

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

plant. Thus, in the event the track is operated by a corporation, then that portion of Section 11, Chapter 86, relating to ownership by a corporation would apply.

“The license of any corporation shall automatically cease upon the change in ownership, legal or equitable, of 50% or more of the voting stock of the corporation and the corporation shall not hold a harness horse race or meet for public exhibition without a new license.”

JAMES GLYNN FROST

Deputy Attorney General

March 22, 1961

To: Honorable Norman Minsky
Committee on Industrial and Recreational Development
House of Representatives
State House
Augusta, Maine

Dear Mr. Minsky:

In reply to your request for an opinion with regard to the proposed legislation directing funds received from the gasoline tax paid by non-commercial pleasure boats into the general fund, and in response to our conversation of this morning, we have come to the following conclusions:

1. Funds received from the gasoline tax paid by non-commercial pleasure boats are not covered under the provisions of the Constitution of the State of Maine, Article IX, Section 19. For this reason, the funds collected from these non-commercial pleasure boat owners would go into the general fund could they be ascertained, and the legislature would therefore have the power to provide by specific legislation if clarification were thought necessary.

2. The problem with regard to this proposed legislation concerns the determination as to what part of the total amount of gasoline tax revenue is paid in by the users of non-commercial pleasure boats. We have been informed by Mr. Ernest Johnson, State Tax Assessor, that such a determination would be impossible from records which are now or which could be kept by his office. We understand that it has been proposed that the average figures supplied by the Petroleum Institute of America be used to make this determination. The Constitutional provision referred to above clearly indicates that all revenues derived from the use of vehicles on public highways shall be turned over to the Highway Commission and that none of these revenues shall be diverted for any other purpose. This section of the Constitution was given a very strict construction by the Supreme Judicial Court. In its opinion of May 6, 1957 (152 Me. 453) the Court said that —

“The language of the Constitution shall not, in our view, be extended beyond its plain and ordinary meaning.” (At p. 456)

If average figures are used in determining questions such as the one involved here, the possibility exists that revenues properly dedicated to the Highway fund would be diverted into the general fund in violation of the Constitution.

It is our opinion that the proposed legislation would be unconstitutional unless some method is devised to determine exactly the amount of revenue received from the gasoline tax paid by the users of non-commercial pleasure boats.

Very truly yours,

THOMAS W. TAVENNER

Assistant Attorney General

March 22, 1961

To: Honorable Harry T. Treworgy
Member, Executive Council
State House
Augusta, Maine

Dear Mr. Treworgy:

In answer to your oral question as to the meaning of the term "No person shall be a trustee of the University who is over 70 years of age . . ."

It is our opinion that a person is 70 years of age until he attains the age of 71; therefore, any person appointed to be a trustee of the University of Maine can serve until his 71st birthday.

Respectfully yours,

FRANK E. HANCOCK

Attorney General

March 24, 1961

To: Honorable J. Hollis Wyman
Senate Chamber
State House
Augusta, Maine

Dear Senator Wyman:

We have your letter of March 22 requesting an opinion as to whether or not L.D. 1476 "An Act Relating to Jurisdiction of Public Utilities Commission over Motor Vehicles Carrying Passengers for Hire" would apply to or affect in any way the conveying of cannery workers, blueberry or bean pickers to and from their place of employment in vehicles furnished by their employers. We have discussed this matter with Mr. William Fernald of the Public Utilities Commission and have arrived at the following conclusions:

1. The lease by an employer of a bus for conveying employees to and from work when the bus driver is an employee is not covered under L.D. 1476.
2. The hiring of a bus for conveying employees to and from work when the employer furnishes the driver and the pay is either by the mile or by the day is not covered by L.D. 1476.