

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

**ATTORNEY GENERAL**

for the calender years

1965 - 1966

We note that the facts are such that the administrative unit transfers the monies to *its* paying agent, and that the agent holds the monies to the credit of the administrative unit until disbursement is required. Payment by a principal to his agent of monies to be held by the agent until called for by third persons does not appear to constitute payment to the third persons until actually relinquished by the agent. Until the agent becomes divested of the monies, the same cannot be said to be expended by the principals. See: 2 *C.J.S., Agency*, § 1. et seq. for a discussion of agency principles.

JOHN W. BENOIT  
Assistant Attorney General

Maynard F. Marsh, Chief Warden

April 4, 1966  
Inland Fisheries and Game

Jurisdiction of District Court over Migratory Bird Treaty Act.

*QUESTION:*

Does the Maine District Court have jurisdiction in cases which involve violations of regulations adopted and approved pursuant to the Federal Migratory Bird Treaty Act as provided in 12 M.R.S.A. § 2352?

*ANSWER:*

No.

*LAW:*

“Determination as to when and how migratory birds may be taken, killed or possessed.

“Subject to the provisions and in order to carry out the purposes of the conventions, referred to in Section 707 of this title, the Secretary of the Interior is authorized, and directed, from time to time. . . . to make suitable regulations, permitting and governing hunting. . . , which regulations shall become effective when approved by the President. . . .” *16 U.S.C.A.*, § 704.

“ . . . The several judges of the courts established under the laws of the United States, and United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. All birds, or parts, nests, or eggs thereof, captured, killed, taken, shipped, transported, carried, or possessed contrary to the provisions of said sections or of any regulations made pursuant thereto shall, when found, be seized by any such employee, or by any marshal or deputy marshal, and, upon conviction of the offender or upon judgment of a court of the United States that the same were captured, killed, taken, shipped, transported, carried, or possessed contrary to the provisions of said sections or of any regulation made pursuant thereto, shall be forfeited to the United States and disposed of as directed by the court having jurisdiction. July 3, 1918, c. 128, § 5, 40 Stat. 756; 1939 Reorg. Plan No. II, § 4, (f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433.” *16 U.S.C.A.* § 706.

“Nothing in sections 703-711 of this title shall be construed to prevent the several States and Territories from making or enforcing laws or regulations not

inconsistent with the provisions of said conventions or of said sections, or from making or enforcing laws or regulations which shall give further protection to migratory birds, their nests, and eggs, if such laws or regulations do not extend the open seasons for such birds beyond the dates approved by the President in accordance with section 704 of this title. July 3, 1918, c. 128, § 7, 40 Stat. 756; June 20, 1936, c. 634, § 2, 49 Stat. 1556." 16 U.S.C.A. § 708.

*OPINION:*

As can be seen from the above-quoted statutes, the regulations referred to in the above question are those regulations created by the Secretary of the Interior pursuant to 16 U.S.C.A. § 704. It is further seen from a reading of 16 U.S.C.A. § 706 that violations of the pertinent sections of the Federal Migratory Bird Treaty Act are under the jurisdiction of courts established under the laws of the United States, i.e., Federal Courts, and it would follow that the Maine District Court would be without jurisdiction in attempting to entertain violations of a Federal statute such as the one with which we are here concerned which would necessarily include any regulations promulgated under authority of such statute.

*QUESTION No. 2:*

Is there any method existent whereby the Maine District Court could be given jurisdiction in cases which involve violations of regulations adopted and approved pursuant to the Federal Migratory Bird Treaty Act?

*ANSWER:*

Yes.

*OPINION:*

Jurisdiction in these particular cases could be accomplished by either legislative or administrative action. As can be seen from a reading of 16 U.S.C.A. § 708, supra, a state is given express authority under the Federal Migratory Bird Treaty Act to make or enforce laws or regulations not inconsistent with the Federal Act or which give further protection to migratory birds. Therefore, the legislature by statute or in the alternative the Commissioner of Inland Fisheries and Game by authority of 12 M.R.S.A. § 2352 could adopt regulations consistent with the Federal regulations in question, violations of which would be prosecuted under authority of 12 M.R.S.A. § 3057 and have as penalties those now in existence under 12 M.R.S.A. § 3060. In this manner, the Maine District Court would have jurisdiction and be able to take cognizance of said violations.

Any other action taken by our legislature in trying to assert jurisdiction in the Maine District Court over violations of the Federal Act itself would be an unwarranted intrusion of a state legislative body in an area where Federal jurisdiction exists and would therefore be repugnant to the United States Constitution.

It is also the opinion of this office that you should immediately instruct your wardens that under no circumstances should an Inland Fisheries and Game Warden take any criminal action for violations of the Federal Migratory Bird Treaty Act or regulations thereto.

RICHARD S. COHEN  
Assistant Attorney General