

# 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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May 5, 1959

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Summer Schools

You have requested an opinion concerning whether it would be legal for a superintending school committee to charge tuition for summer school.

It is my opinion that it would not be proper to charge tuition to students attending a public school during the summer, based on the provisions of our present law. Public funds would be used to pay the teachers and administrative personnel. School buildings would be utilized, and section 121-A of Chapter 41 states that the cost of inspection by the Board of Education shall be paid from the state appropriation for the support of public schools.

You have requested an opinion regarding a hypothetical situation, and, therefore, we have no facts to which the law can be applied. I have necessarily been forced to make assumptions which may not be the facts. Therefore, we must conclude that based on our understanding of the summer school program, we feel that it would not be proper to require tuition from those attending. Public funds cannot be used for private purposes.

GEORGE A. WATHEN  
Assistant Attorney General

May 11, 1959

To: Roland H. Cobb, Commissioner of Inland Fisheries & Game

Re: Contract between Inland Fisheries & Game Department and Pembroke

I have your request for an opinion regarding the legality of the so-called contract which you have forwarded.

Section 57, Chapter 37, authorizes the Commissioner to grant permits to take alewives for market under such rules and regulations as he may establish, but prohibits the granting of exclusive territory permits.

Chapter 49, Private & Special Laws of 1957 gives the Town of Pembroke exclusive rights for taking of alewives in the town and further authorizes the town to operate the fishing itself or sell the privilege through the selectmen or a committee appointed for that purpose.

Therefore in Pembroke the taking of alewives is exclusively in the hands of the town.

Section 13 of Chapter 37 provides for construction and repair of fishways by the owners or occupants of a dam. There is no information regarding the owner or occupant of the dam, but I understand the fishway was put in by your department.

Section 12, V, E, Chapter 90-A, provides that a municipality may appropriate money for propagating and protecting fish in public waters, limiting this to a \$500.00 appropriation annually to be spent by the municipal officers or a person appointed by them, who shall report to the legislative body annually.

The statement that you have sent to me is not a contract, but merely a promise to do an act in the future. If this were a contract, the officers of the town apparently have no authority to execute it, unless authorized at a town meeting. I do not find anything in Chapter 37 that would authorize the Commissioner to enter into such a contract. Therefore, in the absence of authority to enter such a contract, it would not be binding on the Town of Pembroke.

GEORGE A. WATHEN  
Assistant Attorney General

May 13, 1959

To: Peter W. Bowman, M. D., Superintendent of Pineland Hospital & Training Center

Re: Legality of Marriage of Mental Patients

We have your memo of March 30, 1959 in which you ask for a ruling on the legality of marriage in the case of a Pineland Hospital patient; the patient having been married while on a trial visit, age 19 years, Wechsler-Bellevue FIQ 74.

Chapter 166, section 2 of the Revised Statutes of Maine provides that no insane or feeble-minded person or idiot is capable of contracting marriage. Section 51 further provides that any such marriage solemnized in this State is absolutely void, without legal process.

Under such circumstances, where marriage is void without legal process, there is, of course, no way of having such fact recorded. If, as you indicate, you would like something for recording at the Bureau of Vital Statistics, perhaps section 52 of chapter 166 could be used —

“When the validity of a marriage is doubted, either party may file a libel as for divorce; and the court shall decree it annulled, or affirmed according to the proof; but no such decree affects the rights of the libelee, unless he was personally notified to answer or did answer to the libel.”

JAMES GLYNN FROST  
Deputy Attorney General

May 18, 1959

To: John B. Nichols, Inspector, Aeronautics Commission

Re: Registration of Aircraft Leased to Residents by Out of State Owners.

We have your memo of February 18, 1959, in which you ask if our present law is sufficient to demand registration of aircraft operated by a Maine resident, which aircraft is leased by such resident from out of state companies whose business is the leasing of aircraft.