STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1965 - 1966

subsequently joining when such state has enacted the compact into law. . . ."

A second part of this same section merely provides for withdrawal from the compact by act of the legislature and notice of such withdrawal by the Governor.

The compacts represent entirely self-executing contracts entered into between the states. The mere act of legislative enactment constitutes the only assent required to legally bind a state to carry out the terms of such compacts. Certainly, the terms of said compacts are clear and unambiguous. All that remains to be done is the actual carrying out, or administration, of the terms of the compacts.

Pursuant to the provisions of 29 M.R.S.A. § 431 et seq. and 36 M.R.S.A. § 3091 et seq., the Secretary of State and the State Tax Assessor are designated as the administrators under whose supervision the terms of such compacts shall be carried out. This being so, and the fact that no action on behalf of the Governor is required in order to effectuate the terms of the above-mentioned compacts, it is suggested that any correspondence addressed to the Office of Governor pertaining to the execution of such compacts be directed to the attention of those officials charged with the administration of said compacts, to wit: the Secretary of State and the State Tax Assessor.

PHILLIP M. KILMISTER
Assistant Attorney General

September 17, 1965

Raeburn W. Macdonald
Water Improvement Commission

Waste Discharge License, Maine Sugar Industries Inc.

FACTS:

In your memorandum and diagram submitted to this office on September 15, 1965 you have set forth in effect the following factual situation:

> Company V, a potato processing plant, has a license to discharge properly treated waste into P stream. Company S, a proposed sugar refinery, will discharge its waste materials through a portion of V's processing system and thence through Company V's waste outlet into P stream.

QUESTION:

To whom should a license for the discharge of sugar refining wastes be issued?

ANSWER:

Company S (Proposed Sugar Refinery)

OPINION:

The sugar refinery will cause the sole new source of pollution to the waters of P stream and must procure a license as a condition precedent to the discharge of any of its waste materials. (38 M.R.S.A. § 413)

The granting of a license is a permissive right and carries with it certain responsibilities owed to the licensor, i.e., Water Improvement Commission. The responsibility for the proper discharge of industrial wastes lies with the industrial firm

which creates such waste and does not shift to an intermediate or subsequent processor.

The only concern of the Water Improvement Commission should be whether or not the prospective licensee can meet the requirement of discharging properly treated waste materials into a given body of water so as not to degrade said water. If it appears that an applicant for a license cannot meet this responsibility, a license should be denied. Conversely, if it should appear that such responsibility can be carried out by the prospective licensee, then a license should be granted.

The commission seems to be greatly concerned with the difficulty of establishing the exact amount of pollution attributable to each polluter should a degradation of the stream take place and legal or equitable action to correct such degradation become necessary. In the factual situation presented, this burden of proof would exist even if separate processing facilities were utilized, because of the proximity of the two firms. It should be pointed out however that the responsibility for the proper discharge of waste materials may, if anything, be greater upon firms using a processing plant common to both. Should a degradation or defilement of the stream take place, equitable relief might be brought jointly against both.

PHILLIP M. KILMISTER
Assistant Attorney General

December 27, 1965
Labor and Industry

Marion E. Martin, Commissioner

Inspection of public places of employment.

In your memorandum of November 15, 1965 you have sought our opinion to the following question:

QUESTION:

Do sections 1 and 2, Chapter 200, Public Laws 1965 place on the Department of Labor and Industry the responsibility for inspection of public places of employment such as State Institutions, County Court Houses, Public Works Departments et cetera and Public and Private Schools and Colleges?

ANSWER:

See opinion.

OPINION:

Sections 1 and 2 of Chapter 200 Public Laws of 1965, now designated as 26 M.R.S.A. §§ 45 and 45-A, provides that the Commissioner or any authorized agent of the Department of Labor and Industry shall notify employers of the need to correct dangerous conditions of employment which exist on the premises under their control. Section 45-A is an exclusionary provision and merely designates certain areas of employment which are outside the jurisdiction of the Department.

Sections 45 and 45-A must be read in conjunction with section 44 in order to properly arrive at the responsibility for inspection vested in the Department in regard to