STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

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:

" 'Gross weight' as used in sections 16, 19 and 36 shall mean the actual empty weight in pounds of the vehicle to be registered plus the maximum weight of the load to be carried by such vehicle."

Ordinarily, when a truck is registered it is registered on the basis of the actual weight of the truck according to the manufacturer's specification, or, if additional equipment, not supplied by the manufacturer, is added, such as a body, then the actual weight of the combinations of equipment. The "gross weight" would be the weight of the above-mentioned equipment plus the maximum weight of the load that vehicle will carry. The load mentioned is the material placed upon the vehicle and which is designated for removal from one place to another, and not the vehicle itself. These combined weights, vehicle plus load, comprise the weights to be considered in determining "gross weight", for the purpose of Section 20.

With respect to Section 109 of Chapter 22, our answer is different. In the case of overload under the provisions of Section 109, as distinguished from loads in excess of the weight specified in a registration certificate, the weight caused by accumulations of snow and ice must be included in the "gross weight".

Section 109 provides in part:

"No motor truck, trailer, tractor, combination of truck trailer and semi-trailer, or other commercial vehicle shall be operated, or caused to be operated on or over any way or bridge, when the gross weight, actual weight of vehicle and load exceeds 60,000."

The section then continues to spell out the maximum pounds of weight that can be imparted per axle or group of axles to the road surface.

Section 109 cannot, however, be considered by itself in order to determine what is meant by "gross weight, actual weight of vehicle and load". All sections relating to the weight with regard to overweight violations must be read together.

Section 111, designating the fines to be imposed in case the provisions of Section 109 are violated, sets forth a tolerance and an intent that must be dealt with in determining whether or not a violation of Section 109 exists.

In establishing a progressive series of fines, commensurate with the amount of overload, the statute says:

"The following fines and costs shall otherwise be imposed: $20 and costs of court when the gross weight is in excess of the limits prescribed in section 109, provided such excess is intentional and is 1,000 pounds or over but less than 2,000 pounds, *and the above provision as to intent shall apply only to such excess as is less than 2,000 pounds; . . .*"

It can thus be seen that the Legislature has granted a tolerance of 2,000 pounds over the limits established in Section 109, where such excess is unintentional. It is our opinion that this section is intended to give to the person involved the benefit of the doubt whenever the gross weight is unintentionally in excess of the weights specified in Section 109, but under 2,000 pounds, whether the excess is due to mistake or is the work of the elements, such as an accumulation of ice, snow and the like.

The last clause of the above quoted paragraph provides that excesses over 2,000 pounds, whether intentional or otherwise, shall be fined in accordance with the scale of fines that follows that clause.

From these statutes we gather that the Legislature allowed up to 2,000 pounds over the gross weights established to offset the increases in weight, by whatever cause, if unintentional, and did not contemplate that a person should be immune when the weight exceeded the gross weight plus tolerance.

It is difficult for us to give any other interpretation to the words in question, and such an opinion is consistent with the knowledge that heavy loads injure the highways, whether those loads be placed deliberately upon the vehicle, or gather upon the vehicle in transit.

In further substantiation of this position we point out the last sentence of paragraph 5, Section 19:

"But no vehicle shall be operated on ways or bridges, either loaded or without load, that exceeds the limits prescribed in section 109 or is contrary to the provisions of any other section of this chapter, or any other statute pertaining thereto."

The words "either loaded or unloaded" show the clear intent to set maximum weights, regardless of the source of the weight, because of the damage that can be done to our roads and bridges by overweight vehicles.

JAMES GLYNN FROST
Deputy Attorney General

February 6, 1958

To John R. Rand, State Geologist, Economic Development

Re: Necessity for Recording Claims to Acquire Possessory Rights

In regard to your memorandum of January 31, 1958, concerning the necessity for recording claims to acquire possessory rights, the problem presented to us is as follows:

> A case has arisen wherein a locator has staked and recorded a claim in a Great Pond and during the staking noted that another locator had staked the same area previously, but had not recorded his location.

The question then arises—Has the first locator priority rights for thirty days under Section 4 of the Maine Mining Law?

Assuming that the first locator has properly set out the location of his claim, it is my opinion that the first locator has a valid claim for the 30-day period which he is afforded under the statute in which to record his location.

> "Under some statutes the location certificate may be filed at any time before an intervening location. The locator is entitled to the full time allowed by the statute or rule, and, if he files within such time, another cannot gain precedence over him by initiating and completing a location and recording his claim. Even though he does not file his certificate within the prescribed time, unless the statute provides that the claim shall be forfeited, if it is filed before any adverse rights have accrued, or if the delay is excusable."
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> 58 C.J.S. 109, Sec. 55

In the *Big Three Mining and Milling Co. v. Hamilton*, 107, P. 301 the following dicta is found: