

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

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April 7, 1959

To: Fred A. Clough, Jr., Commissioner of Economic Development

Re: Lease — Waiver of sovereign immunity of the State; Purchase of Liability Insurance.

We are returning the lease between Company A and the Department of Economic Development, without our approval.

We would advise that the department cannot comply with the requirements of Section 5, as that section is written.

The first portion of Section 5 provides that the Lessee shall indemnify Company A against claims that may, in fact, have been caused by the negligence of Company A's servants, agents, or representatives, and whether or not the injury occurred in an area in the custody of the Lessee.

"Section 5. It is hereby understood and agreed throughout the initial and any additional term hereof, that Company A shall have no liability for, and Lessee hereby waives, and indemnifies Company A, its employees, agents and representatives, against any and all claims of Lessee or Lessee's agents, employees or customers for any death or injury or loss or damage of any kind or character sustained or suffered in or upon or about the Leased Space from any cause whatsoever, . . ."

We would point out initially that a State Department is powerless, without statutory authorization, to enter into contracts whereby the Department agrees to indemnify any person. Such indemnification would be an ineffectual attempt to waive the sovereign immunity of the State.

With respect to the last portion of Section 5, liability insurance may be purchased by a State Department if such purchase is approved by the Governor and Council.

Perhaps the lessor would feel that its interests are sufficiently protected if the lessee purchases liability insurance without further agreements. We would suggest that Section 5 be amended so as to provide only for the purchase of such insurance.

We offer the following as a suggested amendment to Section 5:

"Lessee shall procure and maintain throughout the leasing period or periods at its own expense in responsible insurance companies acceptable to Company A, adequate amounts of insurance, satisfactory to Company A, for liability for death or injury, or loss or damage, caused by the negligence of lessee, its employees, agents, or servants, sustained or suffered in, on, or about the Leased Space."

JAMES GLYNN FROST
Deputy Attorney General

April 15, 1959

To: Ronald W. Green, Commissioner of Sea and Shore Fisheries

Re: Building Fishway on the Aroostook River

We have your memo of March 6, 1959 having reference to Chapter 171, Private and Special Laws of 1957. Your memo states that along