

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

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-

ment allowance upon written application to the Board of Trustees setting forth at what time he desires to be retired. Any member not in service may retire at age 60 or thereafter on a service retirement allowance upon written application to the Board of Trustees setting forth at what time he desires to be retired, provided that he has at least 10 years of creditable service, any part of which service must have been rendered when he was, or could have been under then existing law, a contributing member to any publicly supported contributory retirement system sponsored by the State of Maine, provided further that at the effective date of the retirement allowance, his contributions are on deposit in the Members Contribution Fund.

"B. Any member specified in paragraph A of this subsection who attains age 70 shall be retired forthwith on a service retirement allowance on the 1st day of the next calendar month; except that any member who is an elected official of the State or an official appointed for a term of years may remain in service until the end of the term of his office for which he was elected or appointed. Notwithstanding the foregoing, on the request of the Governor with the approval of the Council, the Board of Trustees may permit the continuation for periods of 1 year, as the result of each such request, of the service of any member who has attained the age of 70 and who desires to remain in service. Requests for extension of service for employees in participating local districts shall be filed directly with the Board of Trustees by the proper municipal officers and such requests shall not be referred to the Governor and Council,"
P. L. 1955, c. 417, § 1; R. S., c. 63-A, § 6, I, A and B.

Question:

Whether the Board's regulation is legal?

Answer:

No.

Reason:

The word "employee," as defined in the Maine State Retirement System, embraces State Teachers' College presidents. They are officers in a "department."

"'Employee' shall mean any regular classified or unclassified officer or employee in a department. . . ." *R. S., c. 63-A, § 1*
"Employee."

A "department" means, inter alia, an agency of the State.

"Department shall mean any department, commission, institution or agency of the state government." *R. S., c. 63-A, § 1*,
"Department."

State Teachers' Colleges have been designated as agencies of the State. *Orono v. Sigma Alpha Epsilon Society*, 105 Me. 214 (Dictum). To conclude this paragraph, the presidents of the State Teachers Colleges qualify for membership in the Maine State Retirement System.

Membership in the System necessarily incorporates the provisions of the Maine State Retirement System as enumerated in *R. S., c. 63-A*. One of those provisions is Section 6 wherein our Legislature has decreed a dis-

cretionary retirement age of 60, at which age the member "may retire at any time then or thereafter"; and a mandatory retirement age of 70, at which age the member "shall be retired forthwith" (with exceptions enumerated therein).

The Maine State Retirement System is a statutory directive of our Legislature (P. L. 1955, c. 417, § 1) which must be considered as having pre-empted the field of retirement. The Laws of the State of Maine are paramount; and the regulations of the State Board of Education must not be inconsistent therewith.

This Office has rendered earlier opinions of the same tenor; January 25, 1952, and April 9, 1964 (Superintending school committees' regulations re compulsory retirement prior to age seventy).

JOHN W. BENOIT

Assistant Attorney General

May 19, 1964

To: Stanton S. Weed, Director of Motor Vehicle Department

Re: Trailer — Purview of definition

Facts:

A commercial fisherman collects sea moss and sells the moss to businesses that use the moss to pack lobsters and other sea foods. In the course of his business the commercial fisherman intends to store and transport moss or other property in a 1948 Chevrolet chassis which has had its engine and seats removed and which chassis will be towed by a truck by means of a tow bar.

Question No. 1:

Does a chassis as so described and utilized for the purpose of storage and transportation in the course of a business, come within the meaning and intent of a "trailer" as defined in R. S. 1954, c. 22, § 1?

Answer No. 1:

Yes.

Opinion No. 1:

R. S. 1954, c. 22, § 1 defines trailer as follows:

"Trailer" shall mean any vehicle without motive power, designed for carrying persons or property and for being drawn by a motor vehicle, not operated on tracks, and so constructed that no part of its weight rests upon the towing vehicle;"

The definition requires a trailer must be a vehicle. A vehicle is defined by R. S. 1954, c. 22, § 1 as follows:

"Vehicle" shall include all kinds of conveyance on ways for persons and for property, except those propelled or drawn by human power or used exclusively on tracks;"

A 1948 Chevrolet chassis used for carrying sea moss and towed by a truck on ways would be a conveyance on ways for property propelled or drawn by some means other than by human power and the conveyance would not be used exclusively on tracks. It must follow that such a chassis would be a vehicle.