

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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October 13, 1959

To: Perry D. Hayden, Commissioner of Mental Health & Corrections

Re: Attendance of Public at a Parole Hearing

We have your request for an opinion regarding the right of the public to attend a parole hearing.

These hearings are held at the institution where the prisoner is held. It is my understanding that these hearings are case evaluations based on the material in the case file and for the purpose of determining whether or not a person should be released from a state penal or correctional institution prior to the expiration of his maximum term.

Chapter 242, Public Laws of 1959, which amends Section 1, Chapter 27, provides in part:

“All orders of commitment, medical and *administrative records* in the department are held to be confidential . . .” (Emphasis supplied)

Chapter 219, Public Laws of 1959, commonly known as the “Right to Know” law provides in Section 38 that:

“All public proceedings shall be open to the public, and all persons shall be permitted to attend any meetings of these bodies or agencies, and any minutes of such meetings as are required by law shall be promptly recorded and open to public inspection, *except as are otherwise specifically provided by statute.*” (Emphasis supplied)

It is my understanding that the material used by the parole board for the case evaluation are the administrative records, which are confidential. Therefore, if the public were allowed to attend a parole hearing, it would violate the statute requiring these records to be held confidential. Apparently the intent of the act (Chapter 242, P. L. 1959) was to prevent information of a private nature from becoming public knowledge. Certain confidential information, if released, might adversely affect the rehabilitation of a parolee.

GEORGE A. WATHEN
Assistant Attorney General

October 15, 1959

To: Walter Steele, Executive Secretary of Milk Commission

Re: Bulk Tank Increase

I have your request for our opinion regarding various aspects of the Maine Milk Commission meeting held on July 16, 1959.

Section 4, Chapter 33, Revised Statutes of 1954, vests the Commission with authority to establish and change minimum prices paid by dealers to producers for milk received, purchased, stored, manufactured, processed, sold, distributed or otherwise handled within the State. Section 4 further provides that the Commission shall fix and establish wholesale and retail

prices for milk distributed for sale and lists six types of wholesale and retail sales. As a prerequisite to establishing, fixing or changing prices, the Commission must investigate and hold a public hearing.

The last paragraph of Section 4 provides:

“The minimum prices established for sales of milk by producers to dealers shall, if such sales are made by bulk tank, be increased by such amounts per hundredweight as may be determined by the Maine Milk Commission.”

It appears that establishing or changing prices or classifications must be based on a prior investigation and public hearing and this would apply to a bulk tank increase as well as any other change in prices or classification.

Based on the information in my hands, I believe the meeting of July 16, 1959, was properly called and there was proper notice for the dealers' margin increase.

It appears from the information in my possession that an objection was made to the introduction of any testimony concerning the bulk tank increase. It further appears that testimony was offered by both dealers and producers on the matter of the review of dealers' margins.

In viewing the fact situation in regards a waiver by appearance, the facts do not so indicate regarding testimony on the bulk tank premium.

In reference to the action taken on the bulk tank premium, the real question appears to be whether or not there was due notice of the proposed action.

Due notice is such notice as will apprise all interested parties, whose rights may be affected, of the specific matter to be considered at the hearing and the time and place thereof, so that they may appear to offer testimony or other evidence concerning the matter. The statement concerning the term “due notice” in Black's Law Dictionary is that no fixed rule can be established as to what shall constitute due notice. The notice, in my opinion, must be such as will provide all interested parties with an opportunity to be heard and safeguard their constitutional rights of due process. In the present case, I do not believe there was even an indicia of notice of the bulk tank increase in the public notice. The general catch all clause is not adequate notice.

In the *Appeals of Port Murray* (1950) 71 A. 2d. 208, the facts indicate that after a suspension of minimum prices as an experiment, the Director increased the minimum price of milk. Notice was given of a hearing to consider “measures to be taken to stabilize and assure orderly marketing”, “proposals to effectuate a more level production of milk in this State” and “prices to be paid to producers for Class I milk and Class II milk and the prices for sales of milk and cream by and between all persons in respect to whom, by law, the price may be regulated”. The court stated in its opinion:

“The notice did not indicate at all the actions contemplated by the Director and so did not give interested parties proposals that they might criticise or support with proofs and argument. But we may assume that the director had no plan in mind when he called the hearing; he looked to the hearing for guidance in meeting the situation caused by the reduction in the retail price of milk. The

notice, did, however, state comprehensively the several subjects on which the director sought enlightenment. In our opinion the notice was sufficient."

This is cited to indicate the type of notice necessary and further to point out the functions of the Commission.

In my opinion, a hearing held three years ago regarding the subject of bulk tank premiums would not contain proper evidence for the Commission to base a decision on at this time. I conclude this for two reasons:

- (1) during the interim conditions may have changed and
- (2) the Commission felt that the evidence presented at the hearing on June 21, 1956, was not sufficient to establish a premium.

My gratuitous advice to the Commission in considering the bulk tank premium is to investigate and call a public hearing to determine the amount of the increase.

I did not attempt to answer your last two questions since I do not have enough factual information and these questions, in my opinion, have no bearing on the main issue here involved.

GEORGE A. WATHEN
Assistant Attorney General

October 16, 1959

To: Carleton L. Bradbury, Commissioner of Banks and Banking

Re: Ever-Ready-Chek Plan by Small Loan Companies.

We have your memo of September 10, 1959, and the attached material relating to "Every-Ready-Chek Plan" with the request that we examine the "Plan" to determine if such "Plan" violates any provision of the small loan law.

In essence the "Plan" works as follows:

Upon application, the client is extended a line of credit, definite in amount, but not exceeding \$2500. This credit is evidenced by undated check or checks issued to the client, in the total amount of the credit extended.

When and if client desires to use the credit, he endorses and cashes the check, or one of the checks, if more than one such check is issued. At that time, as stated on the sample form supplied by the Small Loan Company, a loan is made.

"The endorsement by me of any such check and its negotiation shall constitute a loan to me in the amount of the check, effective as of the date of such check, and each such loan shall constitute a renewal of this agreement which will include the amount of the aforesaid check and any prior unpaid principal balances outstanding as of the date thereof . . ."

Payment of the loan is made in monthly installments, which payments may vary in amount, from month to month, as checks are cashed.

Monthly billings would be made to the borrower showing debits and credits to his account.