

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

accountant. Said section provides that in such event, upon a proper petition, then the State Auditor shall order a new postaudit to be made by the department.

JAMES GLYNN FROST
Deputy Attorney General

February 5, 1958

To Roland H. Cobb, Commissioner of Inland Fisheries and Game

Re: Access Areas

In response to your letter of January 27, 1958, supplementing our opinion of January 6, 1958 with respect to the purchase of access areas to land not governed by game management laws, we would advise that it is not proper either for your department to purchase such access areas or for your department with the approval of the Governor and Council to purchase such access areas.

We would expect that with respect to land which you desire to purchase for the purposes of game management you would continue to follow the law as you have in the past.

JAMES GLYNN FROST
Deputy Attorney General

February 5, 1958

To E. L. Newdick, Commissioner of Agriculture

Re: "Meat, Fish and Poultry," Chapter 32A, Section 32, R. S. 1954

We have your memo of January 30, 1958, which reads as follows:

"Sec. 22, Chapter 32A, R. S. 1954 as amended reads as follows:

"*Meat, Fish and Poultry.*—Except for immediate consumption on the premises where sold, or as one of several elements comprising a meal sold, as a unit, for consumption elsewhere than on the premises where sold, all meat, meat products, fish and poultry, offered or exposed for sale or sold as food, shall be offered or exposed for sale and sold by weight."

"Since the effective date of this legislation, August 28, 1957, this Department has enforced the provisions of the above section on the assumption that the key words 'meat, meat products, fish and poultry' were used in the law as general terms embracing all types of edible flesh from creatures of the land and sea.

"It is our understanding that this legislation was passed with the specific purpose of protecting the public from trade practices which result in unfair or unequal prices for these foods when they are sold by the unit without weighing.

"The question, then, is this: Are we correct in assuming that the intent of the law is that 'meat, meat products, and poultry' include the carcass or portion thereof from any warm blooded animal or bird used for food purposes; and further, that 'fish' as used in this section includes any cold blooded animal of the sea such as fish, lobster, crab, clam, oyster or mussel used as food for human consumption?"

We agree with you in your interpretation of the meaning of "meat, meat products, fish and poultry".

We understand that you are primarily interested in whether or not the word "fish" embraces shell fish.

In *Moulton v. Libby*, 37 Me. 472, the Court said:

"In all the treatises respecting that common right (of fishing), the general term 'piscaria' or its equivalent, is used as including all fisheries, without any regard to their distinctive character, or to the method of taking the fish. . ."

The Court held that the taking of oysters and clams is embraced in the common right to fish. In *Caswell v. Johnson*, 58 Me. 164, the Court, concluding that oysters are included in the term "fish", said:

"The classification which scientific men have made, founded upon the physical structure of the animal, is not of such common notoriety among the dealers in this class of animals, as to lead to the conclusion that a legal instrument was drawn and executed upon their theories, rather than the well-known accepted theory of the legislative and judicial departments of the State, even if such classifications should differ. The term 'shell' prefixed to the word 'fish', thus making a compound word of it, does not exclude them from this class of animals, but is put there to indicate the particular kind of fish, as cod-fish, sword-fish, dog-fish, and the like. It is a shell-fish, that is, a fish covered with a shell."

See also *State v. Peabody*, 103 Me. 327.

JAMES GLYNN FROST
Deputy Attorney General

February 5, 1958

To Colonel Robert Marx, Chief, Maine State Police

Re: Actual Weight of Vehicles

. . . You ask the Attorney General to furnish you with a ruling on the interpretation of Section 20 of Chapter 22, R. S. 1954, as amended, and of that portion of Section 109 of Chapter 22 that reads, "gross weight, actual weight of vehicle and load".

You state that problem as follows:

"During the winter months, and especially during snow or sleet storms, vehicles being weighed carry some accumulation of snow and ice. Some of these units inevitably exceed the statutory tolerances of 2,000 lbs. on road limits, 10% and 5% on registration, and 10% for vehicles carrying certain forest products.

"The owners, a few courts and one county attorney have indicated that in their opinion 'actual weight of vehicle and load' does not include any accumulation of snow, ice, mud, etc. One court has said that the terminology does not include driver, spare tire, tools, etc. not actually a part of the vehicle and load."

It is our opinion that Section 20 of Chapter 22, R. S. 1954, as amended, does not include weight resulting from accumulations of ice, snow, etc.

Section 20 defines "gross weight" as follows: