

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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February 24, 1960

To: Honorable Roswell P. Bates
72 Main Street
Orono, Maine

Dear Dr. Bates:

In reply to your inquiry relative to the interpretation of Article IV, Part First, Section 2, of the Constitution relating to the term of office of legislators, I do not believe that it was the intention of the framers of the constitution to leave a void in time from one Legislature to the next. I believe the term "two years" is considered actually from one first Wednesday to the next first Wednesday.

Using the 99th Session, 1959, and the 100th Session, 1961, as an example and following your reasoning, the 1959 session would begin on January 7th and the 1961 Session would begin on January 4th; therefore, there would be two legislatures sitting at the same time for two or three days. This is not the intent of the constitutional provision. Should a special session have to be called during the period of time used in your example, the Legislature previously elected would be called and properly so in my interpretation because they would sit until the incoming Legislature convenes.

Sincerely yours,

FRANK E. HANCOCK
Attorney General

February 25, 1960

To: Marion E. Martin, Commissioner of Labor and Industry

Re: Agricultural Employment under the Minimum Wage Law

I have your request for an opinion regarding section 132-B, Chapter 30, as amended by Chapter 362, Public Laws 1959. Subsection III-B of section 132-B exempts "Any individual employed in agriculture, not to include commercial greenhouse employees;" from the definition of employees under Chapter 362, Public Laws of 1959.

The term agriculture is defined by Webster's International Dictionary as "The art or science of cultivating the ground, and raising and harvesting crops, often including also feeding, breeding and management of livestock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use and their disposal by marketing or otherwise."

In regards the hypothetical questions you have raised concerning the various degrees of milk production and distribution, I believe the exemption is applicable in operation number 1, and not applicable in operation number 3. In number 2, I believe the answer would depend on the amount

produced by the operator, that is, does he run a dairy farm and supplement his business with outside purchases, or is he primarily engaged in distribution or processing and as a minor adjunct to this business keep some cows. The operation of the business may be such that the employees who are engaged in processing have no duties in the production aspect of the business.

It is difficult to set forth a general rule on the meaning of "individuals employed in agriculture", since each case should be reviewed on its own fact situation, but as a guide, I would suggest that those operations in which the production of agricultural products is the primary purpose, and in which packing and transporting is an adjunct thereto, that the employees are exempt. I am referring here to operations where the same employees perform some of each of the duties in the chain from the farm to market.

In the operation of a processing plant, the employees should not be considered exempt. Office help in connection with agricultural operations are not normally considered agricultural labor. The term used in our act is broader than the term farm labor.

When a specific fact situation arises, it should be reviewed in the light of the various decisions of the courts on this subject.

GEORGE A. WATHEN
Assistant Attorney General

March 16, 1960

To: Dr. Warren G. Hill, Commissioner of Education

Re: State Subsidies for Transportation

I have your request for an opinion regarding the state subsidy for transportation. Section 237-D, Chapter 41, provides that pupil transportation shall be computed in determining the foundation program allowance for each administrative unit. *Squires, et al. v. The Inhabitants of the City of Augusta, et al.*, 155 Me. 151, held that municipalities may not use contingent funds or school funds to transport pupils to parochial schools.

I have searched the statutes for the duties of the Commissioner when monies have been improperly expended by a municipality for transportation. Section 28, Chapter 41, provides that:

"All moneys provided by towns or other administrative units or apportioned by the State for the support of public schools shall be expended for the maintenance of public schools established and controlled by the administrative units by which said moneys are provided or to which such moneys are apportioned."

This directive of the legislature is clear and unambiguous. Section 237-A, Chapter 41, reads in part:

"After providing an opportunity for a hearing, the State Board of Education, on recommendation of the Commissioner, may adjust the state subsidy to an administrative unit when, in