

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

change the application of these decisions, . . . they would have done so by the use of some apt language rather than to have left their intention to the uncertainty of implication." *Webber v. Granville Chase Co.*, 117 Me. 150 at 152.

It must, therefore, be concluded that recipients of public assistance who receive supplemental supplies or support from municipalities are not paupers within the meaning of Article II of the Constitution, or the definition in section 1 of the election laws.

The definition of paupers in section 1 of the election laws applies only to those persons who have been directly or indirectly furnished supplies by a municipality within three months of any election as their sole means of existence (other than their own work, occasional though it may be).

GEORGE C. WEST

Deputy Attorney General

April 5, 1962

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

Re: Sale of Smelts

You have asked if it is legal to sell and serve fried fresh water smelts at a road-side stand.

Answer: Yes.

The only provision in Chapter 37 relative to the sale of fresh water fish is in section 49. This section provides in part:

"It shall be unlawful for any person to sell or buy, directly or indirectly, any landlocked salmon, trout, togue, black bass, white perch or pickerel, except that pickerel may be sold in Washington County."

There is no other prohibition against the sale of fresh water fish in our fish and game laws. Therefore, it must follow that the sale of fried fresh water smelts is legal whether at a road-side stand or any other place.

GEORGE C. WEST

Deputy Attorney General

April 9, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Subsidy for Superintendence

This is in answer to your request for an opinion interpreting Revised Statutes of 1954, Chapter 41, section 81, which reads in part as follows:

". . . Upon the approval of said certificate by the Commissioner, the superintendent so employed shall, on presentation of proper vouchers, receive monthly out of the sum appropriated for superintendence of towns comprising school unions *a sum equal to the amount paid by the town*, provided the amount so paid shall not exceed \$1,350 for one year for the superintendent of any one town. . . ." (Emphasis supplied)

Because of the death of a superintendent, the question has arisen whether or not the monthly amount paid the superintendent should be for that part of the month which the superintendent performed his duties or for the entire month.

It is our opinion that the estate of the superintendent has a valid claim for the entire \$112.50 monthly payment and not a prorated amount of that monthly payment.

In passing, I would note that I find no authority for prorating \$1,350.00 maximum state payment over a period of twelve months. The law provides for a sum equal to the amount paid by the town. If the town makes monthly payments to the superintendent, the state would match each monthly payment up to the amount of \$1,350.00. It may, therefore, only take 2 or 3 monthly payments by the state to reach the maximum amount allowed by the statute.

It appears that prorating over the period of twelve months would be a more reasonable approach to the payment of the \$1,350.00 maximum salary, and perhaps your department may want to recommend an amendment of the statute to provide for such proration over the period of twelve months.

RICHARD A. FOLEY

Assistant Attorney General

April 9, 1962

To: Austin Wilkins, Commissioner of Forestry

Re: Kindling Out-of-Door Fires

We have your request of April 5th with regard to our interpretation of Revised Statutes, Chapter 36, section 94-A. We understand that you are asking whether or not a person with a camping trailer or pickup truck can light a camp fire on the land of another without permission of the land owner.

The provisions of section 94-A provide that—"No person shall kindle or use fires on land of another without permission of the owner . . ." This section goes on to include as out-of-door fires, sterno fires in or out of tents and collapsible shelters. This paragraph limits the prohibition of lighting fires while on the land of another to fires which are on the ground or in or out of tents and collapsible shelters. For this reason, any person who kindles a fire while on the land of another is in violation of this section even though that fire be in a camping trailer or pickup truck, so long as that camping trailer or pickup truck is not permanently enclosed but is covered by a tent or collapsible shelter.

This opinion should in no way be construed to prohibit the lighting of such a fire in an enclosed permanent trailer even though that trailer may be situated on the land of another.

THOMAS W. TAVENNER

Assistant Attorney General