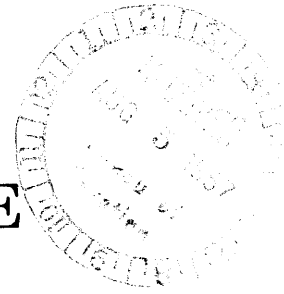
STATE OF MAINE



REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1955 - 1956

TABLE OF CONTENTS

ATTORNEYS GENERAL OF MAINE

1820 - 1956

Erastus Foote, Wiscasset	1820
Jonathan P. Rogers, Bangor	1832
Nathan Clifford, Newfield	1834
Daniel Goodenow, Alfred	1838
Stephen Emery, Paris	1839
Daniel Goodenow, Alfred	1841
Otis L. Bridges, Calais	1842
W. B. S. Moor, Waterville	1844
Samuel H. Blake, Bangor	1848
Henry Tallman, Bath	1849
George Evans, Portland	1853
John S. Abbott, Norridgewock	1855
George Evans, Portland	1856
Nathan D. Appleton, Alfred	1857
George W. Ingersoll, Bangor (died in office)	1860
Josiah H. Drummond, Portland	1860
John A. Peters, Bangor	1864
William P. Frye, Lewiston	1867
Thomas B. Reed, Portland	1870
Harris M. Plaisted, Bangor	1873
Lucilius A. Emery, Ellsworth	1876
William H. McLellan, Belfast	1879
Henry B. Cleaves, Portland	1880
Orville D. Baker, Augusta	1885
Charles E. Littlefield, Rockland	1889
Frederick A. Powers, Houlton	1893
William T. Haines, Waterville	1897
George M. Seiders, Portland	1901
Hannibal E. Hamlin	1905
Warren C. Philbrook, Waterville	1909
Cyrus R. Tupper, Boothbay Harbor (resigned)	1911
William R. Pattangall, Waterville	1911
Scott Wilson, Portland	1913
William R. Pattangall, Augusta	1915
Guy H. Sturgis, Portland	1917
Ransford W. Shaw, Houlton	1921
Raymond Fellows, Bangor	1925
Clement F. Robinson, Portland	1929
Clyde R. Chapman, Belfast	1933
Franz U. Burkett, Portland	1937
Frank I. Cowan, Portland	1941
Ralph W. Farris, Augusta	1945
Alexander A. LaFleur, Portland	1951
Frank F. Harding, Rockland	1955

DEPUTY ATTORNEYS GENERAL

Fred F. Lawrence, Skowhegan	1919-1921
William H. Fisher, Augusta	1921-1924
Clement F. Robinson, Portland	1924-1925
Sanford L. Fogg, Augusta (Retired, 1942)	1925-1942
John S. S. Fessenden, Portland (Navy)	1942
Frank A. Farrington, Augusta	1942-1943
John G. Marshall, Auburn	1943
Abraham Breitbard, Portland	1943-1949
John S. S. Fessenden, Winthrop	1949-1952
James Glynn Frost, Gardiner	1952-

ASSISTANT ATTORNEYS GENERAL

Warren C. Philbrook, Waterville	1905-1909
Charles P. Barnes, Norway	1909-1911
Cyrus R. Tupper, Boothbay Harbor	1911-1913
Harold Murchie, Calais	1913-1914
Roscoe T. Holt, Portland	1914-1915
Oscar H. Dunbar, Jonesport	1915-1917
Franklin Fisher, Lewiston	1917-1921
William H. Fisher, Augusta	1921
Philip D. Stubbs, Strong	1921-1946
* Herbert E. Foster, Winthrop	1925
LeRoy R. Folsom, Norridgewock	1929-1946
Richard Small, Portland	1929-1935
* Ralph M. Ingalls, Portland	1938-1940
Frank J. Small, Augusta	1934-1946
Ralph W. Farris, Augusta	1935-1940
William W. Gallagher, Norway	1935-1942
Richard H. Armstrong, Biddeford	1936
* David O. Rodick, Bar Harbor	1938-1939
John S. S. Fessenden, Portland, Navy	1938-1942
Carl F. Fellows, Augusta	1939-1949
* Frank A. Tirrell, Rockland	1940
Alexander A. LaFleur, Portland (Army)	1941-1942
Harry M. Putnam, Portland (Army)	1941-1942
Julius Gottlieb, Lewiston	1941-1942
Neal A. Donahue, Auburn	1942-
Nunzi F. Napolitano, Portland	1942-1951
William H. Niehoff, Waterville	1940-1946
*1 Richard S. Chapman, Portland	1942
*1 Albert Knudsen, Portland	1942
*1 Harold D. Carroll, Biddeford	1942
John O. Rogers, Caribou	1942-1943
John G. Marshall, Auburn	1942-1943
Jean Lois Bangs, Brunswick	1943-1951
John S. S. Fessenden, Winthrop	1945-1949

	Henry Heselton, Gardiner	1946-
	Boyd L. Bailey, Bath	1946-
	George C. West, Augusta	1947-
	Stuart C. Burgess, Rockland	1949-1953
	L. Smith Dunnack, Augusta	1949-
	James Glynn Frost, Eastport	1951-1952
	Roscoe J. Grover, Bangor	1951-1953
	David B. Soule, Augusta	1951-1954
	Roger A. Putnam, York	1951-
	Miles P. Frye, Calais	1951-1954
	Frank W. Davis, Old Orchard Beach	1953-
	Milton L. Bradford, Readfield	1954-
	Neil L. Dow, Norway	1954-1955
*	Orville T. Ranger, Fairfield	1955-
	George A. Wathen, Easton	1955-

* Temporary appointment. ....

*1 Limited appointment to handle cases arising under the profiteering law, without cost to the State.

COUNTY ATTORNEYS

County		
Androscoggin	Gaston M. Dumais	Lewiston
Assistant	William D. Hathaway	Lewiston
Aroostook	Walter S. Sage	Fort Fairfield
Cumberland	Frederic S. Sturgis	Portland
Assistant	Arthur Peabody	Portland
Franklin	Joseph Holman	Farmington
Hancock	William Fenton	Bar Harbor
Kennebec	Lewis I. Naiman	Gardiner
Assistant	Robert A. Marden	Waterville
Knox	Curtis M. Payson	Rockland
Lincoln	James B. Perkins, Jr.	Boothbay Harbor
Oxford	Henry Hastings	Bethel
Penobscot	Oscar Fellows	Bangor
Assistant	Orman G. Twitchell	Bangor
Piscataquis	Matthew Williams	Dover-Foxcroft
Sagadahoc	George M. Carlton, Jr.	Bath
Somerset	George W. Perkins	Skowhegan
Waldo	Hillard H. Buzzell	Belfast
Washington	Harold V. Jewett	Calais
York	William P. Donahue	Biddeford

STATE OF MAINE

Department of the Attorney General

Augusta

December 1, 1956

To the Governor and Council of the State of Maine:

In conformity to Chapter 20, Section 14 of the Revised Statutes of 1954, I herewith submit a report of the amount and kind of official business done by this department and by the several county attorneys during the preceding two years, stating the number of persons prosecuted, their alleged offenses, and the results.

FRANK F. HARDING

Attorney General

REPORT

HOMICIDE CASES, 1955-1956

STATE vs. FLOYD LANDEEN

Respondent indicted April Term, Superior Court, Aroostook County, 1955, for the murder of his wife, Albertine. Upon trial at same term, respondent was convicted of manslaughter and sentenced to ten to twenty years in prison.

STATE vs. OMER JULIEN and ANDREW JULIEN

Respondents were indicted for murder at the April Term, Superior Court, Aroostook County, 1955, in the death of Joseph A. Condo. Both respondents pleaded guilty to manslaughter. Andrew Julien was sentenced to two to four years in prison. Omer Julien was sentenced to one to two years in prison.

STATE vs. RALPH MILLER and LESTER SMITH

At Thanksgiving time in November of 1954 the dead body of Lucy Newell was found in a field in a remote spot in Aroostook County. Autopsy showed that death was caused by a ruptured liver. Investigation showed respondents to have been last persons known to have seen her alive. Respondents were indicted April Term, Superior Court, Aroostook County, 1955, for murder. Both pleaded not guilty. Upon trial, evidence being to a great extent circumstantial, Ralph Miller was acquitted. Lester Smith was convicted of manslaughter and sentenced to ten to twenty years in prison.

STATE vs. JOSEPH A. CAMUSO

In May of 1952 the dead body of Mary Petley of Boston was found in Cumberland County. The respondent was indicted for murder, but was not apprehended. During the summer of 1955, respondent was apprehended and returned to Portland for trial at the September, 1955, Term of Superior Court for Cumberland County. Investigation showing the improbability of obtaining sufficient reliably credible evidence of where the offense was committed, a plea of guilty of manslaughter was accepted and respondent sentenced to ten to twenty years in prison.

STATE vs. GERALD TROIANO

Respondent, a minor, was indicted September Term, Superior Court, Cumberland County, 1955, for the murder of a child, Margaret Gormley, at Portland. Respondent pleaded guilty at same term. Because of respondent's youth, a record was made showing details of the offense and conferences held by the Court with counsel, respondent's parents and relatives, and with the Superintendent of the Augusta State Hospital, where respondent had been sent for examination.

The plea of guilty was then accepted and respondent sentenced to life imprisonment.

STATE vs. RAYMOND BURTON

Respondent, a minor, indicted September Term, Superior Court, Piscataquis County, 1955, for murder of father, Harold Burton. Plea not guilty. Upon trial at same term, respondent convicted of manslaughter and sentenced to serve five to ten years in prison.

STATE vs. FORTUNAT MICHAUD

Respondent, a minor, indicted November Term, Superior Court, York County, 1955, for murder of a child, one Doris Trudeau. Plea not guilty. Upon trial at same term, convicted of murder and sentenced to life imprisonment.

STATE vs. JOSEPH LEONARD MICHAUD

Respondent arrested for murder of wife, Azilda, July 7, 1955, bound over to Superior Court and committed to Augusta State Hospital for observation. Respondent indicted Superior Court, Kennebec County for murder. At November Term, because of ambiguity of report as to respondent's sanity, a plea of guilty of manslaughter was accepted and respondent sentenced to ten to twenty years in prison.

STATE vs. MAURICE STONE

Respondent indicted March Term, Superior Court, Piscataquis County, 1956, for the murder of William Partinen. During trial, at the same term, respondent changed his plea to guilty and was sentenced to life imprisonment.

STATE vs. RICHARD B. WOOD

Respondent indicted June Term, Superior Court, Sagadahoc County, 1955, for murder of Wilfred Blais. Respondent had been committed to Augusta State Hospital and found sane. Respondent pleaded not guilty. Upon trial at June Term respondent was found guilty. This case went up to the Supreme Judicial Court on exceptions and is now pending.

STATE vs. LOUIS THURSBY

Respondent was arrested for the murder of Clarence A. Towle September 25, 1956, and bound over to the January 1957 Term of Superior Court for Somerset County. Respondent was committed to Bangor State Hospital for observation upon representation that he intended to plead not guilty by reason of insanity, and was in custody there, awaiting action by the grand jury, on the date of this report.

OTHER CRIMINAL CASES

During the biennium this office has directly prosecuted one criminal case not involving homicide. Upon information furnished by a Justice of the Su-

perior Court regarding circumstances surrounding a drunken driving complaint pending against one Leon Gordon in Superior Court in Waldo County, an investigation was made by this office, during which it was necessary to go into six different counties, and as a result of which one Earle W. Albee of Portland, a State Senator from Cumberland County, was indicted at the June 1956 Term of Superior Court in Kennebec County for conspiracy and for cheating by false pretenses. Demurrers were filed to those matters alleging conspiracy, the demurrers overruled, exceptions taken and, by agreement, continued until final disposition of the indictment for cheating by false pretenses. This latter indictment alleged that the respondent took money from one Leon Gordon upon the false pretense that the respondent had arranged to have a "drunken driving" case pending against Gordon disposed of without an adjudication of guilt. To the indictment the respondent pleaded not guilty. Upon trial he was found guilty and was sentenced to serve two to four years in prison. Exceptions were taken to the admission of certain testimony and to the failure of the presiding Justice to grant a motion for a directed verdict. The case is now pending in the Supreme Judicial Court.

The reports of the county attorneys for the two years ending November 1, 1955 and November 1, 1956, respectively, are as follows, exclusive of homicides:

	1955	1956
Rape	22	19
Arson	15	9
Robbery	23	34
Felonious Assault	32	70
Assault and Battery	126	146
Breaking, Entering and Larceny	299	412
Forgery	107	136
Larceny	241	360
Sex offenses other than rape	102	162
Non Support	31	43
Liquor	45	57
Drunken Driving	506	705
Intoxication	109	120
Motor Vehicle	451	732
Miscellaneous	298	354

The total, including homicides, is 2432 for the first year of the biennium and 3383 for the second, the increase being largely due to better enforcement of the motor vehicle laws, thanks to an increase in the number of State Police available for this work.

In the first year, 774 cases were filed, continued or nol-prossed and 60 ended in acquittal. For 1956, these figures are 944 and 76.

201 were placed on probation in 1955, 323 in 1956. 634 were fined in 1955, 923 in 1956. 329 received prison sentences in 1955 and 493 in 1956. 434 were pending at the end of the first year and 616 at the end of the second.

COUNTY ATTORNEYS

This office has rendered assistance to various county attorneys during the biennium and has sincerely endeavored to follow the spirit as well as the letter

of the statute, not only in homicide cases, but in the other cases where help was requested or needed.

The State of Maine during this period has been fortunate in the selection by the voters of the sixteen counties of the various county attorneys, whose work has been careful and diligent.

BOYINGTON CASE

The 97th Legislature, by Chapter 81 of the Resolves of 1955, authorized Kenneth H. and Ernestine Y. Boyington to sue the State of Maine for alleged negligence upon the part of State employees at the State School for Boys at South Portland and to recover in an amount not to exceed $25,000.00.

The facts, briefly, are that two boys escaped from the State School, stole an automobile and were involved in a collision with the Boyingtons. Suit was brought and tried before three Justices of the Superior Court. The State was represented by Deputy Attorney General Frost and Assistant Attorney General Putnam. After a four-day trial the Court entered judgment for the defendant State.

OTHER MATTERS

The office of Attorney General may well and truly be said to be the nerve center of State government. The past and continuing growth of government must be recognized, if not liked. With it, the growth of this office has kept pace until the Attorney General has become an administrative officer, as well as being the chief legal officer and chief law enforcement officer of the State.

The staff now consists of the Deputy Attorney General, eight full-time Assistant Attorneys General, one part-time Assistant, one Assistant retained specially, one Assistant performing work authorized by the 1955 Legislature, two investigators, and three clerks.

The 1955 Legislature authorized a revision of Chapter 91 of the Revised Statutes and directed the Attorney General to perform the work. An Assistant Attorney General was hired on a full-time basis to perform this work. Work has been in progress for the past sixteen months, with the advice and assistance of the Maine Municipal Association and an Advisory Committee appointed under the provisions of the law authorizing the revision. The completed work is to be presented to the 1957 Legislature in the form of a bill containing the full revision of the chapter.

During the biennium the Assistant Attorney General assigned on a part-time basis to the Insurance Department died and has not been replaced. It is hoped and recommended that an Assistant may shortly again be assigned to this department.

The Public Utilities Commission presents a specialized field of law with which none of the regular Assistants is familiar, and with which they can not familiarize themselves without greatly neglecting their regular work. For this reason an Assistant is appointed to work at the Commission's request upon rate cases and such other matters as the Commission requires. The services of the Assistant who has been doing this work have been highly satisfactory, and the suggestion following is not intended, nor to be taken directly, indirectly, by inference, or in any other way, to be critical of the work which has been or is being done. It is suggested that a full-time Assistant assigned to the Commission could give more time, and therefore more service, to the Commission and more

value to the State for the extra money spent than is possible under the present arrangement.

The State Liquor Commission each year does a gross business of over forty million dollars. Due partly to long tenure and familiarity with the Commission's business, one Assistant performs its legal work on a part-time basis. His duties are many and varied. He answers correspondence and questions of the Liquor Commission and its employees and advises the Commission on legal matters in regard to the supervision, inspection and licensing of the malt liquor business and those respecting the purchase and sale of spirituous and vinous liquors through the State stores. He prepares notices of hearings to licensees charged with violations of law and the rules of the Commission and sits with the Commission in hearings to advise on the admissibility of evidence. Three hundred cases have been heard and disposed of by the Commission in the biennium. The Assistant Attorney General represents the Commission in appeals from its decisions to the Superior Court. He also sits with the Commission in appeals by licensees from decisions of municipal officers. There have been six each of the last two types of cases in the past two years. This Assistant during the past two years has also done the legal work which accompanied the construction of the new liquor warehouse in Hallowell. He also negotiates and writes leases for the fifty-six retail stores throughout the State. It is also his duty to prepare and cause the publication of the Commission's rules and regulations annually and, at the request of the Commission, he drafts suggested legislation for each session of the legislature.

One Assistant Attorney General is assigned on a full-time basis to the Maine Employment Security Commission. His duties consist of advising the Commission upon all legal matters pertaining to the Employment Security Law and representing the Commission in court in actions to collect taxes and in prosecuting fraud cases. The court work has become so voluminous that a request has been made for an additional Assistant to aid and relieve the one now assigned. We hope to be able to fulfill this request in the near future.

One Assistant Attorney General is assigned on a full-time basis to the State Highway Commission. He has the usual duties of advising the Commission, the heads of the various bureaus within the department, and the department employees; he supervises and directs the work of two men in searching titles for the rights of way to new highways. He represents the State in an increasingly large number of court cases involving condemnation proceedings, and, for this purpose, is authorized to employ local counsel for cases tried before juries in the various counties. He is now representing the State in two actions pending before the Supreme Judicial Court, one testing the right of the State to condemn land for future highway use and the other to test the right to cause utilities to move their pipes without special compensation.

Two Assistant Attorneys General are assigned to the Bureau of Taxation. The statute requires that one be assigned to this Bureau for Inheritance Tax work. The Inheritance Tax work, as a matter of practice, has become a matter very largely of administrative procedure, leaving one Assistant, as he has reported, to advise the State Tax Assessor upon important questions of law. The other Assistant devotes his full time to the enforcement of the tax laws and collection of delinquent taxes, including the Sales and Use Tax, Property, gasoline, use fuel, cigarette, blueberry, fertilizer, milk, potato, sardine, and sweet corn taxes, and other miscellaneous taxes. As part of his duties, six hundred and fourteen col-

lection cases have been closed in the past two years. Letters were written in all these cases, conferences were held with taxpayers, when requested, and court action was brought in two hundred twenty-three of these cases.

Two Assistants are assigned on a full-time basis to the Department of Health and Welfare. While it is not necessary, nor necessarily desirable, to justify the work of the Attorney General's Office by calling attention to the fact that it returns more money to the State than it spends, it is noteworthy that these two Assistants alone collected for the State, from the estates of relief recipients in the various categories, from fathers of Dependent Children, and from relief recipients, during the fiscal years from July 1, 1954 to June 30, 1956, the sum of $510,-111.49. It is also noteworthy that, of this amount, the collections in the relatively new field opened by the Uniform Reciprocal Enforcement of Support Act grew from $19,765.87 in the fiscal year 1954-1955 to $43,286.15 in the fiscal year 1955-1956, and may be expected to continue growing, as greater use is made of the Act and greater reciprocity is brought about by the cooperation of all the States. The collection of this total amount of money also furnishes a commentary upon the compensation paid to members of the Attorney General's staff, as the fee of an attorney engaged in private practice for the collection of a similar amount would, for this one item, more than twice exceed the total salaries paid to both Assistants for all their services to the Department of Health and Welfare. In addition to the money collected, another $32,380.00 was directly saved the State because of the work of these two Assistants, by investigation, correspondence, conference and court action, which resulted in reduction or elimination of payments of the taxpayers' money to ninety-eight recipients. Obviously, a great part of the time of these two Assistants is devoted to the duties outlined above. The senior Assistant, however, is charged with the further duty of being the legal adviser to the Department and finds time to advise the Commissioner and the many bureau heads of this large department.

One Assistant is assigned to cases arising under the Workmen's Compensation Act between the State and its employees. He legally, ethically, and ably performs the very difficult task of representing both parties before the Industrial Accident Commission. This work requires that he travel throughout the sixteen counties and occupies the greater part of his time. He also, however, does research work on title to lands in which the State has, or is alleged to have, an interest. This latter work has resulted in a saving of many dollars to the State over the former practice of having this work done by attorneys in private practice.

One Assistant Attorney General is employed on a full-time basis but is not especially assigned full time to any one department. His activities are many and varied. A great deal of his time is devoted to criminal matters arising after conviction and sentence. This business has increased tremendously in the past few years, not only in this State but nationally in each of the other forty-seven States, to the point where the National Association of Attorneys General has created a special committee on post-conviction procedure and has, with other interested organizations, recommended federal legislation to curb the abuses, made by persons convicted of crime, of the various processes available to provide judicial review of judgments in criminal cases. Emphasis should be placed upon the word "abuse" and it should be borne in mind that no effort has been made, or should be made, to curtail the proper use of these procedures. In this connection it is worthy of note that our Assistant Attorney General, within the past year, by action carried to our Law Court, has been chiefly responsible for the establish-

ment of the writ of error *coram nobis* as a proper post-conviction procedure, thus opening a further field of judicial review in these matters within this State. This Assistant, during the year 1956, has represented the State in fifteen petitions for writs of habeas corpus, five petitions for writs of error, and ten petitions for writs of error *coram nobis*. These are all court actions, and several of them have been carried to the Law Court.

Other extraordinary remedies in which this Assistant has represented the State have been three mandamus actions, one against the Superintendent of the Augusta State Hospital, and the other two against the State Parole Board.

He has represented the Department of Inland Fisheries and Game in a hearing before the Civil Service Commission. He has done some collection work, collecting $12,205.72 during 1956. He serves as counsel to the Maine School Building Authority. He has established hearing procedures for various State boards and commissions and acted as counsel for them in hearings. He has rendered substantial services to the Maine Real Estate Commission, the Department of Education, the Department of Development of Industry and Commerce, the Board of Registration of Dentists, the Department of Inland Fisheries and Game, and has given advice and assistance to numerous other State boards and commissions to which counsel is not specifically assigned and who come to the main office for advice. He has also discharged various other miscellaneous assignments which have arisen from time to time in the office.

The Deputy Attorney General is a full-time State employee whose duties are so many and so varied that it is not practical to itemize them all in this report. In the absence of the Attorney General the Deputy performs all the duties required of the Attorney General and in this respect has acted as advisor to the Governor and Council, Secretary of State, Treasurer of State, Bank Commissioner, Insurance Commissioner, State Auditor, and the heads of various other State departments, boards, bureaus, and commissions to whom counsel is not specially assigned. He also devotes a great amount of his time to performing those duties of the office which are commonly called "routine," but are so only in the sense that they are monotonously repetitive. In this latter class, over the two-year period, the Deputy approved 1,012 certificates of organization of corporations, 14 corporate mergers, and many changes of purposes; issued 296 excuses to corporations; examined for sufficiency extradition papers, including both cases where Maine was the asylum State (17 cases) and where Maine was the demanding State (19); examined approximately 1000 medical examiners' reports on dead bodies; approved all contracts for the construction and repair of State buildings (24 of such contracts were for the Department of Institutional Service, totaling $18,990,784.37) and all leases and other agreements executed by those departments not having Assistants especially assigned.

ATOMIC ENERGY

Under the provisions of the Atomic Energy Act of 1954, atomic energy was for the first time made available to private industry for peaceful purposes.

The Act of 1954 also provided that the processing and utilization of source, by-product, and special nuclear material must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public.

To carry out the objectives of the Act it became necessary for the Atomic Energy Commission to enact rules and regulations relating to the licensing of individuals, industries, and materials, and to enact rules and regulations on Standards for Protection against Radiation.

I am pleased to report that in 1955, Mr. Frost, Deputy Attorney General, was invited by the United States Atomic Energy Commission to serve on a 12-member Advisory Committee of State Officials to consult with the Commission on health and safety regulations relating to atomic work.

The Deputy has attended all conferences of the Committee held in Washington, D. C., with representatives of the Commission.

Because of his activity on the Committee, Mr. Frost has been able to recommend amendments to our Maine Atomic Energy Act, which are designed to keep the State apace this rapidly growing phase of our economy.

Respectfully submitted,

FRANK F. HARDING
Attorney General

OPINIONS

January 3, 1955

To Honorable Carroll Peacock

Re: Compatibility

Your inquiry relative to your right to continue as a Commissioner on the Atlantic States Marine Fisheries Commission after your acceptance of the office of Governor's Councilor has been received.

The Constitution of Maine, Article V, Part Second, Section 4, provides as follows:

> "Persons disqualified; not to be appointed to any office.—No member of Congress, or of the legislature of this state, nor any person holding any office under the United States, (post officers excepted) nor any civil officers under this state (justices of the peace and notaries public excepted) shall be counsellors. And no counsellor shall be appointed to any office during the time, for which he shall have been elected."

It is the opinion of this office that the position of Commissioner on the above-mentioned Commission is a civil office within the meaning of the Constitution of the State of Maine and specifically the section above quoted. Therefore by your acceptance of the position of Governor's Councilor you will automatically vacate the office of Commissioner on the Atlantic States Marine Fisheries Commission.

ROGER A. PUTNAM
Assistant Attorney General

January 4, 1955

To Robert L. Dow, Director of Marine Research

Re: Seed Quahogs

We have at hand your memo in which you inquire as to the legal responsibilities of the Commissioner of Sea and Shore Fisheries in granting permits for the handling of seed quahogs and the utilization of seed quahogs in Maine flats. The question is raised because of the existence of a provision in Section 90 of Chapter 34 of the Revised Statutes, following a determination of the legal size of quahogs and clams:

> "Provided, however, it shall not be unlawful to take seed quahogs or seed clams or have the same in possession under the authority of a permit therefor, which the commissioner is hereby authorized to grant, for replanting in waters or flats within the state or for any other purpose."

With respect to this law you ask three questions:

"1. Is granting Mr. X a permit by the Commissioner discretionary or mandatory?"

Answer. Unquestionably, as seen in several provisions of the law, the legislature contemplated that under certain conditions it would be permissible for a person to have seed quahogs or seed clams. The authority is placed in the Commissioner for issuing a permit for that purpose. It would seem to us that after the

Commissioner has determined that the permit is to be used for the purposes enumerated in the statutes, then such permit should issue. We do not feel that it is within the discretion of the Commissioner to refuse such permit without just cause.

"2 (a) If Mr. X is granted a permit to 'take' or 'have' seed, are we authorized to give him seed quahogs dredged by the *Venus M.?*

(b) Are we authorized to sell seed to him?"

We answer both parts of this question in the negative.

"3. If we are not authorized to give or sell seed to Mr. X dredged by the *Venus M.,* can he or his agents come into Bridgham's Cove and take seed quahogs with his own equipment to be put in the flats leased by him from the town of Phippsburg?"

We answer this question in the affirmative, always conditioned upon the fact that the proper licenses and permits have been obtained.

Our answers are based on the premise that the request concerns giving or selling seed quahogs to a private individual for his own business purposes. It is our opinion that before the State can give or sell property, which belongs to the State as a whole, to a private individual for commercial purposes, an act of the legislature would be necessary.

JAMES GLYNN FROST
Deputy Attorney General

January 4, 1955

To Roland H. Cobb, Commissioner, Inland Fisheries and Game

Re: Moosehorn Refuge, Beaver Trapping

. . . We understand that the Moosehorn Refuge is wholly owned by the Government of the United States, excepting a certain portion which is the railroad right of way and which was made a game preserve under the provisions of Chapter 34 of the Public Laws of 1953.

Mr. de Garmo informs me that there are various reasons why it is necessary for the Refuge manager to remove the beaver on this game refuge. They are flooding out certain areas which are important to the woodcock studies that are being carried on by the U. S. Fish and Wildlife Service.

From all that I can ascertain there is reasonable ground for opening up the area for the taking of beaver. The question arises as to whether or not this federally owned area is subject to the provisions of Section 100 of your chapter. This section provides for the opening of a limited season on beaver, for the various reasons why this trapping may be allowed, and for the marking of the skins, along with certain other provisions. It is the opinion of this office that this law has no application in this particular instance, where the United States Government owns and operates this Refuge. In many instances a State has sought to enjoin the very acts which are here complained of and in every instance has been rebuffed by the federal courts. See *Hunt* v. *U. S.,* 278 U. S. 96, 19 F 2d, 634; also *Chalk* v. *U. S.,* 114 F. 2d, 207.

A check of the federal statutes shows that the United States Government has prescribed certain laws relating to game preserves of this nature. See Section 683 of Title 16, U. S. Code Annotated. Paraphrasing: This provision allows the President to designate areas on lands taken and held by the United States for

the purpose of protecting game animals, birds, and fish. That section further provides that it is a crime to hunt, trap, etc., on these lands except under such rules and regulations as the Secretary of the Interior may from time to time prescribe.

It would appear to me that if the manager is authorized by the Department of the Interior or its properly designated agent to remove the excessive amount of beaver on this Refuge, he is fully empowered to do so under federal law, and that federal law supersedes State law.

Covering a point not requested in your inquiry, from the above it follows that it is not necessary to tag the beaver so taken, under the provisions of Section 100 of your chapter. In order to protect the individuals taking same, however, Mr. Radway should give some sort of certificate to the trapper in order to protect him from prosecution under Section 100; otherwise he may find it rather hard to prepare his defense.

ROGER A. PUTNAM
Assistant Attorney General

January 10, 1955

To William P. Donahue, County Attorney, York County

Re: Medical Examiners' Fees

. . . You ask for an interpretation of Section 252 of Chapter 89 of the Revised Statutes of 1954, which section reads in part as follows:

> "Every medical examiner shall render an account of the expense of each case . . . and the fees allowed the medical examiner shall not exceed the following, viz: review and inquiry without an autopsy, $15; for review and autopsy, $50."

You inquire if a medical examiner who first conducts a review and inquiry without autopsy and later an autopsy at the request of this office is entitled to collect both the $15 fee and the $50 fee or whether he is entitled only to the $50.

We believe that the clear wording of this statute precludes any determination other than that the combination of view and autopsy calls for a $50 fee. We do not believe that the fact that the Attorney General has, in a particular instance, authorized the autopsy should call for the medical examiner's receiving both fees. It fairly often happens that the Attorney General authorizes the autopsy because the County Attorney is for the time being unavailable.

JAMES GLYNN FROST
Deputy Attorney General

January 14, 1955

To Colonel Robert Marx, Chief, Maine State Police

Re: Failure to forward Appeal Seasonably

We have your memo . . . requesting an opinion from this office.

It appears that a person was arraigned before a trial justice, found guilty, and sentenced to imprisonment and to pay a fine with costs. The respondent appealed to the September term of the Cumberland County Superior Court, but the trial justice through an oversight failed to send the appeal papers in time for the matter to be heard at that term of court, in fact after that term had closed.

You ask what procedure should now be followed to have this matter properly presented to the court.

We feel that the matter should not be again presented to the trial court or a municipal court, but that the County Attorney should handle the case by way of indictment before the Superior Court. In that way there will be no question of jurisdiction of the trial court.

JAMES GLYNN FROST
Deputy Attorney General

January 18, 1955

To K. B. Burns, Business Manager, Institutional Service

Re: Repairs at Pownal State School

I have your inquiry of January 17th relating to Chapter 209, Resolves of 1953, which provided funds for certain emergency repairs at Pownal State School.

We note that in the body of this Resolve there is a total sum of money appropriated from the General Fund in the amount of $97,700. Below that appropriation are set out certain sums against certain repairs to be made, for instance, the sum of $4500 was allocated to repair the old section of the water reservoir, while the sum of $14,000 was given to complete the kitchen.

The question arises as to whether the sum of money saved under one subdivision of this appropriation may be used to supplement the funds in another subsection where the funds appropriated therefor have proved insufficient.

It is our opinion that the set-up on this Resolve shows a legislative intent to line-budget the total sum. That being true, the money must be expended only for the purposes indicated and cannot be transferred from one to another. Only the legislature can correct this deficiency.

ROGER A. PUTNAM
Assistant Attorney General

January 27, 1955

To Ray L. Littlefield, Trial Justice, Scarboro

Re: Suspension of Driving Licenses

We have your letter of January 22, 1955, in which you ask for an interpretation of Section 166 of Chapter 22 of the Revised Statutes of 1954. That section reads as follows:

> "In addition to any other penalty provided in this chapter and imposed by any court or trial justice upon any person for violation of any provision of this chapter, the court or trial justice may suspend an operator's license for a period not exceeding 10 days, in which case the magistrate shall take up the license certificate of such person, who shall forthwith surrender the same and forward it by registered mail to the secretary of state. The secretary of state may thereupon grant a hearing and take such further action relative to suspending, revoking or restoring such license or the registration of the vehicle operated thereunder as he deems necessary."

You ask specifically if the additional penalty of suspension of license is subject to appeal the same as the original sentence. With respect to this question we believe you ask if the suspension of the license is vacated as is the penalty in the usual case of a municipal court when appeal is taken.

While this office does not customarily give opinions to any but those persons included under our statutes, we should be pleased to give you the reaction of this office to the question in hand because of our past deliberations on this same matter.

While there is some dissent in this office to the proposition that such suspension is a penalty and is vacated on appeal, it is the general opinion that such is true, that in effect the suspension of the license amounts to a penalty imposed by the municipal court and as such is vacated when the accused appeals from the decision or sentence of the lower court. It has certainly been the opinion of the Secretary of State, because in every such case the license is returned forthwith to the operator when he has appealed from the decision of the trial court.

We think it wise that the imposition of the penalties be as uniform as possible throughout the State and that what appears to be customary practice should be adhered to when possible.

This office has advised the State Police that it would be proper for them to consider such suspension as an additional penalty.

JAMES GLYNN FROST
Deputy Attorney General

February 7, 1955

To Earle R. Hayes, Secretary, Maine State Retirement System

Re: Eligibility of Certain Former Teachers

We have your memo *re* retirement of school teachers, which reads as follows:

"Some little time ago you sat in on a conference with the Board of Trustees of the Retirement System with respect to several cases of the older group of teachers who have not taught for several years, have attained age 60 or more but never did complete the so-called minimum of 25 years of creditable teaching service in the schools of Maine which automatically provides a teacher in that particular category with a guaranteed minimum retirement benefit at attained age 60.

"The question of whether or not these individuals are now eligible to apply for and receive retirement benefits was the major question discussed, as you will recall, and it was all discussed in the light of the fact that the words 'in service' had been deleted from the law.

"I am wondering if you have arrived at any conclusions to the point at least, where you could give us an opinion as to the eligibility or non-eligibility of these particular cases for benefits."

Conversations with you have amplified the above information and the following facts have been added: that the teaching experience of the teachers concerned varies from 10 to 20 years, that a few have been contributors since 1945 and have left their contributions in. It would appear that the question involves teachers who had not qualified for retirement under the provisions of Chapter 64, Sections 6-XIII through XV, because they had not gathered the minimum of 25

years of teaching service. Boiling the question down still further, it appears that the issue presented is whether teachers who, prior to the 1953 amendment giving vested rights to employees of ten years' employment (leaving in their contributions) may now retire by virtue of the 1953 amendment, when all their service was accumulated prior to August 8, 1953, the effective date of the amendment, and in no case amounted to 25 years.

The first sentence of Section 3-VIII of Chapter 64, R. S. 1954, reads:

> "Any employee who is a member of this retirement system may leave state service after 10 years of creditable service and be entitled to a retirement allowance at attained age 60 provided the contributions made by such member have not been withdrawn, and provided further, that his retirement allowance shall be based upon the total number of years of creditable service, in accordance with the provisions of this chapter."

Before Section 3, subsection VIII was amended by Chapter 412, P. L. 1953, an employee who was a member of the Retirement System could leave State service after 30 years of creditable service and be entitled to a retirement allowance at age 60. As noted, the 1953 amendment changed the 30 years to 10 years. The only way that a teacher could now retire who had not taught for 25, 30 or 35 years, or who is not teaching upon reaching the eligible age, would be to qualify under Section 3, subsection VIII, having left the service after 10 years of creditable service and left her contributions in. However, we would refer you to our opinion dated August 13, 1953, in which we stated that the amendment to Section 3, subsection VIII, providing for a 10-year rather than a 30-year vested right, was not retroactive and did not give benefits to one who had left State service prior to the enactment of the amendment.

It is our opinion that teachers who are not eligible for retirement under the provisions of Section 6-XIII, XIV and XV may not be eligible by virtue of the 10-year vested right amendment, unless they left the service after August 8, 1953, the same being the effective date of Chapter 412, P. L. 1953.

JAMES GLYNN FROST
Deputy Attorney General

February 11, 1955

To Julius Greenstein, Chairman, State Boxing Commission

Re: Local Licensing

Your recent inquiry raises the question whether cities and towns may require license fees or tax from boxing promoters in addition to the State Boxing Commission's State license fee and tax.

By Section 7 of Chapter 88 of the Revised Statutes of 1954, the State Boxing Commission has the sole direction, control and jurisdiction over all boxing contests or exhibitions. The words, "or exhibitions," were placed in the law by Chapter 244 of the Laws of 1953. The law in this regard is thus made clearer than it was when this office rendered an opinion on December 12, 1946, that the law which gave the Boxing Commission sole direction, control and jurisdiction had impliedly repealed whatever authority a city may have had theretofore in the premises. The present law is clear that a city or town has no jurisdiction over this subject.

NEAL A. DONAHUE
Assistant Attorney General

February 24, 1955

To Roland H. Cobb, Commissioner of Inland Fisheries and Game

Re: Town Clerks as Agents

We have your memo of February 18, 1955, in which you draw our attention to the provision on page 37 of your Biennial Revision which states, "The commissioner may appoint additional agents," and in the next line, "Licenses shall be issued to a resident by the clerk of the town," with respect to which you ask, "Does the Commissioner have the right to refuse those Town Clerks, who are yearly bad in handling their records, the privilege of issuing licenses, and to appoint some other Agent?"

It is the opinion of this office that though you may appoint additional agents in a town the clerks of all towns have been designated by the legislature to be authorized agents and that you are without power to deprive them of that privilege.

JAMES GLYNN FROST
Deputy Attorney General

February 28, 1955

To Earle R. Hayes, Secretary, Maine State Retirement System

Re: Gisela K. Davidson, M.D.

We have your memo of February 9, 1955, in which you ask our opinion as to whether or not Gisela K. Davidson, M.D., who is employed by the Department of Health and Welfare in the capacity of X-ray consultant, is in fact an employee of the State within the meaning of the Retirement Law and eligible for membership in the System. . .

We do not feel that you have given us sufficient facts to determine whether or not she is an employee. However, we are herewith setting forth what we believe to be a rule of thumb to assist you in determining whether or not persons are employees within the meaning of the Retirement System Law:

A person working for the state must fulfill the following requirements to be considered an employee of the State:

a. work as a regular classified or unclassified officer or employee in a department (including commission, institution or agency); and
b. work either in a position that has been properly established by an appointing authority and recognized as properly filling that position by the Personnel Department, if it is in the classified service; or
c. work in a position that has been contemplated by the legislature, if in the unclassified service (Chapter 63, Section 11, R. S. 1954); and
d. obtain that position through appointment by a properly constituted appointing authority.

You should be able to determine within this formula whether or not a person is an employee, particularly if he is on a payroll. However, in cases of doubt, the Board has the authority under Section 1 to determine whether any person is an employee as defined in Chapter 64.

JAMES GLYNN FROST
Deputy Attorney General

March 1, 1955

To Stanton S. Weed, Director, Motor Vehicle Division

Re: Temporary Number Plates

We have your inquiry concerning the interpretation of Section 37 of Chapter 22 of the Revised Statutes of 1954. You ask if the temporary plates issued under the provisions of this section are in effect temporary registration or authority to use a car for a period not to exceed seven days without having the vehicle registered. Said section reads as follows:

> "A manufacturer or dealer, may, upon the sale or exchange of a motor vehicle, attach to such motor vehicle a set of temporary number plates, and the purchaser of such motor vehicle may operate the same for a period not to exceed 7 consecutive days thereafter without payment of a regular fee. Temporary number plates may not be used on loaded trucks without a written permit from the secretary of state.
>
> "A manufacturer or dealer shall, upon attaching a set of temporary number plates to a motor vehicle sold or exchanged by him, mark thereon the date when said license expires and immediately notify the secretary of state of said sale or exchange, giving the name and address of the purchaser, the number of the temporary plate and such further information as the secretary of state may require. The markings required by this paragraph to be placed on temporary number plates shall be made not less than 1 inch in height, with indelible or waterproof ink.
>
> "The secretary of state may issue temporary number plates to bona fide dealers who request them under such rules and regulations as he shall deem necessary; and shall receive for them 50c per pair."

It is the opinion of this office, upon a reading of this section in conjunction with other sections of Chapter 22, that temporary number plates are a means whereby a vehicle is temporarily registered with the Secretary of State and not a privilege or license to operate a motor vehicle without registration for the 7-day period mentioned above.

Section 13 of Chapter 22 requires that every resident of the State owning a motor vehicle or trailer shall register the same in this State if such vehicle or trailer is to be operated upon or remain upon any way. This section has the effect of prohibiting motor vehicles from being operated unless they are registered.

The last sentence of the first paragraph of Section 18 of Chapter 22 provides that the Secretary may select and issue special number plates for temporary or other special classes of registration.

These sections, combined with Section 37, compel us to the conclusion that a 7-day plate properly issued amounts to temporary registration of the motor vehicle for which the plate was issued. The make-up of the plate and the attached portions which are forwarded to the Secretary of State by the manufacturer or dealer supply him with sufficient information concerning ownership and other necessary data to amount to registration.

FRANK F. HARDING
Attorney General

March 16, 1955

To Harvey H. Chenevert, Executive Secretary, Milk Commission

Re: Legality of Sales Promotion

We have your memo of March 4, 1955, in which you recite the following:

"A dealer proposes to give away articles, such as bicycles and other smaller prizes to the boy or girl who presents the most bottle caps with his (dealer's) name on cap.

"Question: Is this a violation of Chapter 33, Revised Statutes, Section 4, Item VI, last paragraph of which reads 'No method or device shall be lawful, etc.'

"May we have a written opinion?"

Section 4-VI, of Chapter 33, the last paragraph, reads as follows:

> "No method or device shall be lawful whereby milk is bought or sold at prices less than the scheduled minimum applicable to the transaction whether by any discount, rebate, free service, advertising allowance, combination price for milk with any other commodity or for any other consideration."

The facts stated in your memo have been amplified by facts presented to this office by other people who apparently are complaining against the same individual in regard to the scheme or device by which he gives away articles. It is our understanding that on Saturdays, each week, the dealer has a number of prizes, each of some value, and these articles are auctioned away to the boy or girl presenting the most bottle caps with the dealer's name imprinted thereon.

It is our opinion that, where these articles are given away to the highest bidder, i. e., the person holding the highest number of bottle caps, this is in effect the selling of milk at less than the minimum price and is in violation of the above quoted law. . .

JAMES GLYNN FROST
Deputy Attorney General

April 4, 1955

To Maurice F. Williams, Administrative Assistant, Executive

Re: Line Budget

We have your memo of April 1, 1955, in which you state that to avoid misunderstanding as to authority to transfer funds between appropriations as classified in L. D. No. 452, "An Act Relative to Line Budget for Personal Services, Capital Expenditures and Other Expenses of State Departments," you are asking an opinion on the following question:

Question: Do the Governor and Council, upon recommendation of the department head and the budget officer, have authority to approve the transfer of funds between the category of Appropriations as set forth in Legislative Document No. 452 as approved by the 97th Legislature.

Answer. Yes.

L. D. No. 452 amends Sections 13 and 14 of Chapter 16 of the Revised Statutes of 1954 to provide that the general fund appropriation bill and the work

program submitted by the head of each department and agency of State Government shall both be so prepared as to show specific amounts for their departmental expenses.

In interpreting statutes relating to a particular subject, all laws having reference to that subject should be read together. Section 22 of Chapter 16, R. S. 1954, in our opinion provides sufficient authority for the Governor and Council to make a transfer of funds between the several categories now required by statute to be set out in appropriation bills and work programs. This section reads as follows:

> *"Transfer of unexpended appropriations on recommendation of state budget officer.* — Any balance of any appropriation or subdivision of an appropriation made by the legislature for any state department, which at any time may not be required for the purposes named in such appropriation or subdivision may, upon recommendation of the department head concerned and the budget officer, be transferred by the governor and council, at any time prior to the closing of the books, to any other appropriation or subdivision of an appropriation made by the legislature for the use of the same department for the same fiscal year."

It appears that this section of law was enacted in 1945 with the intention to govern just such a situation as will exist under the new law.

FRANK F. HARDING
Attorney General

April 19, 1955

To Albert S. Noyes, Bank Commissioner

Re: Right of Trust Companies to Hold Real Estate under Deeds of Trust

We have your memo of April 11, 1955, which reads as follows:

"I have been asked a question in relation to the proposed building which is to be built in Waterville for the use of a manufacturing concern, and I am not entirely sure of the proper answer. The question follows:

> " 'Re: A trust company organized under Sections 90 to 100, inclusive, of the Banking Laws of the State of Maine and having a regularly organized trust department:
>
> " 'Does such a corporation have the power to hold under a deed of trust, real estate in the form of land, and to build a building or buildings upon such land, issuing a first mortgage and note or notes in its own name as trustee to pay for the building of such a building, and to lease such building, when completed, for a period of years?'

"Will you kindly rule as to whether Paragraph VII of Section 90, Chapter 59, R. S. 1954 confers the power to act as trustee under a deed of trust, the power to issue first mortgage notes with the trust real estate as security, and the power to lease the property?"

Section 90, Paragraph VII of Chapter 59, R. S. 1954, reads as follows:

> "VII. To hold by grant, assignment, transfer, devise or bequest, any real or personal property or trusts duly created, and to execute trusts of every description; . . ."

It is our opinion that Paragraph VII of Section 90, Chapter 59, R. S. 1954, combined with the first sentence of Paragraph X of said section,

> "To do in general all the business that may lawfully be done by trust companies,"

grants sufficient authority to a trust company to act as trustee under a deed of trust, to issue first mortgage notes with the trust real estate as security, and to lease the property—provided, of course, that the instrument creating the trust specifically contemplates such acts upon the part of the trust company as trustee.

JAMES GLYNN FROST
Deputy Attorney General

April 20, 1955

To Harold J. Dyer, Director, State Park Commission

Re: Town Roads in Parks

Your inquiry of March 31, 1955, asks concerning authority for enforcement of Park Rules on town roads.

It is the opinion of this office that the authority of the Park Commission is limited to the park areas and does not extend to public ways which may approach or run through such parks.

NEAL A. DONAHUE
Assistant Attorney General

April 22, 1955

To Walter F. Ulmer, Business Manager, Bangor State Hospital

Re: Waiver of Liability, Workmen's Compensation

Your letter of April 19, 1955, refers to the circumstances of re-employment of a man having had what appeared to be a coronary attack and who at the time used sick leave.

The cases hold that the employer "takes the employee as he finds him," or to that effect. In other words, employment of a person who may be easily incapacitated can well involve greater liability or liability more easily brought about than ordinarily. Only in an exceptional case may it be expected that an employee may waive his right to receive benefits under the Workmen's Compensation Act.

Should the circumstances be, however, sufficiently serious to prevent the employee from any employment under ordinary circumstances because of the extraordinary risk to the employer, then a waiver of a claim for liability under circumstances limited to or caused by the then present handicap may be entered into. Under the statute such waiver must be approved by the Industrial Accident Commission or by the Commissioner of Labor and Industry before becoming effective. . .

NEAL A. DONAHUE
Assistant Attorney General

June 8, 1955

To Paul A. MacDonald, Deputy Secretary of State

Re: Proposed Constitutional Amendments and Bond Issue

Your question in regard to the Constitutional Amendments, more specifically the requirements of Section 14, Article IX of the Constitution of Maine, as applied to the bond issue authorized by Chapter 198, P&SL 1955, has been received. Your question is:

"Does this constitutional provision require that the Secretary of State print the statement as to bonds outstanding on the ballot along with the question with reference to the issuance of bonds for the bridge across Jonesport Reach?"

The constitutional provision in question is as follows:

> "Whenever ratification by the electors is essential to the validity of bonds to be issued on behalf of the state, the question submitted to the electors shall be accompanied by a statement setting forth the total amount of bonds of the state outstanding and unpaid, the total amount of bonds of the state authorized and unissued, and the total amount of bonds of the state contemplated to be issued if the enactment submitted to the electors be ratified."

The words necessary for our immediate attention are "shall be accompanied by a statement." Speaking in general terms, the word "accompany" means "go along with, to go with or attend as a companion or associate, and to occur in association with."

It has been held that an article or thing is accompanied by another when it supplements or explains it, in the same manner that a committee report of the Congress accompanies a bill, and no personal attachment, one to the other, is necessary, it being the textual relationship that is significant. *Kordel* v. *U. S.*, 335 U. S. 345.

The constitutional provision above referred to will be complied with if a written statement is presented to the voters which sets forth the following: 1) a statement of the total amount of bonds of the State outstanding and unpaid; 2) a statement of the amount of bonds of the State authorized and unissued (if there are no bonds authorized and unissued we feel that this should be stated); and 3) a statement of the total amount of bonds of the State contemplated to be issued under the provisions of Chapter 198, P&SL 1955.

It is not necessary that this statement be printed on the bill. We feel that it is permissible, however, to place this statement on the ballot in such a place that it will be readily seen by the voter. It would be administratively sound, as it would tend to lessen the confusion at the polling place, and, secondly, it would be conclusive evidence that the voter did receive the statement that is provided for under Section 14, as the check list will be proof of the receipt.

While not asked in your written memorandum, we have discussed the question of when the statement as to total indebtedness should be dated. We feel that the statement should be complete as of the date of the election, which we understand will be September 12, 1955. Although the Constitution is silent, we feel that it is the date that the framers had in mind.

ROGER A. PUTNAM
Assistant Attorney General

June 22, 1955

To Edward L. McMonagle, Director of Administrative Services,
Department of Education

Re: Chapter 321, Public Laws of 1955

We have before us the request forwarded to you from the Regional Office, Bureau of Old Age and Survivors Insurance, regarding the right of the Department of Education to enter into an agreement with the Secretary of Health, Education and Welfare in regard to Chapter 321, which is an Act relating to the determination of physical disability by the Department of Education. More specifically, the federal agency involved is questioning the right of the department to enter into the agreement.

We feel that Section 202-A is a complete answer and should lay to rest any problem relating to the right to enter into the agreement. This statute provides in part:

> ". . . The executive officer of the State Board of Education (this would be the Commissioner of Education), subject to approval of the Governor, is hereby authorized and empowered to enter into an agreement on behalf of the State with the Secretary of Health, Education and Welfare to carry out the provisions of Title II of the Federal Social Security Act relating to the making of determinations of disability."

You will note that it is the Legislature which has determined the State agency to handle this matter and it is not for the Governor to assign the duty to any particular department.

ROGER A. PUTNAM
Assistant Attorney General

July 5, 1955

To Richard E. Reed, Executive Secretary, Maine Sardine Industry

Re: Advertising

You inquire whether the Tax Committee has authority to allocate to individual packers a percentage of their tax payments to be used by them to advertise their individual brands.

In my opinion the Tax Committee does not have authority to do so.

Section 267, Chapter 16, R. S. 1954, provides for the expenditure of sardine tax revenues. The pertinent language is:

"1. For the collection of the tax and enforcement of all provisions of sections 260 to 269, inclusive.

"2. The balance in such amounts as shall be from time to time determined by the Maine Sardine Tax Committee:

A. For the purpose of merchandising and advertising *Maine sardines* for good, under the joint direction of the Maine Development Commission and the Maine Sardine Tax Committee." (Underlining supplied.)

The concept of the legislature is that the State of Maine, not the sardine packers, levies a tax upon packers, the proceeds of which tax must be used for public purposes. It is not a public purpose to advertise any individual brand. The money may be used for highways, for schools, etc., except as restricted by the sardine tax statute. The advertising of an individual brand is a private purpose.

You also inquire whether the Tax Committee has authority to match individual advertising budgets with tax funds. For the same reason, the answer is that the Tax Committee does not have power to do so.

You also inquire whether the Tax Committee may directly advertise a given brand. The Tax Committee may not do so.

I am sorry to come up with a wholly negative reply but see no alternative as the Constitution and statute are worded.

BOYD L. BAILEY
Assistant Attorney General

July 20, 1955

To Ernest M. White, Esq.

Re: Old Age Assistance

. . . For many years the Department of Health and Welfare has operated under the laws relating to Old Age Assistance as set forth by the legislature. . . . Revised Statutes 1954, Chapter 25, Section 287 is the law which applies to the situation involved in this case. The interpretation which has always been placed upon the words "reasonable consideration" has been full value. It has always been the interpretation that this law must be read in connection with Section 295 which calls for a claim against the estate of a deceased recipient. It has been the opinion of this department for many years that the legislature intended that persons applying for or receiving Old Age Assistance should not dispose of any type of property for less than its full value, thereby escaping the claim of the state for Old Age Assistance.

