

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

Answer:

Their terms of office begin on the operational date of the School Administrative District and expire at the end of the length of their respective terms determined by Section III F. The operational date of the School Administrative District coincides with the active management and at the beginning of the school director's terms.

GEORGE A. WATHEN
Assistant Attorney General

March 10, 1958

To Andrew E. Watson, Asst. Chief, Agriculture, Division of Inspection

Re: Rules & Regulations—Establishment of grades of sardines in oil, packed in $\frac{1}{4}$ sized cans; Marking, Branding or Labeling of Sardines

We are returning herewith two proposed sets of rules and regulations—one relating to the establishment of grades for sardines in oil, packed in $\frac{1}{4}$ sized cans; the other relating to the marking, branding or labeling of sardines and the use of established grades. We have the following comments to make on the rules:

In establishing official grades for sardines in oil, packed in $\frac{1}{4}$ sized cans, four grades are established ranging from "fancy" to "sub-standard grade."

"Sub-standard grade" is defined as being "The quality of canned Maine sardines in oil that failed to meet the requirements of 'standard grade', if they (sardines) comply with the provisions of existing applicable state law and regulations.

It appears to us that such definition embraces all sardines going downward from "standard grade" to the lowest level at which such fish might be sold, including such fish as might be sold as herring under the provisions of Section 263, Chapter 32 of the Revised Statutes of 1954. In other words, "sub-standard grade" embraces all sardines that can be legally sold up to, but not including, the grade established as "standard grade."

In relation to this definition we draw your attention to the contemplated rules and regulations governing the marking, branding or labeling of sardines. These latter rules and regulations provide for the marking of sub-standard grade sardines which must be stamped with the words "BELOW STANDARD IN sardines which must be stamped with the word "BELOW STANDARD IN QUALITY, GOOD FOOD—NOT HIGH QUALITY" and products which are otherwise known as sardines but fail to meet sub-standard grade requirements which latter product must be marked "HERRING."

It appears to us that, as "Sub-standard Grade" embraces all sardines that can be sold up to the standard grade, the further breakdown of sardines into a pack that does not make the sub-standard grade presents an ambiguity that should be cleared.

In so far as Section 263 of Chapter 32 provides that products which do not meet standards to be established by the Commissioner may be sold if labeled "HERRING," the requirement in the contemplated rules and regulations that

sub-standard grade sardines shall have the words "BELOW STANDARD IN QUALITY, GOOD FOOD—NOT HIGH QUALITY" is not a proper requirement. A valid rule and regulation cannot be promulgated where such rule and regulation is inconsistent with the statute.

JAMES GLYNN FROST
Deputy Attorney General

March 18, 1958

To David H. Stevens, Chairman, State Highway Commission

Re: Sale of Buildings on Condemned Land

You have requested my opinion as to the power of the Commission to sell at auction buildings on land condemned for highway purposes.

It is true that the legislature has given broad general powers to the Commission and that the statutes should be interpreted to achieve the purpose of creating a connecting highway system. However, the legislature laid down definite rules in regard to purchases and sales. When the Code was enacted under Tudor Gardiner's leadership, a stringent control was set up with the intent to take away from all departments the power to buy and sell and to place this power in the hands of a central bureau of purchases, great emphasis being placed on the system of publicly advertised bids. This theory of a public bid system is similar to that lately promulgated by the Federal Bureau regarding right-of-way cases. It seems that there is a willingness to stick to a graft-proof system and pay more, rather than risk possible collusion.

The only provision in the highway laws relating to sale of property is in Section 24 of Chapter 23:

"The governor and council on recommendation of the commission *may* sell and convey in behalf of the state the interests of the state in property taken or acquired by purchase under this chapter and deemed no longer necessary for the purposes hereof, . . ."

It will be noted that the Commission can recommend sales, but the Governor and Council "may" sell. Nothing is said about procedure; but, since this provision was enacted in 1913 and the Code in 1931, since the Code was intended to set up a new and complete control of the financial system, and since the Code emphasized the bid system, there can be no question but that the Governor and Council would insist on the bid method. . . . The Attorney General's staff understands that the bidding rule applies to all departments.

When the Commission takes land and buildings and contracts with a bidder for a construction for the clearance of the land, releasing title to the buildings and trees thereon, it is considered as salvage under the clearance part of the contract and therefore outside the rule requiring bids. In other words, the trees, houses, bushes, walls, etc., are considered as obstructions to the work, and it is part of the project to remove them.

I have carefully examined the statutes and can find no provisions for the auction of State property. On the other hand, the statutes definitely provide for sealed bids.

L. SMITH DUNNACK
Assistant Attorney General