STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

parole board to make the determination, and the time and place of parole release are "administrative records" as used in Chapter 242, P. L. 1959, and, therefore, are held to be confidential.

In reference to your second request, I believe such notification is proper as an administrative act to insure cooperation between the law enforcement agencies. It does not seem that Chapter 242 was designed nor has the effect of impeding the exchange of information between the various law enforcement agencies when such information is requested or given to aid the enforcement agency in the performance of a duty.

GEORGE A. WATHEN
Assistant Attorney General

December 10, 1959

To: Allan L. Robbins, Warden, Maine State Prison

Re: Inmate Funds

We have your memo of December 4, 1959, in which you ask for our decision on whether you are legally permitted to put inmate funds (running between $10,000 and $25,000) in a savings bank, or other interest paying establishment, and placing the paid interest in the inmate's benefit fund or a created prison educational or recreational fund.

It is our opinion that you would not be legally permitted to mingle funds of the prisoners, place them in a savings bank and apply the interest to an inmate's benefit fund or a prison educational or recreational fund.

Section 48 of Chapter 27, Revised Statutes of 1954, as amended by Chapter 65, Public Laws of 1959, is the statute regulating the handling of prisoners' funds. In its present form this section reads as follows:

> "The warden shall receive and take care of any property that a convict has with him at the time of his entering the prison, keep an account thereof, and pay the same to him on his discharge."

If interest were to be taken in the manner described above and applied to a fund such as is mentioned, we believe such would be the taking of private property without due process and would be an unconstitutional administration of an otherwise constitutional statute.

JAMES GLYNN FROST
Deputy Attorney General

December 15, 1959

To: Walter B. Steele, Jr., Executive Secretary of Maine Milk Commission

Re: Chapter 219, Public Laws of 1959

Reference is made to your memo of November 3, 1959, addressed to George A. Wathen, Assistant Attorney General.

Reports of private individuals to government officials pursuant to statutes do not constitute "public records." (See *People ex. rel. Stenstrom v. Harnatt*, 226 N.Y.S. 338, 341).

It was not the intent of the Maine Legislature that private books and records which happened to be in the hands of a public agency for inspection should be open to the public. If, otherwise, it would be manifestly unfair to private citizens cooperating with that agency.

STANLEY R. TUPPER
Assistant Attorney General

December 16, 1959

To: Marion Martin, Commissioner of Labor and Industry

Re: Taxi Drivers under the Minimum Wage Law

I have your request for an opinion regarding whether taxicab owners are required to pay their cab drivers the minimum wages under Chapter 362, Public Laws 1959.

Section 132-A, Chapter 30, as enacted by Chapter 362, Public Laws 1959, sets forth the declaration of policy which is to provide wages sufficient to employees to provide adequate maintenance, to protect their health and to be commensurate with the value of the services rendered. Section 132-C states that $1.00 per hour is such a rate as will provide the requisites as set out in the declaration of policy.

Section 132-B, subsection III defines the term "employee" and provides exclusions thereto. In looking at the exclusions, I do not feel that A through H apply to taxicab drivers. Subsection III I provides an exclusion for "Any individual employed in a business or service establishment which has 3 or less employees at any one location."

In my opinion, this clearly exempts individuals who are so employed and does not exempt the industry or company employing more than three in a location.

The fact situation indicates that not all taxicabs operate in the same manner; that is, some drivers work from a central office or dispatch office, while others operate from rented stands; others cruise and use free stands. It appears that in each of these methods that orders are relayed to them by phone or radio. It is my understanding that drivers who are on a stand do not necessarily return to that stand. Salaries of the drivers are paid on a commission basis plus tips. The commission paid drivers range from 35% to 40% of the gross receipts. From information available it is not possible to get an accurate statement of the amount of tips received by the drivers. Therefore, I must assume that none of the drivers would be exempted from the definition of employee by reason of subsection III C which excludes "any individual employed as a . . . service employee who receives the major portion of his remuneration in the form of gratuities;"