Therefore, the question arises in this case as to whether Mrs. J. did divest herself of any property after January 1, 1950 without receiving full value. The following appear to be the facts as understood by the Department of Health and Welfare.

Mr. J., the husband, died in September, 1953. Mrs. J., although separated from her spouse, was still his legal wife. After considerable discussion with the other heirs, sometime after or during August of 1954 Mrs. J. either executed a deed of her interest in her husband's property to the heirs or joined in a bond for a deed. As to which is the exact fact . . . is not a material point. The property was then sold on a bond for a deed for $2,000.00, thereby establishing the value of the property.

Under the provisions of Revised Statutes 1954, Chapter 170, Section 1, "in any event one-third shall descend to the widow or widower free from payment of debts, except as provided in Section 22 of Chapter 163." Therefore, Mrs. J. was entitled to one-third of the value of the property free and clear of indebtedness. I understand there was a mortgage on the property in the amount of $433.50. It is further my understanding in computing the value of the property that you deduct the amount of the mortgage from the sale price, which leaves

$1566.50. One-third of this figure is $522.15. This is the amount to which Mrs. J. was entitled under this statute. I think if you will also read the cases of *Whiting* v. *Whiting,* 114 Maine, 372 and *Longley* v. *Longley,* 92 Maine, 395 you can come to no other conclusion than that she was entitled to this one-third interest.

It appears that Mrs. J. conveyed her one-third interest for the sum of $300.00 which, under the interpretation which has always been given the statute cited above, means that she received less than full value for her interest.

It would therefore appear that Mrs. J. did not receive full value for her property, and did divest herself of property without reasonable consideration after January 1, 1950.

We are all very sorry that these decisions have to be made, but inasmuch as this is a categorical type of assistance which is governed by statute and regulations, there are occasional instances where persons have placed themselves in a position so that they are not eligible for such assistance. It is not always possible to bail them out of a situation into which they have got themselves. This appears to be one of those situations and I am sorry that there is nothing that I can tell you which will be of benefit to Mrs. J. in this instance.

GEORGE C. WEST
Assistant Attorney General

August 2, 1955

To Allan L. Robbins, Warden, Maine State Prison

Re: Withholding of Confession of one Prisoner from Another

I have your memorandum relative to your withholding a confession from further transmittal to a prisoner. It further appears that both men are serving time for breaking, entering and larceny and that X. was implicated in these crimes by a statement made to the police by Y.

We are of the opinion that you do have a right to withhold further transmittal of this document. It is your job to maintain security within your institution and to keep the peace therein. This document, in the hands of the addressee, would be a powerful weapon to coerce the writer and might cause physical violence.

Your withholding of this document will not impair any legal rights that X. might have. An attested copy is in the hands of his attorney, who will undoubtedly make such use of it as he sees fit in any legal proceeding that he might want to bring. This is all that is necessary to protect X.'s rights.

ROGER A. PUTNAM
Assistant Attorney General

August 3, 1955

To Peter W. Bowman, M. D., Superintendent, Pownal State School

Re: Residence

. . . Your first inquiry relates to residence as the word is used in Section 145, Chapter 27, Revised Statutes of 1954. . . Although the word is not defined in the

statute or under the rules of construction, we have more or less resolved it down to this: that a resident would be a person living within the county and intending to reside there for an indefinite period of time. This is more or less the definition of domicile. Sometimes the words are used synonymously, at other times not. Without a court opinion it is hard to say. I think we should avoid at all costs the construction that a person is a resident who is merely living there at the time of the commitment. Such a construction might lead to an abuse by out-of-Staters who might come here especially for the purpose of disposing of their children into our care and then leave the State. I think the Probate Judge must determine as a question of jurisdiction whether the person is a resident in the county.

In answer to your second inquiry, regarding transfers from your institution, where the parents have removed from the State and gained settlement in another State, we would call your attention to the last sentence of Section 3 of Chapter 94 of the Revised Statutes of 1954. This statute takes care of the question of settlement of any inmate of your institution up until the time he or she is discharged. Settlement will not move while the person is in your institution. I would not overlook the fact, however, that the statutes of a sister State might provide for transfer in such cases. If that were true, and the sister State would accept any patients you might have, I would suggest that it would be legally proper for you to suggest transfer to the out-of-state institution. This would be a matter of law in the other jurisdiction. . .

ROGER A. PUTNAM
Assistant Attorney General

August 4, 1955

To the Maine Employment Security Commission

Re: "Next Ensuing," as used in Section 15

I have discussed the intent of the above noted section with our Attorney General and our Deputy Attorney General, especially with regard to the application of "for the period of unemployment next ensuing after he has left his employment voluntarily without good cause attributable to such employment."

Our conclusions are as follows:

For the purpose of administering this subsection, "the period of unemployment next ensuing after he has left his employment voluntarily without good cause attributable to such employment" refers to that period immediately following his *last* employment.

"A" leaves his job voluntarily without good cause attributable to such employment and files a claim for benefits. "A" will be disqualified for a period of not less than 7 nor more than 14 weeks in addition to his waiting period.

"B" leaves his job voluntarily without good cause attributable to such employment, immediately going to work in subsequent employment, being later *laid off* for lack of work, and files a claim for benefits. If otherwise eligible, this claimant is entitled to benefits, he *not* having left his most recent or last employment voluntarily.

"C" leaves his job voluntarily without good cause attributable to such employment, is unemployed for a period of time, then secures a job, being later

laid off for lack of work, and files a claim for benefits. If otherwise eligible, this claimant is entitled to benefits, he *not* having left his most recent or last employment voluntarily.

This agency has no jurisdiction over the granting or denying of benefits to an individual until such time as he files a claim for benefits. Consequently, the reason or reasons the claimant was separated from his last employment before filing a claim should be used as the test.

MILTON L. BRADFORD
Assistant Attorney General

These conclusions concurred in by Attorney General and Deputy.
Aug. 11, 1955.

J. G. F.

August 4, 1955

To Honorable Harold I. Goss, Secretary of State

Re: Vacancy in Office of Sheriff

I have your memorandum of July 28th requesting an opinion in regard to the length of the term to be served by the person appointed to fill the vacancy in the office of sheriff of Somerset County.

You quote Section 10 of Article IX of the Constitution of the State as follows:

> "All vacancies in the office of sheriff. . . shall be filled in the same manner as is provided in the case of judges and registers of probate."

You also quote Section 7 of Article VI of the Constitution as follows:

> "Vacancies occurring in said offices . . . shall be filled by election in manner aforesaid at the September election, next after their occurrence; and in the meantime, the governor, with the advice and consent of the council, may fill said vacancies by appointment, and the persons so appointed shall hold their offices until the first day of January next after the election aforesaid."

You ask the specific question: "Shall the vacancies be filled by election at the next regular election for the choice of county officers or at the next election to be held in September, 1955 as provided by legislative acts relating to constitutional amendments?"

The vacancy is to be filled by election at the next regular election for the choice of county officers. Section 7 of Article VI provides that "Judges and registers of probate shall be elected by the people of their respective counties, by a plurality of the votes given in, at the biennial election on the second Monday of September." This portion of Section 7 is the first part of the section which you have quoted in part, and the specific part to which I wish to call attention reads as follows:

> "Vacancies occurring in said offices. . . shall be filled by election *in manner aforesaid* at *the* September election. . ."

It is our opinion that the words "in manner aforesaid" refer back to "the biennial election on the second Monday of September," and that the words "at

the September election, next after their occurrence" were not enacted in contemplation of a special election and also refer to the regular biennial election.

FRANK F. HARDING
Attorney General

August 5, 1955

To Harry E. Henderson, Deputy Treasurer of State

Re: Mortgaged Property

. . . Your memo of August 4 reads as follows:

"The State of Maine holds a mortgage on farm property . . . in Wayne. The principal amount of the loan has been reduced by payments from the original amount of $1400.00 to the present balance of $391.52.

"The Treasurer of State has notice that on February 16, 1954, the Collector of Tax for the Town of Wayne recorded with the Registry of Deeds of Kennebec County a tax lien covering an unpaid tax for 1953. This lien will expire before the date of the next meeting of the Governor and Council.

"Section 25 of Chapter 177, Revised Statutes of 1954, provides for various actions by the Treasurer of State relative to mortgages owned by the state. Does the Treasurer of State have authority under the statutes to pay the tax and costs in this instance for the purpose of protecting the state's interest as mortgagee?"

It is our opinion that the Treasurer of State is not only authorized to pay the tax and costs in this instance, but is under a duty to do so. Investments authorized by the statutes must be safeguarded whenever possible.

JAMES GLYNN FROST
Deputy Attorney General

August 10, 1955

To Stanley R. Tupper, Commissioner of Sea and Shore Fisheries

Re: Herring under 4" Long

. . . You request that we reduce to writing an oral opinion given with respect to the provisions of Chapter 304 of the Public Laws of 1955, which law will become effective on August 20, 1955.

That part of the statute with which we are concerned reads as follows:

> "Except for use as bait for fishing, it shall be unlawful for any person, firm or corporation to take from the coastal waters of Maine, or to sell, offer for sale, purchase, transfer in any manner, use, process, dispose of in any way or have in his possession for any purpose whatsoever herring less than 4 inches long, overall length measured from one extreme to another; except that when herring under 4 inches in length are mixed with longer herring and the herring of prohibited size represent less than 25% of the lot taken at any one time, sale or purchase, the foregoing provisions in this paragraph shall not apply. . ."

The question asked is whether the prohibition extends to herring under 4 inches in length which have been taken, not from the coastal waters of Maine, but from Canadian waters, or the selling, offering for sale, purchasing, etc., of such fish taken from Canadian waters.

This law, as are a great majority of the other laws contained in the Sea and Shore Fisheries chapter, is based on the theory of the conservation of fish in the waters of Maine. For this reason such a statute, limiting the consumption of fish taken from the coastal waters of Maine can be upheld.

We are of the opinion, however, that the prohibition does not extend to herring taken from Canadian waters, as we feel that such a prohibition would of necessity have to be enacted by Congress, which, under our Federal Constitution, regulates interstate and foreign commerce.

JAMES GLYNN FROST
Deputy Attorney General

August 12, 1955

To Roland H. Cobb, Commissioner of Inland Fisheries and Game

Re: Nonresident License

This is in response to your memo citing a case where a man lives five or six months at Crescent Lake, pays the poll tax and over $1,000 in property taxes there, and licenses his truck there, but licenses his car in Massachusetts, where he has a residence which he probably occupies only about two months, as he goes to Florida in the winter. You state that the Town Clerk has refused to issue him a license as a resident, even though he pays a poll tax.

Though you ask the question, "Does he have to pay a poll tax if he is ruled a nonresident?" we feel that actually your problem is, Is the clerk justified in refusing the man a resident license if he displays a poll tax receipt, combined with the facts recited above?

There are two sections of law in Chapter 37 which must be read together in determining such a question. While Section 39, subsection VIII, provides that no resident hunting or fishing license or combination of same shall be issued unless the applicant shall present a poll tax receipt from the town where he resided in the year immediately preceding the date of his application, Section 68, subsection V must be also considered. This section provides that any citizen of the United States shall be eligible for any resident license required under the provisions of this chapter, providing such person is domiciled in Maine with the intention to reside here and has resided in this State during the three months next prior to the date an application is filed for any license under the provisions of this chapter.

It can be seen that the sections above referred to contemplate that to get a resident license a person must first be domiciled in Maine with the intention to reside here, and, second, he must have resided in this State during the three months next prior to the date an application is filed for any license, and, thirdly, he must comply with the provisions of Section 38 in that he must show a poll tax receipt or a valid unexpired State of Maine motor vehicle operator's license, or a certificate exempting him from payment of a poll tax, etc. The determination of

domicile is always dependent upon the fact situation involved and must, as seen in Section 68, subsection V, show the man's clear intention that he make the State of Maine his home. It would not be a proper function of this office to substitute its judgment or discretion for that of the town clerk. It is within the jurisdiction of the town clerk to determine whether or not a man is eligible to purchase a Maine resident license. If the person applying for such license is aggrieved at the decision of the town clerk, he has a proper legal remedy.

FRANK F. HARDING
Attorney General

August 15, 1955

To Honorable Edmund S. Muskie, Governor of Maine

Re: University of Maine—Organized Labor

At your request I have reviewed my memorandum of February 2, 1954, respecting the rights of organized labor at the University of Maine, in view of a memorandum of Henry T. Wilson, Legal Assistant, representing American Federation of State, County, and Municipal Employees.

My opinion was given at the request of the President of the University, not addressed to any specific issue but describing to President Hauck what in general were the rights and duties of an administrative officer of the State of Maine dealing with representatives of organized labor.

As I would summarize my own presentation, public employees may meet, talk, petition, and appoint representatives, but no labor agreement can have any teeth in it. By "teeth" I mean remedies in a court of law or equity.

Concretely, let us suppose that President Hauck signed a labor agreement on behalf of the State of Maine, recognizing the A. F. of L. as bargaining agent, fixing conditions of employment, holidays, promotion, demotion, etc. Suppose that the agreement is violated by the State of Maine. It is my opinion that President Hauck has no authority to make such agreement. The agreement being a nullity, no suit or action could be brought to enforce it. The legislature could at any time pass legislation changing the terms of the agreement.

