

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

Such lobster meat would be passing through the State under the authority of laws of the United States and would not be subject to those provisions of Section 116 which precede that portion of the section containing the following exception:

“The foregoing provisions of this section . . . shall not apply to lobster meat passing through the State under authority of laws of the United States . . .”

The foregoing provisions referred to provide generally that lobster meat in the State of Maine shall have been removed from the shell under permit and shall be of certain sizes and that it is to be used for certain purposes, none of which are pertinent because of the referred-to exception.

JAMES GLYNN FROST
Deputy Attorney General

June 3, 1958

To Elmer H. Ingraham, Chief Warden, Inland Fish & Game

Re: Beaver Dam

I have your request for an opinion concerning whether or not your wardens have authority to dynamite beaver dams on private property against the property owner's wishes.

As you have pointed out, sec. 119 of Chapter 37, Revised Statutes of 1954, provides that your department may take nuisance beaver at any time without the consent of the landowner.

It is my opinion that your wardens do not have any authority to dynamite a beaver dam on private property against the landowner's consent. You may take these beavers, and the town will then be left to deal with the landowner regarding the dam which is allegedly causing flooded roads.

GEORGE A. WATHEN
Assistant Attorney General

June 4, 1958

To Vaughan M. Daggett, Chief Engineer, State Highway Commission

Re: Use of Highway Funds for Archeological and Paleontological Salvage

You have requested my opinion as to the authority of the Commission to employ an archeologist on a part-time basis for the purpose of ascertaining the existence of Indian graveyards on proposed new highways in cooperation with the provisions of Section 120 of Title I of the Federal Highway Revenue Act of 1956.

It is obvious that the State of Maine has an interest in the preservation of Indian relics. It follows that these relics are of monetary value as well as of historical and scientific value. It is certain that if the State destroyed any of these relics intentionally, it would be severely condemned, with justification; the act would be wanton.

It appears that under the federal act, a very small expense on the part of the State would aid in ascertaining the location of Indian graveyards on a proposed new construction job and that proper authorities would remove the antiquities.

These relics are property and belong to the people.

When the Commission is planning a way, and a cemetery lies within the proposed line, it is frequently necessary to go to considerable expense to solve the problem. Expending highway funds in this manner is in no way different in kind than to expend funds to avoid destroying Indian relics in an ancient Indian burial ground. In both cases an irreparable damage may be caused.

Section 15 of Chapter 23 says:

“The provisions of the Federal Aid Road Act (public number 156), entitled ‘An Act to Provide that the United States shall aid the states in the construction of Rural Post Roads and for other purposes’, approved July 11, 1916, and all other acts amendatory thereof and supplementary thereto, are assented to. The state highway commission is authorized and empowered to accept, for the state, federal funds apportioned under the provisions of the above act as amended and supplemented, to act for the state, in conjunction with the representatives of the federal government, in all matters relating to the location and construction of highways to be built with federal aid pursuant to the provisions of said act, and to make all contracts and do all things necessary to cooperate with the United States government in the construction and maintenance of public highways in accordance with the above act, as amended and supplemented.”

The Commission is authorized under this section to do all things necessary to cooperate with the United States Government in the construction and maintenance of public highways *in accordance with the above act*, as amended.

The avoidance of damages to these relics is in accordance with the Act, and it is my opinion that the Commission has the authority to participate in the program.

L. SMITH DUNNACK
Assistant Attorney General

June 20, 1958

To E. L. Newdick, Commissioner of Agriculture

Re: The Bangor Fair

I have found that The Bangor Fair was incorporated under the general law on June 11, 1951.

Mr. Gillin has supplied me with a certificate from the Clerk of the corporation which discloses thirteen stockholders in this corporation.

I have checked the lease to Mr. Mourkas and the assignment of the same to The Bangor Fair.

Section 17, Chapter 32, Revised Statutes of 1954, provides that a society to be entitled to the stipend must meet three requirements of which number three was questioned.