

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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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;"

I am basing this assumption on the fact that taxi drivers do not receive the major portion of their salary from tips, without the necessity of determining whether the cab drivers are "service employees" as defined by subsection III C.

It is my opinion that taxicab drivers are not exempt from the term "employee" and therefore must be paid the minimum wage of \$1.00 per hour as determined under subsection V, section 132-B. There are distinguishing aspects between driving busses and trucks, and the job of a cab driver. The cab owner has complete control of the operation of his cabs. The municipality generally regulates where cabs may park and discharge passengers. I do not believe a taxi or a taxicab stand is a business or service establishment as set out in subsection III - I. An establishment is defined by Webster as "The place where one is permanently fixed for residence or business; residence including grounds, furniture equipage, retinue, etc., with which one is fitted out; also, an institution or place of business, with its fixtures and organized staff, . . ."

The term "business" has been defined by our courts as that which occupies the time, attention, and labor of men for the purposes of livelihood or profit. *State v. Brown* 135 Me. 39. The statute uses the term *business or service establishment* which has a different meaning than "using a place for business purposes" or "place of business."

In conclusion, I believe the statute must be changed in order to exempt taxicab drivers from the effect of the minimum wage law.

GEORGE A. WATHEN
Assistant Attorney General

December 29, 1959

To: S. F. Dorrance, Assistant Chief Division Animal Industry, Agriculture

Re: Damage to poultry

I have your request concerning the poultry damage which was claimed to have been done by fox.

Section 18 of Chapter 100 provides a procedure for making such claim and also authorizes the Commissioner of Agriculture or his agents to investigate and adjust the claim. Based on the information you have given me, I agree that there is not sufficient legal evidence to determine that these birds were killed by wild animals.

Section 18, Chapter 100 provides that the investigator must have evidence legally establishing the liability of the State. Therefore, I believe this evidence would have to be such that would satisfy your department in paying such a claim. It is difficult to give an opinion since this must be factual determination in which I will not attempt to interpose my thoughts regarding the facts. The facts must establish legal liability of the state, however.

GEORGE A. WATHEN
Assistant Attorney General