> "Public employers cannot abdicate or bargain away their continuing legislative discretion and are therefore not authorized to enter in collective bargaining agreements with public employee labor unions."
>
> (Editorial Summary, 31 A.L.R. 2d 1170)

President Hauck knows that he may talk to any one, including professional union organizers, about anything. However, he has been advised that the ultimate and continuing authority respecting conditions of employment must reside in the administrative heads of the University and that he cannot bind the State of Maine by what is commonly understood to be a labor agreement. By labor agreement I intend something that is legally effective. . .

BOYD L. BAILEY

August 18, 1955

To Colonel Robert Marx, Chief, Maine State Police

Re: Sealed Vehicles

. . . You ask for an interpretation of Sections 19-52, inclusive, of Chapter 48 of the Revised Statutes of 1954, which sections cover the business of motor transportation for hire, together with provisions for rules and regulations to be promulgated by the Public Utilities Commission, covering such transportation.

In brief, you state that your Department is the only police agency in the State which attempts to enforce these provisions. You ask if, under the police power of the State, it is possible to break sealed boxes or cars used for the purpose of transporting goods to determine whether or not the goods so carried are embraced within the permit issued by the Public Utilities Commission or the permit issued by the Interstate Commerce Commission. Your question therefore extends to your right to break the seal on such cars engaged both in interstate and intrastate commerce, for the purpose of inspection.

You state that neither the statutes nor rules and regulations spell out the rights of the State Police to make this inspection in this manner, and you also point out that there is a possibility that carriers are evading the law by carrying goods not authorized by permit, by the use of sealed cars.

With respect to carriers in interstate commerce our answer is in the negative. We do not feel that the police power grants sufficient right to police agencies of this State to break the seals on boxes or cars in interstate commerce for the purpose of inspection. Under the Federal Constitution interstate and foreign commerce come within the jurisdiction of the Federal Government. We feel that such inspection would very possibly be a direct burden upon interstate commerce and therefore would be illegal. There is, however, some consolation in that the usual permit issued by the ICC is broad in scope and it would be a rare case where trucks in interstate commerce would be carrying cargoes not authorized by permit.

Our answer with regard to cars or boxes engaged in intrastate commerce, absent statutes or rules and regulations properly enacted permitting such inspection, is the same. We do not feel that it would be a proper police power function to break the seals of these cars without such statutory or regulatory provision.

As we perceive the situation, while the absence of the right to make such inspection may be inconvenient for police purposes, still the effective communication system you have established in the Maine State Police would seem to offset any detriment to the State because of the lack of inspection powers. If the carrier suspected of evading the law is an intrastate carrier, our purpose would probably be served by communicating with the barracks closest to the point of destination of goods, and the box could be inspected when opened.

If the suspect carrier is in interstate commerce, then notifying ICC officials would undoubtedly accomplish the same purpose.

This opinion is not to be interpreted as precluding possible agreement, under existing statutes, between your Department, the Public Utilities Commission, and intrastate carriers for inspection, if safeguards were devised which would properly protect the owner of goods who desires his property to be carried under seal.

FRANK F. HARDING
Attorney General

August 18, 1955

To William B. Oliver, State Conservationist

Re: Improvements

. . . You ask if a Soil Conservation District has the authority to carry out, maintain and operate works of improvement as defined by Section 2 of Public Law 566, Chapter 65, H. R. 6788 of the 83rd Congress.

The answer is, Yes. The authority is given to a Soil Conservation District under Section 7 of Chapter 34, R. S. 1954, subsection I, as follows:

> "To carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands."

I believe that this paragraph is particularly pertinent and do not quote the subsections conferring other powers upon such districts.

FRANK F. HARDING
Attorney General

August 30, 1955

To Labor and Industry

Re: Employment of Minors in Hotels and Restaurants

. . . You state that routine inspections have turned up two situations on which you would like to have our opinion:

"First, in the case of a hotel dining room which is leased by the hotel ownership to another person who operates said dining room as a restaurant, with no relationship to the hotel except that it is on the premises, should the dining room be considered part of the hotel and subject to a minimum age of 16 years (Sec. 23) or an eating place, subject to a minimum age of 15 years (Sec. 25)?

"Second, where a hotel ownership operates a hotel, that is, sleeping rooms, lobby, etc., in one building and a dining room in another building, next door or across the street, should the dining room be considered strictly an eating place (Sec. 25) or as part of the hotel (Sec. 23)? If it is a question of distance, how far away should the eating place be before it would not be considered part of the hotel?"

In answering these questions the words of the statutes must be considered along with the evil or danger which the legislature, by enacting such statutes, was attempting to avoid.

Section 23 of Chapter 30, R. S. 1954, provides:

> "No minor under 16 years of age shall be employed, permitted or suffered to work in, about or in connection with any . . . hotel."

Section 25 of Chapter 30, R. S. 1954, provides:

> "No child under 15 years of age shall be employed, permitted or suffered to work in, about or in connection with any eating place. . ."

It is obvious from the above quoted portions of the statutes that the legislature believed that the type of work to be done about a hotel required a minor to be of an older age to do such work, whereas employment in an eating place did not contain such possibilities of danger.

In answer to your first question it is our opinion that, where a hotel dining room is leased by the hotel to another person who operates that dining room as a restaurant, such dining room should be considered part of the hotel and be subject to a minimum age of 16 years, under the provisions of Section 23.

With respect to your second question, where the dining room of a hotel is in another building, we are of the opinion that such dining room should be considered an eating place and the 15-year age limit be considered under the provisions of Section 25.

JAMES GLYNN FROST
Deputy Attorney General

August 31, 1955

To Harvey H. Chenevert, Executive Secretary, Maine Milk Commission

Re: Fees on out-of-State Milk

. . . You ask for an opinion concerning the following situation: A dealer in Maine drops his Maine producers and buys milk from a dealer in New Hampshire. Recognizing that you cannot collect a fee from the New Hampshire dealer, you ask whether or not the Maine dealer is the first handler in Maine and therefore subject to the fees set forth in Section 6 of Chapter 33.

It is our opinion that under the situation set forth above, a Maine dealer purchasing from an out-of-State dealer is the first handler and under Section 6 is subject to the 3c per hundredweight monthly payments.

The sixth paragraph of Section 6 reads as follows:

> "Each licensed dealer shall pay to said commission an annual license fee of $1 and the sums of 3c per hundredweight as monthly payments, based on quantity of milk purchased or produced in any market area. One and one-half cents per hundredweight may be deducted by dealers from amounts paid by them to producers of such milk; except that the milk, farm-processed into cream for the manufacture of butter, shall not be subject to such sums of 3c per hundredweight."

The paragraph above quoted provides that the dealer shall pay the 3c monthly payment and it provides that he may deduct 1½c per hundredweight from the amounts paid to producers for such milk. We feel that if he cannot deduct such sums from a dealer outside the State, he is still subject to the entire 3c per hundredweight monthly payment.

JAMES GLYNN FROST
Deputy Attorney General

September 6, 1955

To Paul A. MacDonald, Deputy Secretary of State

Re: Voting by Indians

. . . You ask for an opinion relative to the voting rights of Indians as a result of the constitutional amendment adopted by the people on September 13,

1954, and proclaimed by the Governor on September 21, 1954, and Chapter 190, Public Laws of 1955.

Prior to the adoption of the constitutional amendment above referred to, Article II, Section 1, paragraph 1, contained a provisions expressly excluding Indians not taxed from voting:

> "Every citizen of the United States of the age of twenty-one years and upwards, excepting paupers, persons under guardianship, *and Indians not taxed,* having his or her residence established in this state for the term of six months next preceding any election, shall be an elector for governor, senators and representatives in the city, town or plantation where his or her residence has been established for the term of three months next preceding such election. . ."

The constitutional amendment amended Section II by deleting from paragraph 1 the words above underlined, "and Indians not taxed," and adding a third paragraph which reads as follows:

> "Every Indian, residing on tribal reservations and otherwise qualified, shall be an elector in all county, state and national elections."

In the light of this constitutional amendment, and in order to provide the necessary mechanics to make the amendment effective, Chapter 190 of the Public Laws of 1955 was enacted. Entitled, "An Act Creating Voting Places for Indians," the Act provides for the establishment of voting places on each of three reservations,

> "at which polling place all Indians residing on the . . . tribal reservation and otherwise qualified . . . shall vote in all State, county and national elections, including primary elections."

With respect to the above provisions of law, both constitutional and statutory, you inquire as to the method of determining which Indians are to be allowed to vote. You state that a voting list will have to be compiled before the election of September 12, and you specifically ask, "Should the census list furnished by the Bureau of Health and Welfare be used as the voting check list or should some other method be used, and, if so, what method do you suggest?"

Chapter 25, Section 321, R. S. 1954, defines an Indian

> "for all purposes as being a person who is in whole or to the extent of at least ¼ part of Indian blood."

The following portion of your letter is quoted because it spells out the situation which causes you to seek an opinion from this office:

"I am told by Dr. Fisher that no Indians on the Tribal Reservations are of the full blood and that the Penobscot Tribe itself determines what Indians have one-fourth blood. There are many Canadian Indians residing on the Reservation; there are Indians from other tribes than the Penobscot residing there. Many of these Indians claim one-fourth blood or better but have never been declared Indians, as such, by the Tribal Council.

"A census list is compiled by the Department of Health & Welfare of Indians on the Reservation at Old Town but this list contains only the names of those persons who have been declared by the Tribal Council to be one-fourth blood Indians.

"A very serious problem arises in connection with the election of September 12 and subsequent elections as to what Indians are to be allowed to vote. If the so-called census list is followed, only those Indians who have been declared such by the Penobscot Tribe will be allowed to exercise the franchise. If, however, all persons residing on the Reservation are allowed to vote, it will include persons who contain much less than one-fourth blood and perhaps no Indian blood at all as I am informed there are many white men living on the Island who have married Indian women."

We are of the opinion that the census list compiled by the Department of Health and Welfare should *not* be used in determining the voting eligibility of Indians residing on the Reservations.

The census list referred to is provided for in Section 369, Chapter 25, R. S. 1954, and is a census of the Penobscot Tribe. It does not purport to be a list of all Indians residing on the Reservation, but only of those Indians belonging to that Tribe.

The constitutional amendment does not restrict the voting privilege to members of the tribe only, but extends the privilege to *"every* Indian residing on tribal reservations."

As stated in your memo, there are non-tribal Indians residing on the Penobscot Reservation, and presumably they are properly there. Section 349, Chapter 25, R. S. 1954, provides for the removal of persons from the Reservation who are not members of the tribe, nor the husband, wife or legally adopted child of a member of the tribe. If such person is, however, residing on the Reservation, is an Indian as defined by statute, and otherwise qualified, we believe he is entitled to vote on the Reservation.

White persons, or Indians not citizens, may not, of course, vote on the Reservation.

Having decided that the census list compiled by the Department of Health and Welfare may not be used in determining the eligibility of Indian voters, we continue to the second part of your question, asking for a suggestion as to a method which might be used.

You stated to us that in drawing the bill, Chapter 190, P. L. 1955, the author believed that the Board of Registration of the City of Old Town would perform the function of determining the qualifications of the Indians involved. The City, however, has since advised you that the Board will be busy with its own affairs and will not be able to go to Indian Island.

Under such circumstances we would suggest that those Indians claiming the right to vote go to the City of Old Town and appear before the Board of Registration of that City.

Indian Island not being a city, town, plantation or organized territory, the situation is not unlike that of a person in an unincorporated place. Such person has no polling place other than in a town within the same representative district (Section 64, Chapter 5, R. S. 1954), and he must go to that town both to register and to vote.

Chapter 190, P. L. 1955, while directing the municipal officers of the City of Old Town to establish a voting place on Indian Island, does not direct the man-

ner of registration, and we are of the opinion that the only reasonable way to achieve the intent of the Legislature that Indians vote is to have them register in Old Town and then vote on Indian Island.

FRANK F. HARDING
Attorney General

September 9, 1955

To Ronald W. Green, Chief Warden, Sea and Shore Fisheries

Re: Juvenile

It appears from the record presented that X. was charged with the offense of molesting a lobster trap belonging to Clyde Eaton, which was then and there set for the taking of lobsters and crabs, without the written permission of the owner thereof, the same being a violation of Section 117 of Chapter 38, R. S. 1954.

Although the record does not completely disclose the age of the accused, we presume that X. was under the age of 17, in view of the adjudication by the Western Hancock Municipal Court that X. stood convicted before this court of juvenile delinquency.

Section 2 of Chapter 146, R. S. 1954, after setting out certain provisions for juvenile courts relating to crimes committed by children under the age of 17, provides as follows:

> "Any adjudication or judgment under the provisions of sections 4-7 (of Chapter 146) inclusive, shall be that the child was guilty of juvenile delinquency, and no such adjudication or judgment shall be deemed to constitute a conviction for crime."

The Commissioner, under date of August 3, 1955, wrote X. to the effect that his license had been suspended under the provisions of Section 117, *supra,* the last sentence of which provides as follows:

> "Any person convicted of a violation of any provision of this section shall be ineligible to hold a lobster fishing license for a period of 3 years from the date of such conviction."

Attorney for X. has questioned the right of the Commissioner to suspend, in view of the provisions of Chapter 146 above mentioned. The opinion of this office is that X. was not convicted within the meaning of Section 117 of Chapter 38, supra, and that the Commissioner was without jurisdiction to suspend his license.

The legislature has seen fit to cast a protective cloak around juveniles. The cloak may sometimes produce results which were not foreseen at the time. This, apparently, is one of those loopholes, and it would be appropriate for you to seek such legislative action as you may deem necessary after reading this opinion.

