

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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purpose. The application and correspondence between the Maine School Building Authority and the town specifically negates the use of funds derived from this bond issue for that purpose. The existing agreements cannot be altered without impairing third party rights.

GEORGE A. WATHEN
Assistant Attorney General

November 29, 1960

To: Dr. Howard L. Bowen, Maine School Building Authority

Re: Expended Funds Re Auburn Project

In looking over the correspondence concerning payment of the \$45,000.00 for the land of the Auburn High School, I note that \$4,500.00 was to be paid in cash and nine serial promissory notes in the sum of \$4,500.00 without interest, one maturing each year were to be treated as payment of this project. Therefore, in regard to your question of whether or not we should treat the \$4,500.00 as spent so that we may release Maine School Building Authority funds for the remainder of the project, I am of the opinion that we should treat the entire \$45,000.00 as having been spent. My reasons for this: (1) No money could be released for nine more years if we did not so treat it; (2) The arrangement for payment was agreed upon by the Maine School Building Authority and the underlying purpose was at the vendor's request; (3) We have title to the property free and clear of encumbrances at the present time; and (4) This arrangement has committed the City to payment in a different manner than usual but with the same net result. Therefore, the Authority should consider that if the remaining money has been spent, that the balance due on the property should be considered expended at this time.

GEORGE A. WATHEN
Assistant Attorney General

November 29, 1960

To: Andrew Watson, Assistant Chief, Inspections, Agriculture

Re: Rules and Regulations Re Grades of Sardines

I have your request for our opinion relating to rules and regulations relating to the grades of sardines. As I understand the facts, rules have been promulgated regarding packing of $\frac{3}{4}$ size (12 oz.) cans of mustard packs. Some of the lots have been inspected and found to be substandard. The query now raised is whether the Commissioner can declare a moratorium on the rules setting up these grades and whether or not, after hearing, new rules relating to these particular grades could be promulgated which would be retroactive, so as to make those lots presently substandard eligible for sale as standard sardines.

The Commission is authorized pursuant to Section 258 through 267, Chapter 32, Revised Statutes of 1954, to promulgate rules and regulations regarding the grade and quality of sardines packed in this state (Section 261). The requisite procedure for establishing, amending or modifying grades is set forth in Section 263 which requires notice and hearing.

It is my opinion that the Commissioner is without authority to declare a moratorium on any standard rule or regulation that has been promulgated pursuant to the statutes. I am also of the opinion that he is without authority to establish a grade making it retroactive, either upgrading or downgrading a packing standard.

GEORGE A. WATHEN
Assistant Attorney General

December 5, 1960

To: Austin H. Wilkins, Commissioner of Forestry

Re: Mining on a Public Lot

I have your request for our opinion concerning procedure for entering into a lease regarding mining rights in Township 5, Range 5, an unorganized territory, in Parmachenee. The Brown Company owns the entire township with the exception of the public lots which are not set off. This Company also owns the timber and grass rights on the unlocated public lot. They desire to lease mining rights to a mining company with appropriate royalty provisions. The state has an interest in the land amounting to about 3.2% based on acreage ratios. The cost of setting of the lot would be about \$1,000.00. If minerals were discovered on the land, you have stated that the proposed arrangement is for the state and the company to share all profits in the percentage that their interest appears.

In the normal situation of granting mining rights on state lands, Chapter 38-B would control and the Mining Bureau would have jurisdiction. The present fact situation seems to be covered by Section 12, Chapter 36, Revised Statutes of 1954.

Section 12 provides that the Commissioner may, under the direction of the Governor and Council, grant mining rights, after the approval of the mining bureau on lands belonging to the state on such terms as they direct.

Therefore, I suggest that a council order be prepared setting forth the terms and conditions of the agreement with the Brown Company and secure the approval of the Mining Bureau before presentation to the Governor and Council. The royalties as set forth in Chapter 39-B would be a good guide for granting these mining rights.

GEORGE A. WATHEN
Assistant Attorney General