

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

legislature in permitting accident and health insurance on small loans, we must recognize that the legislature intended to permit the sale of accident and health policies in conjunction with small loans to be sold only under limited circumstances – that is, the loan must have a minimum payment of at least \$40 per month, the loan had to extend for a period of at least 18 months, and the loan must have a waiting period of at least 30 days. It should be further recognized that a retroactive plan would result in a higher premium because of the greater benefits, and it is our judgment that the legislature intended the more limited coverage with the corresponding lower premium. It is our further judgment that in interpreting the meaning of the words “waiting period of 30 days or more” that we cannot give the broad technical insurance meaning of “waiting period” which meaning would include retroactive and non-retroactive plans. We believe that the legislature in restricting the sale of accident and health policies in conjunction with small loans would follow a dictionary definition of “waiting period” which reads as follows:

“waiting period – insurance – in certain forms of insurance, as accident and health & workmen’s compensation insurance, a stated period after the beginning of disability during which no benefits are paid.” *Websters New International Dictionary, 2d Edition, p. 2865.*

which definition would not contemplate a retroactive plan. It is, therefore, our opinion that a waiting period with a retroactive plan is not permitted by 9 M.R.S.A. § 3082.

JEROME S. MATUS  
Assistant Attorney General

September 12, 1967  
Agriculture

Harold E. Bryant, Ex. Vice President  
Maine Potato Council  
Licensing and Controlling of Processing Grade Potatoes

**FACTS:**

The Commissioner of Agriculture has established a Maine processing grade for potatoes. These potatoes were meant to be used exclusively for processing. However, some have reached the fresh vegetable market. The Maine Potato Council would like to prevent this by requiring growers and shippers to be licensed by the Commissioner of Agriculture to ship this grade and thereby be able to control the use of these potatoes.

**QUESTION:**

Whether the Commissioner of Agriculture or the Maine Potato Commission can, under present Maine Law, employ a licensing device to make sure that processing grade potatoes are used exclusively for processing purposes?

**ANSWER:**

No.

*OPINION:*

The powers of the Commissioner of Agriculture are limited by the statutes of the State of Maine. The general rule as relates to administrative agencies is stated in 1 Am. Jur. 2nd 72:

“The powers of administrative agencies are measured and limited by the statutes or acts creating them or granting their powers, to those conferred expressly or by necessary or fair implication.”

The Commissioner of Agriculture derives his powers in regard to official grades and standards from 7 M.R.S.A. § 441 through 447 and section 950 through 957. These sections prescribe the methods by which he establishes and promulgates the grades and standards and limits his powers thereto. It was under the former sections, namely 441 through 447 that the Blue, White and Red state trade marks were adopted some years ago. These statutes give the Commissioner no authority to control the parties to whom processing potatoes may be sold; this would be the effect of the licensing and controlling which you have described.

Under 10 M.R.S.A. § 1605 the Commissioner may delegate to the Maine Potato Commission the authority to regulate the use of the State of Maine trade mark; under sections 1602 and 1606 the Commission derives its power to prescribe rules and regulations for carrying out the purposes of the chapter and the issuance of licenses thereunder.

This is not to say, however, that the Maine Potato Commission can use the licensing process for restricting the use to which the potatoes can be put. Establishing a grade for identification is one thing. Restricting sales is another.

We are therefore of the opinion that the controls as to usage about which you inquired can not be utilized by the Commissioner of Agriculture or the Maine Potato Commission to confine this grade to the purposes for which it was established. It would appear that new legislation would be needed to effectuate this end.

WARREN E. WINSLOW, JR.  
Assistant Attorney General

September 20, 1967

Samuel S. Silsby, Jr., State Archivist

Clarification of Jurisdiction of Maine State Cultural Building Authority

*FACTS:*

The Maine State Cultural Building Authority is authorized under Private and Special Laws, 1965, Chapter 259, “to acquire land and construct a building thereon to provide appropriate facilities for housing the Maine State Archives, Maine State Library, and Maine State Museum, with service approaches, parking facilities, equipment, exhibits and furnishings therefor, at costs not exceeding \$4,800,000.”

The site selected by the Authority for the construction of the building includes land previously owned by the State and private lands acquired under orders of taking adopted by the Governor and Council on March 29, 1967. Title to the land within the site area selected by the Authority is now in the State of Maine.

The Maine State Cultural Building Authority has been advised of the authority of the Bureau of Public Improvements relative to the approval of the construction plans for the