STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

inspect payroll records, or is this an additional authority to do so when a complaint is made?"

Answer: The purpose of the gathering of statistical material provided for by section 2 of Chapter 30, R. S. 1954, is not related to the minimum wage law, and the method of gathering such material and its use are limited by sections 3 and 4 of Chapter 30. For instance, section 4 permits entrance for the purpose of gathering such statistics only upon the property of certain type establishments: "any factory or mill, construction activity, workshop, private works or state institutions which have shops or factories,". Section 3 limits the use of such material, "such information being confidential and not for the purpose of disclosing personal affairs."

It thus appears that the words "upon written complaint setting forth the violation of section 132-C" (not present in the original bill but inserted by House Amendment "G" to S. P. 472, L. D. 1337) clearly limit the authority of the Commissioner to inspect books, payrolls and other records of the employer for the purpose of ascertaining information relating to the minimum wage law, such inspection being authorized only upon receipt of written complaint setting forth the violation of section 132-C.

JAMES GLYNN FROST
Deputy Attorney General

September 8, 1959

To: E. W. Campbell, Dr. P. H., Executive Officer of Plumbers' Examining Board

Re: Installation of Water Pipes to Heating Plant by Licensed Oil Burnerman

This is in response to your memo of August 18, 1959, in which you point out a present situation relating to the action of a licensed oil burnerman for connecting water pipes to an oil-burning boiler installed by the oil burnerman in his course of business.

It appears that a Plumbing Inspector of the Town of Sanford plans to take legal action against the licensed oil burnerman for such action. As a result of the contemplated action you have prepared a memo to the Director of the Oil Burnermen's Licensing Board in which you state, in essence, that such business has been for years a licensed business of a plumber, and that action will be taken against anyone not possessing a plumber's license who performs such work.

You ask the guidance of our office in the matter.

For our information you attached a memo dated March 2, 1944, written by the then Attorney General to the effect that a hot-water storage tank comes within the intent of the definition of fixtures as contained in section 175, Chapter 1, Laws of 1933. You also enclose a departmental notation of an oral opinion of the Attorney General issued in 1939, that the Plumbers' Examining Board could legally grant limited plumbers' licenses per-

mitting persons who are qualified to install water piping only, or water heaters only.

Your problem deals with the enforcement of a law, violation of which is a misdemeanor. Prosecutions for violation can be commenced by any person having knowledge of the violation — and such person need not be one within your jurisdiction.

In the face of such contemplated action, we feel it is not proper to issue an official opinion on a matter where legal action can be started by someone not at all affected by the opinion.

In so far as the laws in question are administered to some degree by employees of State departments, we feel obliged to offer the following observations in the interests of such administration.

Chapter 82-A, section 2, enacted by Chapter 352, Public Laws 1955, reads as follows:

> "Sec. 2. Definitions. The following words and phrases when used in this chapter shall be construed as follows:
> I. "Oil burner installations" shall mean the installation, alteration or repair of oil and automatic coal burning heating equipment, including industrial, commercial and domestic type central heating plants, and domestic type range burners and space heaters and further including all accessory equipment, control systems, whether electric, thermostatic or mechanical, and all electrical wiring in connection therewith to a suitable distribution panel or disconnect switch, but excluding all other electrical equipment or work in the building or structure where the above equipment is installed."

It is our feeling that a central heating plant is designed to supply heat to certain areas in the manner for which the unit was designed. For instance, a central heating plant designed as a hot-water system, would be utterly and completely useless unless the system for supplying and returning the water to the heating device were to be installed. Thus, we feel that the water pipes connected to such heating plant are necessarily an integral part of the heating plant or, in the alternative, at least accessory equipment as accessory is defined:

> "Webster defines "accessory" (noun) as "1. A thing that contributes subordinately to the effecting of a purpose or to an artistic effect; an adjunct or accompaniment. 2. Any article or device that adds to the convenience or effectiveness of something else but is not essential, as a speedometer on an automotive vehicle." As an adjective: "Of things, accompanying as a subordinate; aiding or contributing in a secondary way; connected as an incident or subordinate to a principal; additional."
> See also *Zangerle v. Republic Steel Corporation*, 60 N. E. 2d 170.

That the Legislature did indeed intend to have the work of the oil burnermen encroach in a field where the plumber has historically worked, is evidenced by section 13 of Chapter 82-A which reads as follows:

> "Sec. 13. Exception. The licensing provisions of this chapter shall not apply to the following:

"II. Any plumber duly licensed under the provisions of sections 170 to 194, inclusive, of Chapter 25, in so far as the work covered by said sections is involved;"

In other words, contrary to the assumption contained in your proposed memo that an oil burnerman is doing the work of a plumber, this statute permits a plumber to hook up water pipes to heating equipment without being required to first obtain an oil burnermen's license. The very section quoted pre-supposes that such connection of water pipes is an oil burnerman's job, which a plumber can do without further license.

In conclusion we would point out that custom and usage will not prevail over a legislative act. Chapter 82-A of the Revised Statutes fills a field which, though occupied by virtue of opinion of the Attorney General in 1944, was never contemplated by legislative act until the enactment of said Chapter 82-A in 1955.

The very limited definition of plumbing contained in Chapter 25, section 179, V, certainly is not inconsistent with the above observations: "The art of installing in buildings the pipes, fixtures and other apparatus for bringing in the water supply and removing liquid and water-carried wastes."

JAMES GLYNN FROST
Deputy Attorney General

September 8, 1959

To: Major-General E. W. Heywood, Adjutant General

Re: State Armories — Joint Utilization of

We have your recent request for an opinion as to whether or not armories in this State are subject to joint utilization projects.

While "joint utilization" is not defined in the material you left with us, it appears that it means the use of our armories by members of the armed forces other than National Guard or State organized military forces.

From our examination of the statutes it appears that armories can be built by two sources:

1. By towns (Chapter 14, section 18, R. S. 1954) in cooperation with the State, or,
2. By the military defense commission from the military fund (Chapter 14, section 18, R. S. 1954).

An armory provided by a town is for the exclusive benefit of the National Guard or other authorized State military or naval forces. Chapter 14, section 18, R. S. 1954: "The municipal officers shall provide and maintain for each unit of the national guard, or other state military or naval forces located within the limits of their municipality, armories and other necessary buildings, the suitability of which shall be determined by the state military defense commission."

An armory provided by the military defense commission from the military fund might be subject to joint utilization. Chapter 14, section