

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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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.

It is our opinion that aircraft leased by a Maine resident from an out of state corporation and operated by the Maine resident in this State is subject to excise tax if the aircraft is used in air commerce.

Chapter 24, section 13, II, reads as follows:

"II. Aircraft. All aircraft owners resident in the state and operating planes in the state shall register such aircraft with the commission and pay a fee of \$1 for each registration. All non-resident aircraft owners engaged in air commerce within the state shall register such aircraft with the commission and pay a fee of \$25 for each registration."

While this section seems to contemplate registration only by Maine residents *owning* and operating aircraft in this State, you state —

"Section 16 I B however may make enforcement possible, but only if operation is within the state. We quote "It shall be unlawful:" "for any person to operate or authorize the operation of any civil aircraft in air commerce within the state which is not possessed of a currently effective airworthiness certificate and a state registration certificate." By reference to our definitions in Section 3 relative to the "Operation of Aircraft" and "Air Commerce" the paragraph may be sufficient except in those cases where the operator will claim that his flying involves flights to and from Maine but never around in Maine. Would 16 I B help us in court despite the omission in 13 II?"

All sections of law relating to the same subject matter should be read and construed together.

In addition to section 16 I, B, section 16 I, A, is also helpful in considering your problem. We herewith quote both paragraphs:

"Sec. 16. Prohibitions and Penalties.

"I. Prohibitions. It shall be unlawful:

"A. for any person to operate or authorize the operation of any civil aircraft which is not possessed of a valid identification mark assigned or approved therefor by the administration, or if owned by a resident of the state, is not also possessed of a currently effective airworthiness or experimental certificate and a state registration certificate;

"B. for any person to operate or authorize the operation of any civil aircraft in air commerce within the state which is not possessed of a currently effective airworthiness certificate and a state registration certificate;"

In paragraph A we find a law consistent with section 13, II, in that again a resident owner of aircraft must possess a state registration certificate.

What then, is the effect of section 16 I, B? This section, and sections 13, II, and 13, IV, C, must be read together.

An aircraft owned by a non-resident, registered in another state, and used in this state for a purpose not air commerce, is exempt from registration. (Sec. 13 IV, C)

An aircraft owned by a non-resident, which aircraft is authorized to be used in air commerce in this state, must have a state registration certificate. Sec. 16, I, B.

Air commerce is defined in Sec. 3, Chapter 24, as meaning “. . . the carriage by aircraft of persons or property for compensation or hire, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation.”

From our examination of the above-quoted sections of law, we are of the opinion that aircraft leased by a Maine resident from an out of state corporation and operated by a Maine resident in this state is subject to an excise tax if the aircraft is used in air commerce.

JAMES GLYNN FROST
Deputy Attorney General

May 25, 1959

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

Re: Relating to the Closing of Waters by the Commissioner

We have your memo of April 23, 1959, asking for an interpretation of Chapter 37, Section 9 of the Revised Statutes of 1954 relating to the closing of waters by the Commissioner with the advice and approval of the Advisory Council. You ask the following question:

“Could a petition be sent in in January, and a hearing held in January, with a ruling made according to the law shortly thereafter?”

Answer: No.

We assume that by “ruling made according to the law shortly thereafter” that you mean: issue an effective rule and regulation.

Section 9 is a law whereby a procedure is established, based upon a petition addressed to the Commissioner of Inland Fisheries and Game, to alleviate a condition which adversely affects the fish in waters in this State. The section sets up the following procedure:

1. Petitions must be filed in the office of the Commissioner on August 1, or before;
2. Hearing on the petition shall be had prior to September 14th of the year in which the petition was filed;
3. After hearing, pursuant to the petitions filed, the Commissioner with the advice and approval of the Advisory Council, shall make such regulations as may be deemed remedial of any adverse conditions proven to exist at the time of said hearing, such regulations to become effective on January 1 of the year next following the date of the petition.

It is our opinion, following the above schedule, that any such rule or regulation promulgated on the basis of petition and hearing on the petition, could not become effective until January of the following year. The words of the statute would clearly prohibit a rule and regulation becoming effective shortly after the hearing held in January, as set forth in your question.

You indicate that it was your belief that the Legislature intended that the hearings be held between August 1 and September 14. As we recall