

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

Answer to Question I(d): If the teacher's salary is reduced by an amount equal to the annuity premium payment by the employer, the resulting reduced gross salary may, in some cases, fall below the teacher's minimum salary schedule as provided in Section 237-A of Chapter 41, R. S. 1954. Said section would have to be amended if the intention is to include the annuity premiums as part of the salary paid to the teachers for the purpose of the minimum salary schedule.

Answer to Question I(e)-(1): Under Section 24 of Chapter 63-A, R. S. 1954, the annual compensation of the teacher determines the maximum amount of the group life insurance available to that teacher. If it is intended to include within the meaning of the term "annual compensation" the annuity premiums paid by the employer, then an amendment would be necessary to the said section.

Answer to Question I(e)-(2): Section 1 of Chapter 63-A, R. S. 1954, defines "earnable compensation" for the purposes of the Maine State Retirement System as actual compensation including maintenance, if any. The earnable compensation determines the amount of contribution made by the employee to the retirement fund and the retirement benefit payable to the employee. The definition of earnable compensation does not include annuity premiums paid by the employer. The Maine State Retirement law would, therefore, have to be amended if the intent is to include the annuity premiums paid by the employer as part of the earnable compensation for retirement purposes.

Answer to Question I(f): This question has been answered in I(c) above.

Answer to Question II: I hesitate to recommend any change in the standard form of teacher contract until there is considerable consultation with the Internal Revenue as to their requirements relating to the tax-sheltered annuity plans. Any change in the standard form of teacher contract should be made only after consultation with the Maine Municipal Association, Maine Teachers' Association and the Department of Education.

RICHARD A. FOLEY

Assistant Attorney General

January 16, 1962

To: Ronald W. Green, Commissioner of Sea & Shore Fisheries

Re: Size of Herring taken from Canadian Waters

We have your request for an opinion with regard to the interpretation of Revised Statutes, chapter 37-A, section 34, as amended. As we understand the problem, the question is whether this section of the law forbids any person from having in his possession herring of less than 4 inches in length, whether or not these herring were taken in Maine territorial waters. The applicable section of the law is as follows:

"Sec. 34. Size of Herring. It is unlawful for any person, firm or corporation to take from the coastal waters of Maine, to sell, to offer for sale, to purchase, to possess, to ship, to transport, or to have in possession herring which are less than 4 inches long, overall length measured from one extreme to the other, except as provided in this section."

You have asked us specifically whether the statutory language quoted above forbids the use in Maine of herring under 4 inches in length which have been

taken in Canadian waters and shipped into Maine for processing. It should be noted that the phrase "from the coastal waters of Maine" modifies the prohibitions contained in this section. For this reason, it is our opinion that Section 34 affects only those herring taken in the territorial waters of this State, and that therefore, herring caught in Canada are not subject to this section even though they might not be of the legal size.

THOMAS W. TAVENNER

Assistant Attorney General

January 17, 1962

To: Philip R. Gingrow, Examiner, Banks and Banking

Re: Issuance of Small Loan License to Superior Finance Co.

Reference is made to your memo of January 10, 1962. I am not going to recite the facts as contained in your memo.

You ask the question: "1. Did this act of incorporation become null and void at the end of 2 years because they had not obtained a license to engage in the business of making loans of \$2,500 or less?"

Answer: No. The mere failing to obtain a license to engage in the business of making the loans does not in and of itself constitute a failure to commence actual business. There are other facts which would be necessary to determine whether or not the particular finance company had commenced actual business within two years of September 12, 1959.

Question: "2. If your reply to question 1 is in the negative, should this Department issue the aforementioned license or must we have proof that they have commenced actual business under their charter in some other manner? What other actions by this corporation could we accept as proof of their having commenced actual business under their charter?"

Answer: I would not recommend the issuing of the license at the present time. You should have proved that they have commenced actual business in some other manner. You will note that under the purposes listed in their act of incorporation is the provision "to borrow money and secure the payment thereof by pledging its assets or any part thereof;" You should inquire into whether or not they have borrowed any money.

In addition to this, there are other facts which should be examined:

1. Has the corporation held legal directors or stockholders meetings?
2. Has the corporation regularly elected officers?
3. Has the corporation rented office space by lease or otherwise?
4. Has the corporation hired personnel, paid them wages, made Social Security reports and other reports necessary relative to hiring personnel?
5. Has the corporation regularly filed federal income tax returns?
6. Has the corporation purchased furniture, office equipment and other items necessary to the operation of an office or business?

It is not possible to say that any one of these items or any particular combination of these items would in and of themselves constitute the commencing of business, but an examination of the whole picture as to what this corporation has done since September 12, 1959, is necessary to determine whether or not it