STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

State, and the Chief of the State Police acting jointly have authority to restrict the speed of all motor vehicles and to increase the speed of all motor vehicles up to a certain stated limit.

This Board, which is commonly referred to as the Speed Regulation Board, can have no more authority than that granted to it by the legislature. It cannot increase speeds above the limits set by the legislature.

In view of the provision of section 113-F-1, providing that speed of certain commercial vehicles shall be the same as pleasure vehicles, and the fact that the Speed Regulation Board has no definite authority to alter speed limits of various types of motor vehicles, it must follow that the Board cannot set separate speed limits for pleasure vehicles, trucks or buses.

Very truly yours,

GEORGE C. WEST

Deputy Attorney General

October 31, 1962

To: Hayden L. V. Anderson, Executive Director, Division of Professional Services, Department of Education

Re: Bequests to Teachers Colleges

You have asked for our informal opinion relative to an inquiry by Attorney William Linnell concerning the naming of a teachers college or the president of a teachers college trustee for the purpose of administering scholarship grants or other educational bequests or gifts. The authority for accepting such a bequest or gift is contained in chapter 11, section 16 of the Revised Statutes. It is our understanding that under that section the bequest would be turned over to the Treasurer of the State of Maine with the interest applied under the terms of the trust.

I agree with Mr. Linnell that it is highly questionable to make a bequest in trust directly to a teachers college or to a president of a teachers college since there is no clear statutory authority for such a bequest to an agency of the State. I would suggest that we survey the situation and recommend an amendment to chapter 11, section 16, to permit the various agencies of the state to administer a particular bequest in trust.

RICHARD A. FOLEY

Assistant Attorney General

October 31, 1962

To: Joseph T. Edgar, Deputy Secretary of State

Re: Eligibility to Vote Absentee Ballot when in County Jail or Penal Institution

You have asked our opinion as to the eligibility of a registered voter to vote by absentee ballot when that voter is in the county jail on a capias writ for non-support.

Revised Statutes, chapter 3A, section 1, provides that "A person who is serving a sentence in a jail or penal institution is not an absentee voter." The question is whether the person incarcerated is "serving a sentence." There are no Maine cases on point. A California court, after reviewing various dictionary and text writers, concluded that "sentence" is applicable to criminal proceedings, it being the judgment upon which an appeal may be taken. *People v. Lopez,* 110 P. 2d 140. In a Colorado case in point, a sheriff released a debtor from the county jail prior to the year for which he was committed on the basis that the debtor had earned deductions from the time of imprisonment under an act concerning prisoners confined under sentence. The court held that one confined under body execution is not serving a sentence and the sheriff was liable on his bond for the release. *Hershey v. People,* 12 P. 2d 345. (1932). One who is in jail on a civil capias execution or is held pending a criminal trial (there being no bail or the prisoner is unable to raise bail) is not serving a sentence within the meaning of section 1 of chapter 3A.

It should be for the town clerk to determine whether the registered voter who seeks to vote as an "absentee voter" is in jail or penal institution as a result of the actions of a court of criminal jurisdiction which has formally found the accused guilty of the acts of which he had been charged. If the town clerk determines that there is no criminal proceeding involved or that there has not as yet been a criminal judgment rendered against the registered voter, the registered voter held in jail is entitled to vote as an absentee voter.

PETER G. RICH

Assistant Attorney General

November 1, 1962

To: C. Wilder Smith, Deputy Commissioner of Labor and Industry

Re: Bedding and Upholstered Furniture Law

You have presented for our consideration a brochure supplied by a firm selling office furniture to the medical profession and ask whether any of the pieces of furniture described in the brochure fall within the Bedding and Upholstered Furniture Law, Revised Statutes, chapter 30, sections 155 through 165.

Revised Statutes, chapter 30, section 155, II, states that articles of upholstered furniture shall mean "chairs, sofas, studio couches and all furniture in which upholstery or so-called filling or stuffing is used whether attached or not." The examining table, the "physio-therapy" table, and the orthopedic table all have a surface cushioned by what is described as a "poly-foam" cushion covered with U. S. Naugahyde, a synthetic fabric or plastic. The "poly-foam" constitutes a stuffing and brings the articles within the provisions of the statute. The cushion on the "operator's stool" being made and covered by the same materials falls within the definition of "cushion" in section 155, II-A. This article is likewise subject to the provisions of the statute.

All the other articles described in the brochure, not being upholstered, are excluded from the operation of the statute.

PETER G. RICH

Assistant Attorney General