

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

3. The company *promises to pay money or to do some act of value to the insured.*

4. The company promises to pay the money or perform the act *upon the destruction or injury of something in which the purchaser has an interest.*

It could be argued that under this statute even a warranty would be considered insurance. To eliminate this possibility, let us apply the more stringent five-point definition outlined by Vance to the used-car warranty business:

(1) Does the insured possess an insurable interest?

Yes. He owns an equity in the car which is the subject of the "warranty" contract.

(2) Is the insured subject to a risk of loss through the destruction or impairment of that interest by the happening of a designated peril?

Yes. The "warranted" parts of the car may be injured or destroyed through normal use of the car.

(3) Does the insurer assume that risk of loss?

Yes. He promises to indemnify the purchaser for all or part of the cost of repairs.

(4) Is this assumption part of a general scheme to distribute actual losses among a large group of persons bearing somewhat similar risks?

Yes. The company seeks to issue these "warranties" to the purchasers of all cars which meet age and inspection requirements.

(5) Does the insured make a ratable contribution, called a premium, to a general insurance fund?

Yes. He pays a fee either directly or indirectly to the company which retains a certain part of it to cover losses and expenses.

Several types of "used-car warranties" have been called to our attention. Though their details differ, their patterns fit the definition of insurance.

For the reason stated, it is our unqualified opinion that the conduct of the sale of used-car warranties in this state is the carrying on of insurance business.

ORVILLE T. RANGER

Assistant Attorney General

December 5, 1958

To Kenneth B. Burns, Business Manager, Institutional Services

Re: Gift to State

We have your memorandum of November 19, 1958, relative to the bequest of cash and other properties to the Maine School for the Deaf and the Maine Institution for the Blind from the Estate of Nellie E. Fuller. Your share of the bequest amounts to \$7,119.37 and is on deposit with the State Treasurer.

You state that it is the desire of the department to establish a permanent trust fund from the proceeds of this estate from which the income only will be made available for the benefit of the students of the Governor Baxter State School for the Deaf.

Normally such gifts would be accepted by the state under the provisions of Chapter 11, Section 16 of the Revised Statutes of 1954. The gift itself not being in the form of a trust rather an unconditional gift, we are of the opinion that the fund may not be accepted in this manner as a trust but only as an unconditional gift.

We would suggest that the only way in which this fund can be impressed with the trust is for the Legislature to accept the gift and establish the trust.

JAMES GLYNN FROST
Deputy Attorney General

December 12, 1958

To Governor Edmund S. Muskie

Re: Maine Port Authority

Under the provisions of Chapter 5, Section 1 (d) of the Private and Special Laws of 1941:

“With the consent of the governor and council, first obtained, it (Maine Port Authority) may, by vote of its directors: . . .

2: Convey, sell, lease, demise or rent any of its property not required in the discharge or performance of its duties:”

By Section 1 (b) the Authority may buy or otherwise acquire property to be used for its general purposes of operating piers and terminal facilities at Portland.

It is our opinion that the request of the Maine Port Authority for authority to convey a right of way to the Canadian National Railways in exchange for a grant of land by the Canadian National Railways to the Port Authority, is a proper matter for consideration by the Governor and Council.

GEORGE A. WATHEN
Assistant Attorney General

December 29, 1958

To Earle R. Hayes, Executive Secretary, Maine State Retirement System

Re: Division into Two Systems for Social Security Coverage

We have your memo of November 14, 1958, and attached copy of a letter from the Department of Health, Education and Welfare, indicating the need for an opinion of the Attorney General on the following question:

Question: May the Maine State Retirement System, under our present law, be divided for referendum and coverage purposes into two deemed retirement systems in the manner permitted by the Federal law (P. L. c. 85-840, section 316), i.e., into one system composed of the positions of teacher, as the then “teacher” is defined in section 316 of the Federal law, and the other composed of the positions of all employees than teacher as so defined?

Answer. The Maine Retirement System may be divided for referendum and coverage purposes into two deemed retirement systems, one composed of the