

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**For The Calendar Years**

**1963 - 1964**

2. Teachers in the state teachers colleges and public schools. *C. 63-A § 1*, "employeee."
3. Employees of any county, city, town, water district, public library corporation or any other quasi-municipal corporation, civilian employees of the Maine National Guard, or of the Maine Municipal Association. *C. 63-A § 17*.

A department is defined as "any department, commission, institution or agency of state government" *C. 63-A, § 1*, "department."

"A soil conservation district organized under this chapter shall constitute an agency of the state . . . ." *C. 34, § 7*.

Hence, it follows that a soil conservation district being an "agency of the state" is a "department" within the definition in *C. 63-A, § 1*, and its employees are eligible for membership in the Maine State Retirement System.

GEORGE C. WEST

Deputy Attorney General

May 12, 1964

To: Governor John H. Reed

Re: Sardine Tax Law

Facts:

A sardine packer has asked you about the possibility of packing sardines for export only. Such sardines would be packed in a can of the approximate size of the familiar sardine can. The only difference in size would be a difference in depth between .913" ( $\frac{1}{4}$  size can) and .788" (proposed can). The length and width would be identical. The packer proposes to pack  $3\frac{1}{4}$  oz. contents.

The can would be labeled "sardines" but would also state "for export only." The packer wishes to be relieved of the tax of \$0.25 a case placed on the privilege of packing sardines.

Question:

Does the changing of the depth of a can by .125" and packing  $3\frac{1}{4}$  oz. contents remove the can from the sardine tax?

Answer:

No.

Opinion:

The particular tax law is chapter 16, and particularly the definition in section 261, I. This subsection defines a "case of sardines" as:

"I. 100 one-quarter size cans of sardines . . . ."

A very full and complete discussion of this law is contained in the case of *State of Maine v. Vogl*, 149 Me. 99. In that case the Riviera Packing Co. unsuccessfully sought to avoid the same tax by circumventing the definition of section 261, III. That subsection defines "15-ounce oval cans." The Riviera sought to pack what it called a "1# oval." It used the same can but sought to pack 1# contents. The court said:

"It is the opinion of the court that there can be no valid reason to doubt what was the intention of the Legislature. The statute

is not ambiguous. The Legislature clearly intended to tax cases of sardines in three instances only, based upon the number and size of the cans in the case. The cans were to be cans built for, and capable of containing, *approximately* one pound (subsection III), or *approximately* twelve ounces (subsection II), and *approximately* four ounces (subsection I) whatever they may have been labelled and whatever (*more or less*) net amounts of fish were actually contained in the respective cans."

. . . .

"Were the contentions of the defendant valid, it would absurdly follow that if the defendants had packed and labelled these 1# ovals or 15-ounce oval cans '15¼ ounces,' they would not be taxable. The court sees no magic in any such deviations, and the legislative will cannot be thwarted by legerdemain." (Emphasis supplied).

So in the instant case, the packer says by reducing the depth of a can by .125" and packing 3¼ ounces in such cans he should be exempt from the sardine tax. It should be noted that some packers now pack 3¼, 3¾, or 4 ounces in the ¼ size can.

The ¼ size can is something known and recognized in the trade and has been for many years. See *State v. Kaufman*, 98 Me. 546 (1904) where reference is made to one-quarter size cans of sardines. In construing a statute, technical or trade expressions should be given a meaning understood by the trade or profession. *State v. Vogl*, *supra*, and cases cited therein.

For the purposes of chapter 16, the pack proposed is a ¼ size can and, therefore, would be taxable.

GEORGE C. WEST

Deputy Attorney General

May 14, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Compulsory Retirement of State Teachers' College Presidents by Regulation of State Board of Education.

Facts:

On June 22, 1959, the Maine State Board of Education adopted the following regulation:

"Those persons serving as administrative heads of institutions operated by the State Board of Education shall terminate their service with the Board and retire at the completion of the school year in which they reach their 65th birthday, the school year being defined as July 1 - June 30.

"Any extension of service beyond the school year in which the 65th birthday is reached shall be based on a request by the Board that the incumbent continue in his position. Said continuance shall be on a year-to-year basis with an affirmative vote of the entire Board required for authorization in each instance."

The Legislature has enacted the following provisions of statutory law:

"A. Any member who at the attainment of age 60 is in service may retire at any time then or thereafter on a service retire-