

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

lowest *responsible* bidder as required by Revised Statutes 1954, ch. 15-A, § 39, VII.

Item #21 of the conditions and instructions to bidders on the back of the "Request for Bids" does not apply to the situation at hand. It reads "No contract may be assigned, sublet or transferred without the written consent of the State Purchasing Agent." There is no contract between M. G. Morissette & Sons, Inc. and the State of Maine. A contract implies the acceptance by the State of the bid of a responsible bidder. There is no contract to assign, sublet or transfer here.

We advise you to reject the bid of M. G. Morissette & Sons, Inc.

FRANK E. HANCOCK

Attorney General

December 21, 1961

To: Lloyd K. Allen, Commissioner of Economic Development

Re: Non-Profit Corporation re New England States Committee on World's Fair

The New England States Committee on the World's Fair has suggested forming a non-profit corporation under Massachusetts law for the purpose of handling funds of the six states appropriated for planning and/or erecting exhibits of each state at the New York World's Fair, 1964-65.

Question: You have asked if you as an individual or as Commissioner have a right to become a member of the corporation.

Answer: You as an individual may become a member of such a corporation. As long as a corporation does not have interests incompatible with your office you may be a member of such corporation. In fact, the only way you can be a member of a corporation is as an individual. It is not possible for the Commissioner of the Department of Economic Development to be a member of a corporation. The Commissioner is a title not a person and a title cannot be a member of a corporation. Such member must be a person. So it would have to be Lloyd K. Allen who would be the member.

Question: May the Governor and/or the DED pay over to such a corporation the funds appropriated by Chapter 221, Private and Special Laws, 1961?

Answer: No. Under the provisions of section 2 of the Act the Governor or his designee (DED) in carrying out the objectives of the Act "shall cooperate with the Governors of the other New England States, or their designees, and with the New England Council in such manner as appears in the best interests of the State . . ."

It is clear that the Maine legislature expects the Governor, or his designee, to work with like people from the other New England States and with the New England Council. No mention is made or even hinted that a third legal entity shall be injected into the picture. A non-profit corporation would be a new legal entity not contemplated by our legislature.

We, therefore, conclude that if such a corporation is formed the Governor, or his designee, has no authority to pay over any of the appropriation made by Chapter 221, Private and Special Laws, 1961, to said corporation.

We suggest that you follow the Act strictly and literally. It would appear that such a course would keep administrative costs at a minimum and allow a greater percentage of appropriated funds to be used for the purposes set forth in the Act.

GEORGE C. WEST  
Deputy Attorney General

December 22, 1961

To: Maynard F. Marsh, Chief Warden, Inland Fisheries and Game

Re: Beaver Trappers and Landowner's Consent

You have asked by your memo of December 20, 1961, concerning the effect of Chapter 65, Public Laws 1961.

This chapter repealed the first sentence of the third paragraph of section 119 of Chapter 37 of the Revised Statutes. This sentence formerly read:

“During such open season beaver may be trapped without the consent of the landowner in unorganized territory, and only with the consent of the landowner in organized territory.”

This sentence constituted an exception to the general law on trapping as set forth in the second sentence of Chapter 37, section 70.

“No person shall trap on or in any organized or incorporated place, or in any unorganized place on the cultivated or pasture area of land that is used for agricultural purposes, and on which land there is an occupied dwelling, or within 200 yards of any occupied dwelling, without first obtaining the written consent of the owner or occupant of the land on which said trap is to be set.”

The exception, relating to beaver trapping, having been removed, the general law applies. A close reading of the general law as set forth in section 70 is less restrictive than seems from a hasty reading.

In order to require written consent the land must be 1) cultivated or, 2) pasture area used for agricultural purposes plus 3) an occupied dwelling on the land, or the trap must be within 200 yards of an occupied dwelling. Furthermore, the written consent may be obtained from either the owner or the occupant of the land.

Section 70, Chapter 37, does apply to beaver trapping. It is a general law and applies to trapping of any animal.

GEORGE C. WEST  
Deputy Attorney General

December 27, 1961

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Eligibility for a War Orphan Scholarship

You have inquired whether or not a war orphan whose father was killed in World War II is eligible for war orphan aid when the child's mother subsequently marries and the husband adopts the son.