

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

June 21, 1961

To: Madge E. Ames, Director of Labor and Industry

Re: Amendments to Minimum Wage Law

We have your memo of May 17 requesting our interpretation of certain provisions of the amendments to the Minimum Wage Law promulgated by the 100th Maine Legislature. In this memo you ask two questions. The first of these is whether or not you are correct in assuming that you cannot count camp counselors, taxicab drivers, and bona fide executives, administrators, and professional people as employees in determining whether or not an employer must comply with the Minimum Wage Law.

It is our opinion that this assumption is basically correct. The amendments to Chapter 30, sections 132-A through J, clearly provide that of all the excluded groups only waiters, waitresses, doormen, bellhops, chamber maids, students, and members of the employer's family shall be included for the purpose of determining coverage. It should be pointed out, however, that students or members of the employer's family shall be included whether or not they are engaged in one of the excluded categories of work. A student or a member of the family should be included in the determination no matter what his occupation. With this exception, no other class of exempt employees shall be included in making this determination.

You ask further if there is any legal definition of the terms "executive," "administrative," and "professional."

An executive is a person whose duties relate to active participation in the control, supervision, and management of business. *Black's Law Dictionary, 4th Edition.*

A person employed as an administrator is one whose job it is to discharge the duties of an office; to manage or conduct; to take charge of a business and to manage its affairs; to serve in the conduct of affairs. *Black's Law Dictionary, 4th Edition.*

A person employed in a professional capacity is one who is practicing a vocation or occupation involving skill, education or special knowledge, which skill or labor is predominantly mental or intellectual rather than physical or manual. *Black's Law Dictionary, 4th Edition.*

As a general proposition, the exclusion covering bona fide executives, administrators, and professional people we feel refers to persons employed to conduct and manage a business and to guide the actions taken by the corporation. Such a person is to be distinguished from one whose job it is to perform the services or create the product upon which the business is based.

THOMAS W. TAVENNER

Assistant Attorney General

June 28, 1961

To: John F. Weston, Chairman of Harness Racing Commission

Re: R. S. 1954, c. 86, § 15, amended by Chapter 399, Public Laws of 1961

In your memorandum of June 26, 1961, you have asked two questions. We herewith return our answers.

"1. Under the above amendment, is the Harness Racing Commission responsible for the administration of this section of the law?"

This question is very broad. It is not possible to give a "yes" answer without some specific directions. Although we do not like to do more than answer a question, we feel in this instance, because of the nature of the question, that we must mention certain specific things the Commission must do under the amendment.

First: the Commission must determine the total amount of the tax on all pari mutuel pools.

Second: the Commission must make a proper division of 1/6 of that total among the licensees, as stated in the amendment.

Third: the Commission must determine that each licensee use the money so returned to it "for the purpose of supplementing purse money."

"2. Do the licensees have to wait until the full racing schedule is completed before receiving their proportionate part of the money or can they receive the money at the close of their race meet?"

The licensees must wait until the full racing schedule is completed. It is not possible to determine the amount each licensee is to receive until the racing schedule is completed. Consequently, a licensee cannot receive its money at the completion of its racing meet.

GEORGE C. WEST

Deputy Attorney General

June 28, 1961

To: Maynard F. Marsh, Ass't. Chief Warden of Inland Fisheries & Game

Re: Use of Artificial Light to Illuminate Wild Birds and Animals

By your memorandum of June 21, 1961, you have asked if the provisions of Chapter 194 of the Public Laws of 1961 apply during the special bow and arrow season on deer.

Chapter 194, Public Laws of 1961 reads as follows:

"Sec. 97-A. Use of artificial lights for lighting game. The use of artificial lights between 1/2 hour after sunset and 1/2 hour before sunrise to illuminate, jack, locate, attempt to locate or show up wild birds or animals shall be unlawful *during open season on deer*, except as provided in section 94, and section 113, subsection IV." (Emphasis ours.)

Section 38, Chapter 37, R. S. 1954, provides:

"The words 'open season' mean *the time* during which it shall be lawful to take animals, birds and fish as specified and limited by law." (Emphasis ours.)

This definition of "open season" indicates that the term applies to a *time* when deer may be legally killed. It does not refer to the *method* of killing deer.

Therefore, the conclusion is reached that Chapter 194, Public Laws of 1961, does apply during the special bow and arrow season.

GEORGE C. WEST

Deputy Attorney General