

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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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

the most recent amendment to this statute, that, indeed, was the legislative intent.

JAMES GLYNN FROST
Deputy Attorney General

May 25, 1959

To: Stanley A. Jones, Chairman of Harness Racing Commission

Re: Collecting of \$10 license fee for Harness Racing

We have your memo of April 6, 1959, relating to the collecting of a \$10 license fee for each six days or less of harness racing whether or not pari mutuel pools are sold.

You ask if it is correct for the Commission to collect such \$10 license fee for races which do not have pari mutuel wagering.

Answer: No.

In considering the laws of 1952, which laws in relation to your question were then substantially as they are today, the Maine Law Court in *Maine State Raceways vs. LaFleur*, 147 Maine 367, 374, said no license is required of anyone who wishes to engage in the business of harness horse racing if there is no pari mutuel betting permitted.

On the basis of the Law Court decision, it is our opinion that the Commission should not collect a license fee for harness horse racing having no pari mutuel pools.

JAMES GLYNN FROST
Deputy Attorney General

May 25, 1959

To: Miss Ruth A. Hazelton, Librarian, Maine State Library

Re: Stipends — Municipal Appropriations or Expenditures

We have your memo of April 9, 1959, in which you ask if the state stipend as provided for in Chapter 42, Section 33, of the Revised Statutes of 1954 as amended, should be a percentage of the municipal appropriation or a percentage of the municipal expenditure.

In the 1954 revision of our laws, separate sections applied to the stipend to be paid municipalities according to whether the municipality maintained its own free library or secured for its inhabitants the free use of a library in another town.

In each case the 1954 law provided that "the officers shall annually, on or before the first day of May, certify to the State Librarian the amount of money appropriated and expended during the preceding year," for the aforesaid purposes of maintaining a library or securing the use of a library for its inhabitants. The state would then pay over to that municipality a sum of money according to the following formula:

"To municipalities appropriating and expending \$475 or less, 10% ;