

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

"If the player wins, the machine ejects the number of slugs shown by the illuminated number. It may be readily seen to what an extent chance plays a part in the winning of the tokens. In the first place, the lighting of a number by a mechanism which is entirely beyond the operator's control, determines whether or not the operator may have the easy chance to put a ball in the 10,000 hole; in the second place, the number of the tokens which the operator will receive is entirely determined by chance. Whether or not the player wins depends to some extent on his skill, to a very large extent on chance; and the amount of his winnings, if he is successful, depends entirely on chance.

"It would seem obvious that this machine is a gambling device. It is nonetheless one because skill is a factor in the player's success. We might as well say that playing cards for money is not gambling because the result is in part dependent on a player's skill. The law in this state is well settled that such a machine as this is a gambling device and comes within the prohibition of the statute. *State v. Baitler*, 131 Me. 285, 161 A., 671."

GEORGE C. WEST

Deputy Attorney General

November 13, 1963

To: Captain Ralph E. Staples, Director
Division of Special Services, Maine State Police

Re: Automobile Junk Yard or Automobile Graveyard Law R. S. 1954,
c. 100, § 138.

Facts:

Your memorandum dated November 8, 1963, wherein you request an opinion relative to automobile graveyards, is hereby acknowledged. One of your State Police Officers has a case pending in which there appears to be a question as to the fact situations to which the automobile graveyard law apply. You indicate that a ruling from this office would be of some assistance to the State Police.

Question:

Whether a pile of automobile engines consisting of more than three is considered a "junk yard" within the meaning of c. 100, § 138?

Answer:

Yes.

Opinion:

R. S. 1954, c. 100, § 138, as amended by P. L. 1963, c. 178, § 2, provides in part:

"No automobile junk yard or 'automobile graveyard' so called, where 3 or more unserviceable, discarded, worn-out or junked automobiles or bodies or engines thereof are gathered together, shall be established, operated or maintained, or permitted by the owner of any land to be established, operated or maintained . . ." (Emphasis supplied).

Any one of the following categories would constitute an automobile junk yard or "automobile graveyard:"

- (a) 3 or more unserviceable, discarded, worn-out or junked automobiles
- (b) 3 or more unserviceable, discarded, worn-out or junked automobile bodies
- (c) 3 or more unserviceable, discarded, worn-out or junked automobile *engines*.

The reason for this is that the statute in question is set forth in the alternative and it is not necessary that the engines or bodies or both be assembled into automobiles before the statute applies. The purpose of the statute obviously was to include a pile of 3 or more automobile engines within its operation so that they would, standing alone, constitute an automobile graveyard.

Your attention is called to the provisions of R. S. 1954, c. 141, § 6, as amended by P. L. 1963, c. 305, wherein "any places where *one or more* old, discarded, worn-out or junked automobiles, or parts thereof are gathered together, kept, etc." are declared to be public nuisances. This might be a source of confusion since there are two chapters dealing with junked automobiles. The distinction is that one junked automobile or parts thereof may be declared a public nuisance under c. 141, § 6, but there is no provision for regulation. But 3 or more junked automobiles or bodies or engines thereof under c. 100, § 138 are not only a public nuisance but are also subject to regulation by requiring a license.

CARL O. BRADFORD

Assistant Attorney General

December 3, 1963

To: Richard E. Reed, Executive Secretary, Maine Sardine Council

Re: Market Classification of Puerto Rico

Facts:

P. L. 1963, chapter 338, provides for the development and expansion of foreign markets for sardines. The Sardine Council would like to expand the market for sardines into Puerto Rico.

Question:

Is Puerto Rico a foreign market within the provisions of P. L. 1963, chapter 338?

Answer:

Yes.

Opinion:

The emergency preamble states that the purpose of the statute is to expand markets for the benefit of the Maine sardine industry. Since the statute is beneficial in nature, it should be liberally construed.

One of the dictionary definitions of the word "foreign" is: "Situated outside a place or country." Another is: "Outside of any locality under consideration." Puerto Rico is physically separated from the continental United States and is not one of the States of the United States. In that sense, it falls within the above definitions.