ROGER A. PUTNAM
Assistant Attorney General

September 26, 1955

To Samuel H. Slosberg, Director of Legislative Research

Re: Payment of Compensation to Members of the Committee Added by Chapter 381 of the Public Laws of 1955

We have your memorandum posing the following question:

"The Legislative Research Committee requests an opinion of the Office of the Attorney General as to whether there is any constitutional or statutory prohibition relative to the payment of expenses and per diem compensation to those members of the 97th Legislature who have become members of the Legislative Research Committee under the provisions of Chapter 381 of the Public Laws of 1955."

A check of the statutes and constitutional provisions regarding your question discloses only one apparent conflict which requires discussion. Article IV, Part Third, Section 10, of the Constitution provides as follows:

> "No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which increased during such term, except such offices as may be filled by elections by the people."

We have checked the adjudicated cases on this point and find that similar questions have been raised regarding legislative committees which would be comparable to our Legislative Research Committee. The leading case on this point is *State* v. *Yelle,* 29 Wash. 2d 68; 185 P. 2d 729, where the court was concerned with a State Legislative Council which, for all intents and purposes, is the equal of our Legislative Research Committee. The major point raised in this case was Article II, Section 13 of the Washington Constitution, which provides as follows:

> "No member of the legislature during the term for which he is elected shall be appointed or elected to any civil office in the state which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected."

The case in general holds that the position on the committee is not a civil office within the meaning of the term as it is used in the Constitution. This is particularly true, they say, because the committee members do not exercise one of the elements of sovereignty. They find that the Legislative Council's power is limited to collecting information, reporting as to the facts they find to the next legislature, and making their reports public. They find that the committee was not engaged in making laws, executing them, or administering them, and that therefore no member of the Council could be deemed the holder of a civil office.

Similar committees have been under attack in other States for the same reason and it is worth while to note that there are cases holding that these committee members do not hold public office. The following cases hold to that effect.

> *Parker* v. *Riley,* 18 Cal. 2d 83; 113 P. 2d 873; 134 ALR 1405 (State Committee on Interstate Cooperation)
>
> *Terrell* v. *King,* 118 Tex. 237; 14 S.W. 2d, 786, and *People* v. *Termaine,* 252 N.Y. 27; 168 N.E. 817.

The gist of these decisions can be summarized by the statement taken from *Parker* v. *Riley* as follows:

> "Where a statute merely makes available new machinery and new methods by which particular legislators may keep themselves informed upon specific problems, it cannot be said to have imposed upon them any new office or trust."

It would only be fair to note that there is a case holding that a committeeman on the Montana Legislative Council holds a civil office. This is *State* v. *Holmes* (Mont.) 274 P. 2d 611. The Court gave no reason for its conclusion, and it is our conclusion that the majority of cases hold such a position not to be a civil office and that this is by far the better view. Consequently it is our opinion that we do not perceive any constitutional or statutory prohibition regarding the payment of expenses and per diem to the members of the 97th Legislature who became members of the Legislative Research Committee by virtue of the provisions of Chapter 381 of the Public Laws of 1955.

ROGER A. PUTNAM
Assistant Attorney General

September 27, 1955

To Marion Martin, Commissioner of Labor and Industry

Re: Women Workers in Woods Operations

You ask: 1) Whether, under the provisions of Section 30 of Chapter 30, R. S. 1954, the number of working hours of a woman cook with a river drive is regulated.

The answer is, No. We are not of the opinion that any of the activities defined in Section 30 include a river drive.

2) "In view of this question and the fact that our inspectors will be visiting lumber camps, in accordance with your interpretation of the Department's responsibilities under Sections 2 and 4 of Chapter 30 (your memorandum of June 10, 1955), we would appreciate your opinion as to whether woods operations—river drives or permanent or temporary lumber camps—would come under the definition of 'workshop' or 'mechanical establishment' as the terms are used in Section 30 et seq. See Section 7 for the definition of 'workshop.' "

In our opinion, woods operations, river drives, or temporary or permanent lumber camps, do not come within the definition of "workshop" or "mechanical establishment," as the terms are used in Section 30 of Chapter 30.

The premises, room or place in which a workshop is established (Section 7 of Chapter 30) would, in our opinion, require that the labor performed be performed in such premises, room or place, or an area immediately adjacent to such property, and we further feel that the words require a building of some sort in which the work is done.

JAMES GLYNN FROST
Deputy Attorney General

October 14, 1955

To Stanley R. Tupper, Commissioner of Sea and Shore Fisheries

Re: Marine Worms

You ask for an interpretation of Sections 5 and 125-A of Chapter 39, Revised Statutes of 1954, as amended.

You ask whether or not, acting under authority of Section 4, you may close an area where shellfish are endangered, to the taking of all species including marine worms, and this despite Section 122-A *re* marine worms.

The first paragraph of Section 5 of Chapter 39 reads:

> "Whenever any existing conditions endanger the conservation of fish, shellfish, lobsters, crabs, shrimp or marine worms in any coastal waters or flats of the state, the commissioner, with the advice and approval of the advisory council, shall make such rules and regulations as he may deem necessary providing for the times, number, weight and manner in which such fish, shellfish, lobsters, crabs, shrimp or marine worms may be taken from such waters or flats, in the manner hereinafter provided."

Section 125-A was enacted by the 97th Legislature and appears in Chapter 110 of the Public Laws of 1955. It reads:

> "Marine worms, taking. It shall be lawful for any person, firm or corporation, who legally possesses a commercial shellfish and marine worm license, to dig, take, buy or sell marine worms, clamworms, bloodworms and sandworms in any tidewater area of the State, except those areas which are closed to all digging for the conservation of marine worms by the department.
>
> "No area shall be closed for the purpose of conservation to the digging or taking of marine worms, clamworms, bloodworms and sandworms except as provided in section 5."

In considering the problem presented it should first be recognized that the legislature has the power to enact laws regulating the common right of fishery. The legislature could, if it saw fit, declare a perpetual close time on fishing. Thus, if the legislature desired to close an area to marine worm fishing in order to save the clams in that area, such would be within their power. The question here presented then is, whether the legislature in enacting Sections 5 and 125-A of Chapter 38 has indicated that in order to conserve one species of fish or shellfish the Commissioner may, by rule and regulation, close the particular area to other types of fishing, where closing is not necessary in order to conserve the latter type of fish.

Our answer is in the negative.

Reading Sections 5 and 125-A together we interpret such sections to mean that if existing conditions endanger the conservation of shellfish, then by proper rule and regulation the Commissioner may with the advice and approval and the Advisory Council control the taking of such shellfish, similarly with other species of fish.

We do not believe that the legislature has directly or indirectly delegated the power to determine if one industry is more in the interest of the people of the

State than another industry, which would of necessity be the case if, in order to conserve clams in a particular area, the digging of marine worms could be prohibited in that area.

JAMES GLYNN FROST
Deputy Attorney General

October 18, 1955

To Colonel Robert Marx, Chief, Maine State Police

Re: Insurance Status of Men Enlisted prior to July 9, 1943

We have your request regarding the status of men enlisted in the Maine State Police prior to July 9, 1943, as regards their eligibility for group life insurance under the provisions of Chapter 451 of the Public Laws of 1955.

The laws applicable to this situation are:

Section 24 of Chapter 63-A, Revised Statutes of 1954, as enacted by Chapter 451 of the Public Laws of 1955, through subsection I, reads as follows:

> "Group life insurance shall be made available to state employees and teachers, subject to the following provisions:
>
> I. Except as provided herein, each appointive officer or employee of the State of Maine, or teacher, who is eligible for membership in the Maine State Retirement System, shall at such time and under the conditions of eligibility as the Board of Trustees may by regulation prescribe, come within the purview of this section. Such regulations may provide for the exclusion of employees on the basis of nature and type of employment or conditions pertaining thereto, such as, but not limited to, emergency, temporary or project employment and employment of like nature; which regulation shall be issued only after consultation with the appointing authority concerned: provided that no employee or group of employees shall be excluded solely on the basis of the hazardous nature of employment."

Section 1 of Chapter 64, R. S. 1954, in part:

> " 'Employee' shall mean any regular classified or unclassified officer or employee in a department, including teachers in the state teachers' colleges, normal schools and Madawaska training school, and for the purposes of this chapter, teachers in the public schools, but shall not include any member of the state legislature or the council or any judge of the superior or supreme judicial court who is now or may be later entitled to retirement benefits under the provisions of section 5 of chapter 103 and section 3 of chapter 106, nor shall it include any member of the state police who is now entitled to retirement benefits under the provisions of sections 22 and 23 of chapter 15. In all cases of doubt the board of trustees shall determine whether any person is an employee as defined in this chapter."

This definition of "employee" is seen unchanged in the reenactment of the Retirement Law in Chapter 417 of the Public Laws of 1955.

The first paragraph of Section 22 of Chapter 15, R. S. 1954:

> "Any member of the state police who shall have served as a member thereof for 20 or more years with a good record shall upon request in

writing to the chief of the state police be retired from active service and placed upon the pension rolls, and receive thereafter ½ of the pay per year that is paid to a member of his grade at the time of his retirement, Provided that this section shall apply only to persons who were members of the state police on July 9, 1943."

In reviewing the foregoing statutes it becomes self-evident that the right to the group life insurance is conditioned upon eligibility for membership in the Maine State Retirement System; further, that the term "employee," as used in the Retirement Act, definitely excludes members of the Maine State Police who still belong to the retirement system provided in Section 22 of Chapter 15. This being true, they are not eligible for retirement under the Maine State Retirement System, as we understand it, and of course it necessarily follows that they are ineligible for the group life insurance.

In view of the foregoing it will be necessary to ask the legislature to include within that group of persons eligible for group life insurance the men who are now under the State Police Retirement System.

ROGER A. PUTNAM
Assistant Attorney General

October 21, 1955

To Honorable Edmund S. Muskie, Governor of Maine

Re: New England Board of Higher Education

You ask: "In your opinion, under the Maine statute, in order to implement it, is it necessary that the five States execute a formal document incorporating the provisions of the statute, or is it sufficient that the States involved exchange verified copies of their legislation?"

In my opinion, in order to make the proposed compact effective as between two or more of the New England States, it will be necessary to execute a formal document embodying, so far as Maine is concerned, substantially the same provisions as are set forth in the Maine statute.

The Maine statute contemplates the necessity of more than a mere exchange of copies of legislation.

Section 2 of Chapter 441, P. L. 1955, provides as follows:

"Authorization. The Governor, on behalf of this State, is hereby authorized to enter into a compact, substantially in the following form, with any one or more of the states of Connecticut, Massachusetts, New Hampshire, Rhode Island and Vermont; said compact to be effective upon the filing of a copy thereof in the office of the Secretary of State."

It is apparent that this gives the Governor the authority to enter into a compact for and on behalf of the State and that the statute in and of itself does not, and does not purport to, constitute such a compact. This section does, however, impose a general limitation that the compact, when entered into, must substantially comply with the form prescribed by the statute.

Section 3 of this statute provides that a verified copy of the compact, not the statute, when executed by the Governor on behalf of this State, be filed with

the Secretary of State. This section contemplates a compact as separate and distinguished from the statute, and it contemplates legislative ratification of such a compact. Ratification by our legislature is contained in the statute.

FRANK F. HARDING
Attorney General

November 1, 1955

To Stanley R. Tupper, Commissioner of Sea and Shore Fisheries

Re: Sardines

We have at hand a copy of a letter dated October 17, 1955, from Richard E. Reed, executive secretary of the Maine Sardine Industry, addressed to you as Commissioner, Department of Sea and Shore Fisheries, with respect to which you ask our opinion.

Mr. Reed's letter in part reads as follows:

"Several sardine canners in the Eastport and Lubec area are considering the possibility of operating their plants during the winter months and have asked us to obtain from you an interpretation of Section 22 of Chapter 38 of the Revised Statutes of 1954 as follows:

"1. Can a Maine plant operator legally can herring of any size, taken from Canadian waters and delivered to his place of business from December 1 to April 15, providing he does not label or market the finished product as sardines?

"2. Can a Maine plant operator legally can herring of any size taken from Maine waters from December 1 to April 15, providing that the finished product is not labeled or marketed as sardines?

"For your information, these packers have expressed the feeling that they definitely should be permitted to handle Canadian-caught fish as outlined in Question 1, in view of the August 10, 1955 ruling by the Attorney General's office covering the importation of Canadian herring under four inches in length."

Section 22 of Chapter 38, R. S. 1954, referred to above, reads as follows:

"Whoever takes, preserves, sells or offers for sale between the 1st day of December and the 15th day of the following April any herring for canning purposes less than 8 inches long, measured from one extreme to the other, or cans herring of any description taken in the coastal waters of Maine between the 1st day of December and the 15th day of the following April forfeits $20 for every 100 cans so packed or canned and for every 100 herring so taken. . ."

Briefly, the essence of Section 22 is to the effect that herring for canning purposes may be taken, preserved or sold between the 1st day of December and the 15th day of the following April, provided such fish are longer than 8 inches and provided that they are not taken from the coastal waters of Maine.

This office has arrived at the same conclusion as a prior opinion dated November 17, 1952, to the effect that there is no prohibition against canning herring over 8 inches in length, so long as they have not been taken from the coastal waters of Maine.

To proceed to your questions:

The answer to Question 1 is, No.

The answer to Question 2 is, No.

