

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

when he travels to the State House to conduct hearings or to do other work connected with a particular case?

These points are covered in the Council Order of January 11, 1961, which Council Order purports to give the State Controller instructions with regard to the allowance of expense accounts to State employees. This Council Order points out that no official of the State shall be reimbursed for meals, lodging or travel expenses at his official headquarters or at points within a reasonable distance therefrom, except when a statutory provision expressly provides differently or unless in the opinion of the State Controller the changes are justified as involving less expense to the State or are necessary because of unusual circumstances. An example of an instance in which a statutory provision expressly provides for travel and lodging expenses can be found in Revised Statutes, Chapter 20, section 1. In this section it is specifically stated that the Attorney General shall receive actual expenses incurred in the performance of his official duties while away from his home.

Under section 7 of the Administrative Code (R. S., Chapter 20-A) the Hearing Officer is entitled to actual and necessary expenses in the performance of his duties. It should be noted that there is no mention of expenses incurred while he is away from his home.

It is our opinion that the official headquarters of the Hearing Officer is in Augusta and that the aforementioned Council Order therefore precludes the inclusion of travel expenses by the Hearing Officer to and from Augusta. He would be entitled, however, to travel expenses to and from any other point in the State.

We are enclosing a photostatic copy of the Council Order referred to above.

THOMAS W. TAVENNER

Assistant Attorney General

May 17, 1962

To: Paul A. MacDonald, Secretary of State

Re: Interpretation of Public Laws 1961, Chapter 324

Reference is made to your memo of April 2, 1962. You have asked three questions relative to this law.

Question 1: May a court suspend a nonresident license?

Answer: No.

Chapter 61, § 51-B, states that upon a conviction of knowingly transporting or permitting transportation of intoxicating liquor by a person under 21 years "the court shall *suspend the operator's license*, if any, for a period of 10 days." (Emphasis supplied) This section further provides that the court shall forward to the Secretary of State the license and a record of conviction. The court may recommend a further suspension for an additional period not to exceed 60 days.

The Secretary of State "*shall suspend the license, or right to operate, or right to obtain a license*, of such person for the recommended period. . . ." (Emphasis supplied)

It is to be noted that the legislature gave the court the right to only "suspend the license" of the violator. A court may only suspend a license over which it has jurisdiction. A Maine court has jurisdiction only over a Maine license. Therefore, a court may not suspend the license of a nonresident.

Question 2: May a nonresident's right to operate in this state be suspended if he does not hold a valid license in this or any other state?

Answer: As to the court "No." As to the Secretary of State, "Yes." The answer to question 1 answers this question so far as the court's authority is concerned. The law is very clear that the Secretary of State shall suspend the "right to operate" of a nonresident.

Question 3: May the right to operate or the right to obtain a license of a resident of this state who does not hold a valid license from this or any other state be suspended?

Answer: As to the court "No." As to the Secretary of State, "Yes." Again the answer to question 1 gives the answer as to the court's authority. The court may only suspend a license. It may not suspend the right to operate or the right to obtain a license. Such action is the function of the Secretary of State.

A question may arise as to the procedure to be followed by the municipal court in the event the violator is a nonresident or has no Maine license.

The wording of the first sentence of § 51-B gives ample authority to the court to forward the record of conviction to the Secretary of State for appropriate action even though the court cannot suspend the violator's license. Note the words "the court shall suspend the operator's license, *if any* . . ." (Emphasis supplied) It seems to follow that if there is no license for the court to suspend, that the record of conviction shall still be forwarded to the Secretary of State for appropriate action.

It is also to be noted that the Secretary of State can only act upon a recommendation by the court. Such recommendation is essential. Without it the Secretary of State can do nothing.

GEORGE C. WEST

Deputy Attorney General

May 21, 1962

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

Re: Micmac Indians

We are in receipt of your memorandum dated April 27, 1962, in which you state that a Micmac Indian from Canada has purchased a resident fishing license in this State on the theory that he is a citizen of North America and no particular state or territory therein, and therefore is entitled to a resident license. As you state in your memorandum, this is absurd.

In order to be considered a resident within the purview of the statutes requiring a fishing and/or hunting license one must be a domiciliary of the State of Maine. Obviously, a Micmac Indian from Canada is not a domiciliary of the State of Maine unless and until he sets up permanent residence in this State with an intent to remain here. The argument advanced that because the Indian is a citizen of North America he can have a resident hunting license in this State is fallacious inasmuch as he is bound by the laws of each State that he enters, just as we as American citizens are. All American citizens can travel without restriction from state to state within the United States. However, each and every one of us is bound by the laws of that particular state that we happen to