STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1965 - 1966

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

those employees enumerated in the above-stated question.

26 M.R.S.A. § 44 Right of Access "The Commissioner as state factory inspector, and any authorized agent of the department, may enter *any factory or mill, construction activity, workshop, private works or state institutions which have shops or factories,* when the same are open or in operation, for the purpose of gathering facts and statistics such as are contemplated by sections 42 to 44, and may examine into the methods of protection from danger to employees and the sanitary conditions in and around such buildings and places, and may make a record of such inspection." (Emphasis supplied)

The statutory language sets forth the right of inspection in areas of private economic enterprise and then specifically states "or state institutions which have shops and factories." It is apparent that the legislature did not wish to have workers in shops and factories in which the state is the employer, subjected to standards of safety and protection different than those which govern their counterparts in private industry. For this reason, the right to inspect shops or factories in state institutions was given.

We believe that the legislature intended nothing more than this however. Had the legislature intended to give the Department of Labor and Industry the authority to inspect shops and factories of other public employers, such as municipalities, counties, or public school systems, we believe they would have said so.

To expand the right of inspection as set forth in section 44 of 26 M.R.S.A. to include all workshops and factories, whether public or private in nature, could be accomplished only through legislative enactment.

In answer to the question presented, it therefore follows that if a *"factory"* or *"workshop"* as defined in 26 M.R.S.A. § 1 is maintained by a state institution or a private educational institution, that the Department of Labor and Industry may inspect the premises of said factories or workshops pursuant to the terms of 26 M.R.S.A. §§ 44 and 45.

PHILLIP M. KILMISTER
Assistant Attorney General

January 5, 1966
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

Insurance Premium Tax – John Hancock Mutual Life Insurance Company

FACTS:

Taxpayer, a life insurance company, has established a contributory group insurance plan for its full-time employees.

Under the plan enrolled employees receive life insurance and health insurance, including hospital, surgical, major medical and other usual benefits.

Both the employees and the company contribute to the coverage; the employees by payroll deduction, the company by assumption of cost shown only by a journal entry in the company's books.

On November 3, 1965, under the provisions of the Maine Revised Statutes relating to taxation of insurance companies based on "gross direct premiums," the Bureau of Taxation made a supplemental insurance premium tax assessment against the taxpayer.