STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

offered to contract for education with another unit may authorize students to attend the non-contracting unit. Again, the persons in charge of the non-contracting unit would determine the admission standards.

(2) Pupils having completed the elementary schools in a unit which maintains a secondary school come within the purview of Section 99 of Chapter 41; that is, the unit maintaining a secondary school is not obligated to pay tuition and the student who wishes to enter a secondary school in the unit in which he resides is governed by the admission qualifications of Sections 44 and 102. These sections provide that the superintendent, the superintending school committee, or the school directors shall examine the candidates for reasonable entrance qualifications.

(3) Pupils having completed the elementary schools in a unit not maintaining a secondary school and who wish to enter a community district high school must meet the entrance qualifications set up by the community school committee, since Section 117 provides that the community school committee shall have all the powers and duties with respect to the community school conferred upon superintending school committees under the general statutes and those enumerated in Section 114. This means that the community school committee has the same powers of examination for admission as do the supervisors under Sections 44 and 102. Section 124 provides that the superintending school committee of a town, community school committee, or school directors shall determine the qualifications.

(4) Pupils having completed the elementary schools in a unit which has joined a community school district and wish admission to the district's high school must conform to the qualifications for entrance set by the community school committee.

I have assumed in each of the above cases that a secondary school or free high school qualifies as such under Section 98, Chapter 41.

The standards set by the committees, as outlined above, must be reasonable and the judgment of the group setting entrance qualifications cannot be attacked unless it can be shown that the standards are unreasonable. In each of the specified cases there is statutory authority to set entrance requirements. There is no standard set by statute, therefore the group charged by the statute with this duty may exercise its discretion.

GEORGE A. WATHEN
Assistant Attorney General

July 8, 1958

To Max L. Wilder, Bridge Engineer, State Highway Commission

Re: Fishing from Bridges on Highways

You have requested my opinion as to the legal status of people fishing from the bridges on state or state aid highways.

Obviously, fishing is not a normal highway use. A bridge is a highway and its purpose is to permit travellers to cross the water. Although an abutter can use an easement highway to some extent, there cannot be any abutting land owner to a bridge. I can find nothing to permit the fisherman to fish from a bridge as a matter of right.

Therefore, it is my opinion that the State Highway Commission can forbid fishing from bridges if it interferes with the use of the highway.

Of course, this can be a serious public-relations matter.

L. SMITH DUNNACK
Assistant Attorney General

July 10, 1958

To the Legislative Research Committee

Re: Suggested Amendments of Sales and Use Tax Act as a result of the hearing on June 11, 1958.

Your committee has requested an opinion relating to the suggestions set forth in Attorney Stevenson's letter of June 12, 1958, to Senator Lessard, Chairman of the subcommittee presiding over the hearing on the previous day.

In paragraph 2 of his letter he suggests striking out the sentence beginning on line 9, "retailers . . ." and replacing it with "Retailers, resident and non-resident, who are registered under the provisions of Sections 6 and 8 or who ought to be so registered under these sections, shall collect such tax and make remittance to the Assessor for all years that collections and remittances should have been made." This language inserted into Section 4 might jeopardize the constitutionality of the Sales and Use Tax Act. A Maine statute applying to a non-resident of this State would be deemed unconstitutional by any court of last resort. Section 6 takes care of non-resident sellers in case they come within the constitutional jurisdiction of this State by doing business in this State or having an agent, office, sample room, warehouse, or storage place.

In *California v. West Publishing Company*, 216 P. 441 (1950), the court said, speaking through Justice Spence:

> "The nature and range of appellant's local activities establishes it as a 'retailer maintaining a place of business in this State,' and that such 'presence' in this jurisdiction rendered it liable to the service of process under the terms of the Use Tax Act."

Our use tax provisions in Section 6 take care of this situation without referring specifically to non-residents. Our use tax definition is the same as California's, and out-of-state sellers can come within the jurisdiction of this State by certain acts specified in Section 6 of Chapter 17, R. S.

The suggestion of adding to Section 6-II after "aforesaid": "who solicits directly by sending printed catalogs or other types of order booklets and pamphlets to residents within the state," would create a restraint upon out-of-state persons contrary to the Commerce and Due Process clauses of the Federal Constitution. The present Maine law is quite adequate in the taxing of out-of-state sellers who do business in Maine, as you will note under paragraphs I, II, III and IV of said Section 6.

The use tax is assessed for the storage use or other consumption in this State, and the United States Supreme Court has held that there is no violation of the Commerce Clause involved in the requirement that an out-of-state seller of goods collect a use tax on goods sold for use within the State, but in all of these court