

# MAINE STATE LEGISLATURE

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M F  
June 23, 1975

Maynard C. Dolloff, Commissioner

Agriculture

David Roseman, Assistant

Attorney General

Vahlsing, Inc.

I am writing in regard to your memo dated May 6, 1975, to Deputy Attorney General John Benoit, Jr., concerning Vahlsing, Inc. Two letters were attached to your memo. One, dated April 16, 1975, is from Glendon Wathen, President of the Agricultural Bargaining Council, and is addressed to you. The other, also dated April 16, 1975, is from Lowell Weeks, Executive Vice President of the Maine Potato Council Claim Service, and is addressed to you. It is my understanding, based upon our telephone conversation a few weeks ago, that you wish to know what steps you, as Commissioner of the Department of Agriculture, should take with regard to the matter set forth in each of the two letters.

I shall deal first with the letter from the Agricultural Bargaining Council [hereinafter referred to as ABC]. Title 7 M.R.S.A. § 14 provides in applicable part for a hearing by the Commissioner of the Department of Agriculture when he becomes cognizant of the violation of any provision of Title 7 M.R.S.A. The ABC letter apparently refers to a violation of 7 M.R.S.A. §§ 1090, et seq. However, it is not clear from that letter that a violation of those sections of the statute has in fact occurred. Therefore, you would be advised to obtain at least the information set forth in 7 M.R.S.A. §§ 1091 and 1093. For example, you should obtain information showing that there was a collective marketing agreement, that Vahlsing, Inc. received written notice of the assignment from both the association and from the member (7 M.R.S.A. § 1091) and that Vahlsing, Inc. has available and under its control funds owing to the grower or producer that are sufficient in amount for making the payment of the dues involved (7 M.R.S.A. § 1093).

If it is determined that a violation has occurred, there exists the possibility of bringing a criminal action under 7 M.R.S.A. § 16.

It should be noted that private civil matters between ABC (and its members) and Vahlsing, Inc. might also be involved. This is something, however, that ABC and its members must determine with their own legal counsel.

The second letter is from the Maine Potato Council Claim Service [hereinafter referred to as Potato Council]. According to Potato Council's letter, Vahlsing, Inc., Debtor in Possession,

Maynard C. Dolloff

Page 2

June 23, 1975

has not paid potato growers an unspecified amount of money. Potato Council's letter seems to imply that Vahlsing, Inc. is a processor. This should be clarified with Potato Council, for if Vahlsing, Inc. is a processor, it is exempt from the provisions of 7 M.R.S.A. §§ 1011, et seq. See 7 M.R.S.A. § 1024. Assuming Vahlsing, Inc. is a processor, I can find no Maine statute imposing upon you, as Commissioner of Agriculture, a duty to act.

Again, this appears to be a private civil matter between Potato Council (and certain potato growers) and Vahlsing, Inc. which should be discussed by Potato Council, the growers and private legal counsel. Additionally, Potato Council and those growers might again have rights under the Perishable Agricultural Commodities Act (PACA), 7 United States Code, Chapter 20A, § 499.

7 United States Code 499f(b) states:

"Any officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory and any employee of the United States Department of Agriculture or any interested person may file, in accordance with rules and regulations of the Secretary, a complaint of any violation of any provision of this chapter by any commission merchant, dealer, or broker and may request an investigation of such complaint by the Secretary."

Therefore, if upon examining the facts, you feel that a violation of PACA has occurred, I believe you (in your capacity as Commissioner of Agriculture) would be an "interested person" who could act pursuant to that section. The decision on whether or not to act would rest within your sound discretion. Before, however, you would take any action pursuant to that section, you should obtain a copy of the rules and regulations of the Secretary of the United States Department of Agriculture (which are referred to in 7 U.S.C. § 499f(b) ) and we should discuss those regulations.

If I can be of further assistance, please do not hesitate to contact me.

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DAVID ROSEMAN  
Assistant Attorney General

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