the express words of the statute.

ROGER A. PUTNAM
Assistant Attorney General

October 29, 1957

To David H. Stevens, Chairman, State Highway Commission

Re: Construction Area Permits

You have requested my opinion as to the powers of the Commission to grant the request of Cianchette Bros. to operate overloaded trucks on certain ways in Bangor.

Section 98 of Chapter 22 was amended in 1953 by Chapter 231, which authorizes the State Highway Commission to establish "construction areas." Although this grant of authority was not made in the clearest of language, the intent of the proponents of the original bill is known. They had two objectives:

1. to permit the use of the unusually heavy modern road building machinery on the job, and
2. to provide for the use of Euclids and heavily loaded trucks in hauling materials to the job.

The statute uses the words "within construction areas established by the Commission." No attempt having been made to define "construction area" in the law, it must be construed to mean such areas as are deemed advisable by the Commission.

The paragraph providing for procuring permits from towns and cities indicates that the legislature contemplated that the areas could extend beyond the focus of the construction work for the purpose of hauling materials to the work.

The paragraph that permits the state engineer-in-charge to grant construction permits indicates that one of the major intents of the act was to provide for speedy action. Of course, no engineer-in-charge would issue such a permit without acting under some directive.

The amendment in question provides for a bond, etc., so that the Commission can be assured of the rebuilding of the road, if necessary.

In construing statutes relating to the powers of the Highway Commission we must consider that the primary duty of the State Highway Commission is to provide for and protect the highways.

Although it seems that the legislature presumed that these permits would be freely issued, there are no mandatory words. The statute says "*may* be issued," and the Commission has the power to establish the areas. In fact, there is no set-up for applications for the establishment of these areas.

It is my opinion that the Commission should be assured that the highway can be and will be restored to its previous condition and that the traffic hazards will not be dangerous. It must be noted that the inclusion of federal projects in these areas indicates that the act was intended to aid the contractors, but it

cannot be presumed that this aid should be given at the expense of the condition and usability of the highways.

L. SMITH DUNNACK
Assistant Attorney General

November 5, 1957

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

Re: Contract with Massachusetts Institute of Technology

We are returning herewith a copy of agreement from the Massachusetts Institute of Technology executed by your Council and the Institute. The agreement was referred to this office by the Bureau of Accounts and Control for our approval.

There are two points relating to the contract with which we are concerned and which prevent us from approving the contract.

We note that the contract, when considered in conjunction with other correspondence with the Institute, contemplates that 17½% of the contract price involves work to be done by the Institute for the William Underwood Company. The contract as a whole contemplates research and study on sardines, primarily for an analysis of the packed food for protein, fat, carbohydrates, minerals, etc. A portion of the work, approximately 17½%, includes study of William Underwood's fried sardines and the free liquid packing medium.

We gather from your letter to Mr. F. L. Foster, dated May 14, 1957, that the results of the study of the Underwood sardines would be forwarded to your office in a sealed envelope, which envelope would be immediately forwarded to Underwood, unopened.

While apparently the results of the study on the whole will be made available to Maine industry and State agencies of the State of Maine, the work to be done on the Underwood product will not be made available, but will be sent unopened to the Underwood Company.

We do not conceive it to be the function of a State agency to advance the cause of a single private industry. For that reason we do not approve the contract.

We also point out that under the provisions of Chapter 16, Section 267-II-B, the one paragraph in our opinion which would permit such research project, such project is to be under the joint direction of the Commissioner of Sea and Shore Fisheries and the Maine Sardine Tax Committee. Such statutory requirement compels us to the conclusion that the contract should be approved by the Commissioner of Sea and Shore Fisheries. The contract is not so approved and therefore that is a second reason why we have not approved it.

JAMES GLYNN FROST
Deputy Attorney General

November 6, 1957

To Paul A. MacDonald, Deputy Secretary of State

Re: Transit Plates

We have your memo of October 18, 1957, stating that a dealer in heavy machinery, who is an authorized holder of transit plates issued under the pro-