

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

Bureau of Public Roads, has raised a question as to the legality of Land Damage Board hearings held by two members of the Board. In particular, the question is raised as to the legality of such hearings when the chairman, an attorney, is absent.

A hearing held by two members of the Land Damage Board is legal. It is not necessary that one of the two holding a hearing be the chairman, except in the instance where the chairman has been unable to administer the oath to the County Commissioner member.

The last sentence of the third paragraph of section 20-I reads:

"A majority of the board, being present, may determine all matters; provided, however, the chairman shall resolve all questions of admissibility."

It is very obvious that the law allows two of the three members to "determine all matters." This is a very clear statement that any two members may hold a hearing and decide the amount of the award. If there is a question of admissibility of evidence this is to be determined by the chairman. There is no requirement that the determination of admissibility of evidence be made at the hearing. Such determination may be made after the transcription of the record.

Such practice has some precedent in Maine. In the taking of depositions counsel may object to a question, an answer, or to certain evidence. The objection is noted on the record. When the deposition is offered in court, the justice then rules on the admissibility. So here, the two non-legal members will hear the evidence, objections to be noted in the record, and the chairman when he reviews the record can rule whether or not the evidence is admissible.

The problem of admissible evidence is not too great because of the provisions of the first two sentences of the third paragraph of section 20-I. The only evidence not admissible is that which is "immaterial, irrelevant, and unduly repetitious testimony." The determination of these factors is not too difficult.

It should be pointed out that in the last paragraph of section 20-I is the following language:

"He (county commissioner) shall be sworn by the chairman of the Land Damage Board. . . ."

There is no stated time when this member of the Board must be sworn. The only requirement that can be read into the law is that he be sworn *before* assuming his duties for the particular hearing or hearings on which he will be sitting. Except in cases of emergency, the chairman can arrange to administer the oath to the particular county commissioner at some date prior to the hearing or hearings.

GEORGE C. WEST

Deputy Attorney General

March 16, 1962

To: S. F. Dorrance, Assistant Chief of Division of Animal Industry, Agriculture

Re: Issuing of Spay Certificates to Government Veterinarian

We have your request of March 6, 1962 for an opinion as to whether your office should issue spay certificates to Government Veterinarians whose practice is limited to animals belonging to military personnel and/or their dependants.

Revised Statutes, Chapter 77-A, section 4, exempts Government Veterinarians from the provisions of the veterinary registration act, thereby permitting these veterinarians to practice veterinary medicine so long as that practice does not extend to animals owned by other than military personnel and dependants.

For this reason it is our opinion that your department should issue spay certificates to a Government Veterinarian providing it is clearly understood that these certificates are not to be used in any private practice.

THOMAS W. TAVENNER

Assistant Attorney General

March 23, 1962

To: Colonel Robert Marx, Chief of Maine State Police

Re: Fees for Motor Vehicle Inspection

A question has been raised as to whether the owner of a motor vehicle must pay the \$1.00 inspection fee if the person inspecting the motor vehicle refuses to pass the motor vehicle and attach a sticker thereto.

Answer: Yes.

Revised Statutes 1954, chapter 22, section 47, reads as follows:

"Fee for inspections. The operator of any official inspection station shall conduct the inspection of motor vehicles presented to him for that purpose in accordance with rules and regulations promulgated by the Chief of the State Police, for which he shall receive a fee of \$1 for each car inspected, this sum not to include labor or material used in correction of faults in equipment."

It is very clear from this wording that the operator of any official inspection station "shall receive a fee of \$1 for each car inspected." Nothing is said in this section about the "sticker." It is the inspection that earns the operator his \$1 fee.

Section 45 of the same chapter provides in part:

"If, at the time of such inspection and before the said vehicle is again operated upon the highway, the condition of said vehicle conforms in each and every respect as required by law, an official sticker as a certificate of inspection furnished by said Chief of the State Police shall be placed in the upper right-hand corner of the windshield or in the center of the windshield back of the rear mirror."

As can be seen from this quotation, the "sticker" is only evidence that "the condition of said vehicle conforms in each and every respect as required by law." The fee of \$1 does not buy a sticker. The \$1 fee pays for a full and complete inspection whether or not a "sticker" is issued.

GEORGE C. WEST

Deputy Attorney General