We think that an examination of the case of *State* v. *Kaufman,* 98 Maine 546, and the statute under consideration in that case clearly shows the legislative intent with respect to the present law. The law, as amended by Chapter 240 of the Public Laws of 1901, reads as follows:

> "Whoever catches, takes, preserves, sells or offers for sale between the 1st day of December and the 10th day of the following May, any herring for canning purposes less than 8 inches long . . . or packs or cans sardines of any description, between the 1st day of December and the 10th day of the following May forfeits $20 for every 100 cans so packed or canned and for every 100 herring so taken; . . ."

The Court, in *State* v. *Kaufman, supra,* comments upon the logical inconsistency in holding that a person is liable to a penalty for canning fish which he may lawfully catch for canning purposes (herring over 8 inches) and stated:

> "There is a seeming ambiguity which requires the construction of this statute."

The Court then went on to hold that the general prohibition against packing or canning "sardines of any description" took precedence and even prohibited the catching, taking, etc. of herring over 8 inches long. This situation went along pretty much the same until 1949, when our law was amended and the words, "taken in the coastal waters of Maine," were inserted in the second prohibition. The legislature thereby clarified the apparent ambiguity with the result above stated, that the proper interpretation of the statute would seem to be that the canning of herring in excess of 8 inches long taken from waters other than the coastal waters of Maine is proper.

JAMES GLYNN FROST
Deputy Attorney General

November 1, 1955

To George R. Petty, Assistant Director, Civil Defense and Public Safety

Re: Sirens on Masonic Temple, Portland

This office is in receipt of your letter of October 19, 1955, and attached copy of a letter from Julian H. Orr, City Manager of Portland.

It appears that part of the program of installing air raid sirens in the City of Portland calls for the installation of such equipment on the Masonic Temple. Mr. Orr states that the attorney for the Temple has been insisting that the City enter into an agreement where the City would agree:

1. To repair any damage to the building caused by the installation or maintenance of the siren;

2. To hold the Temple harmless and to indemnify the Temple against any possible liability to any personal property injured or damaged as a result of the installation; and

3. To hold the Temple harmless for any damage to the siren.

Barney Shur, Corporation Counsel for the City of Portland, reports that inasmuch as the sirens are the property of the State, he does not feel that the City would have a legal right to enter into such an agreement.

With respect to this latter statement, while title to the property is in fact in the State, nevertheless the signature of the Portland City Manager on the project application subjects the City to the same compliance as the State with all applicable federal Civil Defense administrative regulations covering contributions of Civil Defense equipment, and quite likely their responsibilities are much the same.

It would appear to us that points 1 and 3 above, which call for the repair of damage to the Temple caused by the installation and maintenance of the siren and for holding the Temple harmless for any damage to the siren, would be necessarily incidental to the responsibility of the State and the City, and the Temple is justified in asking for such consideration.

It is our opinion that expenditure for such purposes would be appropriated out of the funds available for the installation of the equipment, or operational fund.

With respect to item 2, wherein the Temple desires an agreement whereby it will be held harmless for indemnification for any possible liability for injuries to personal property, we would refer you to Section 11 of Chapter 12 of the Revised Statutes of 1954, as amended. We feel that Section 11 was enacted by the legislature in consideration of just such a situation as is here presented. Section 11 reads as follows:

> "Neither the State nor any political subdivision thereof, nor other agencies, nor, except in cases of willful misconduct, the agents, employees or representatives of any of them, engaged in any civil defense activities, while complying with or attempting to comply with the provisions of this chapter or any other rule or regulation promulgated pursuant to the provisions of this chapter, shall be liable for the death of or any injury to persons, or damage to property, as a result of such activity. . ."

This office is of the opinion that the Temple is, for the purpose of the installation of air raid equipment, an agent of the State and the City of Portland, and is immune under Section 11 from liability for the death of or any injury to persons, or damage to property, as a result of the installation or maintenance of such equipment, except in the case of wilful misconduct.

It would also appear to us that, upon being informed of the existence of this statute, the Temple would no longer require the save-harmless agreement.

JAMES GLYNN FROST
Deputy Attorney General

November 7, 1955

To Francis H. Sleeper, M. D., Superintendent, Augusta State Hospital

Re: Commitment

We have your inquiry regarding a commitment from the Probate Court in and for the County of Cumberland. It appears to your satisfaction that one of

the physicians signing the certificate and testifying was not, at the time of the signing and at the time of the giving of testimony, a physician duly licensed in this State.

The pertinent section of the statute is Section 113 of Chapter 27 of the Revised Statutes of 1954, which is as follows:

> "No person shall be declared insane or sent to any institution for the insane by municipal officers or by a judge of probate, or by any other person or persons constituting a board of examiners charged with authority to inquire into the condition of a person alleged to be insane, unless the person alleged to be insane shall first have been examined by 2 reputable physicians, each of whom shall have been a duly licensed and practicing physician in this state, who shall be appointed by said municipal officers or by the probate judge, or by any examining board before whom proceedings are held, and neither of whom, or of said members, shall be related to the person alleged to be insane or related to the person or persons making complaint, and such physicians shall have certified that the person examined is in fact insane."

You will note that this section says in effect that no person may be adjudged insane unless two reputable physicians, duly licensed and practising in this State have certified and testified, etc. This would be a condition precedent to the court's accepting jurisdiction of the case.

This patient would, in our opinion, not be legally committed if the doctor were not duly licensed. The Law Court has been extremely strict in such matters, as the cases of *Kittery* v. *Dixon,* 96 Me. 368, and *Naples* v. *Raymond,* 72 Me. 213, indicate. We could not recover for his care under this commitment.

You quoted to us Section 131 of Chapter 27, R. S. 1954, which of course allows you to proceed to challenge the legality of this commitment in the Augusta Municipal Court and have a new and legal commitment. You may follow this procedure or discharge the patient, as the situation warrants.

ROGER A. PUTNAM
Assistant Attorney General

December 14, 1955

To Kermit Nickerson, Deputy Commissioner of Education

Re: Meetings of State Board of Education

We have your memo requesting an interpretation of Chapter 41, Section 3, which section reads in part as follows:

> "Meetings of the board shall be held quarterly in the offices of the department on call of the chairman of the board or the commissioner on 5 days' written notice to the members; and if both the chairman and commissioner shall be absent, or refuse to call a meeting, any 3 members of the board may call a meeting by similar notices in writing."

With respect to the above quoted section of law you ask the following two questions:

"1. Is the policy of holding monthly meetings legal and in compliance with the statute?

"2. Is the Board empowered to hold special meetings on call of the chairman or commissioner?"

Confirming an oral opinion given by the Attorney General a short time ago, we would answer your questions in the following manner:

1. Your policy of holding monthly meetings is legal. We would, however, advise that you comply with that portion of Section 3 which calls for quarterly meetings in the office of the department, such meetings being, in our opinion, mandatory, and being the minimum compliance with the statute.

2. The Board is empowered to hold special meetings on the call of the chairman or the Commissioner. We would suggest that in such instances the 5 days' notice in writing be given.

JAMES GLYNN FROST
Deputy Attorney General

December 15, 1955

To Honorable Edmund S. Muskie, Governor of Maine

Re: Creation of a Committee by the Governor

We have your request for an opinion as to your right to appoint a committee to inquire into the price differential of gasoline and fuel oil between the State of Maine and other States, more particularly Maine and Massachusetts.

We are assuming that, implicit in the above question, are the further questions of the right to reimburse the members of such committee for services rendered and the right to create a committee that would have some authority, that is to exercise a portion of the sovereignty, or in some respect represent the sovereign State of Maine.

We are of the opinion that you are without authority to create such a committee.

The Governor of the State of Maine is an executive officer, and his authority is limited by the Constitution and statutes of the State.

We have been unable to find either constitutional or statutory provision authorizing you to appoint such an officer.

Without such express authority, then the act of creating the office would be an infringement upon the powers of the Legislature, which body alone has the right to determine whether or not the establishment of such an office is necessary, its duties, powers and duration.

In the case of *State* v. *Butler,* 105 Me. 91, the Legislature by Act had authorized the Governor to create the office of special attorney for any county, the office to continue during the pleasure of the Governor.

The Court held that the Act was unconstitutional because it authorized the Governor to create the office, whereas the creation of a public office is a legislative power, and such cannot be delegated.

FRANK F. HARDING
Attorney General

December 20, 1955

To Paul A. MacDonald, Deputy Secretary of State

Re: Partnership

We have your request for an opinion concerning the following fact situation:

Under date of July 27, 1953, Guy Agreste and Edward L. Caron combined to form a partnership for the purpose of buying and selling used cars in the City of Biddeford under the partnership name of Elm City Motors. A certificate to this effect was duly filed with the clerk of the City of Biddeford, in compliance with the statute.

On the 1st day of September, 1955, Caron and Agreste agreed to bring into the partnership one Romeo A. Lambert. Under the conditions of the agreement the original conditions of partnership were to remain unchanged and binding on all three of the partners.

The next day, the 2nd day of September, 1955, by written agreement, Edward Caron withdrew from the partnership.

All such actions were properly recorded in the city clerk's office, Biddeford.

You have asked this office if, under the above circumstances, the partnership now remains the same as that originally formed in 1953.

It is our opinion that the withdrawal of Edward L. Caron from the partnership on the 2nd day of September resulted in the dissolution of the partnership. See to this effect *Cumberland Co. Power & Light Co.* v. *Gordon,* 136 Maine 213. Considered in that case was Section 4 of Chapter 44, R. S. 1930, now seen as Section 12 of Chapter 171 of the Revised Statutes of 1954. This section provided that whenever any member of a partnership withdrew therefrom he might certify under oath to such withdrawal, the certificate to be deposited in the clerk's office.

In arriving at its decision the Court found itself faced with this question: "To what extent does this statute, enacted in 1915, modify the common law as to the effect of the dissolution by the withdrawal of the partner?" The answer was contained in the last paragraph of the case and is here quoted:

> "The purpose of the statute is effected when we interpret it to mean only that one who withdraws from the partnership and does not file a certificate of withdrawal (there being no actual estoppel) is conclusively presumed still to be a member of it when carrying on the business within either its actual or apparent scope."

It is our conclusion that this decision clearly holds that withdrawal of a partner dissolves the partnership.

JAMES GLYNN FROST
Deputy Attorney General

January 4, 1956

To Fred J. Nutter, Commissioner of Agriculture

Re: Loans and Mortgages between Soil Conservation District and Farmers Home Administration.

You ask if the Soil Conservation District formed under the provisions of Chapter 34, R. S. 1954, as amended, has the authority and power to contract for

loans, mortgage property, and segregate income from that property to pay indebtedness.

All questions may be answered by a determination of whether or not this District has the power to mortgage its property.

In a prior, unofficial opinion rendered to Mr. C. Wilder Smith, State Director, Farmers Home Administration, under date of November 17, 1954, we indicated to him that the District was not empowered to mortgage its property.

We have had an opportunity to check this opinion and we are still of the opinion that, in the absence of legislative authority to mortgage its property or to pledge income from its property to repay a loan, a conditional sales agreement or what have you, a quasi-municipal corporation such as this District does not have the power to mortgage or pledge its property.

Municipal corporations receive their powers from two sources: from their charters or special legislation dealing with the corporations and from the Constitution of Maine and the general statutes. We do not find any power from any of these sources, and therefore will have to answer your questions in the negative.

We would suggest that, in order to broaden the function of the District and in order to pass on to the farmers the benefit of some liberal farm legislation by the Congress, this matter of mortgaging and purchasing be presented to the next legislature, so that the power of the District may be broadened within the discretion of the legislature.

ROGER A. PUTNAM
Assistant Attorney General

January 4, 1956

To Roland H. Cobb, Commissioner, Inland Fisheries and Game

Re: Embden Lake Property

We have your memo of December 12, 1955, in which you ask a question which has arisen as a result of a contemplated gift of property at the foot of Embden Lake, North Anson, for a salmon rearing station.

The Devereux Foundation, riparian owner, owns a dam site and dam on a river running out of the lake. The dam has not been kept in a state of good repair and is presently not in use as a mill dam.

"Question: What are the riparian rights of the Devereux Foundation who own the dam and operate a children's summer camp on the lake? If the station goes in and the water level should be lowered, would they have legal cause for complaint?"

Answer. If the salmon rearing station is built and the water necessary to maintain the station causes the water level of the lake to be lowered, or the water level in the river to be lowered, there would, in our opinion, be no legal cause for complaint against the State. We consider your question to be: "Would the State be liable for damages to riparian owners if it caused the waters of the lake to be lowered in maintaining the fish rearing station?" and the answer to that question is, No.

In *Auburn* v. *Water Power Co.,* 90 Maine 576, a case where the city was diverting water from Wilson Pond for public purposes under Special Act of the legislature and in so doing took water that the water company claimed was due it as natural flow, the Court was considering a question similar to that presented here.

The Court adopted the law set down in a Massachusetts case (*Watuppa Reservoir Co.* v. *Fall River,* 147 Mass. 548), which held that the State could authorize such taking without the taker being liable to pay damages to those who want the water for the use of mills.

It is interesting to note that the Massachusetts case was quite evidently a test case, because in the charter authorizing the City of Fall River to take the water for domestic uses, it was provided that the taking should be without liability to pay any other damages than the State itself would be legally liable to pay.

The wording was recognized by our Court as intending

> "to test the authority of the legislature to confer upon towns and cities the right to take water from great ponds for domestic purposes without being liable for damages."

In a similar case, *Woolen Co.* v. *Water District,* 102 Maine 153, our Court stated the following:

> "In an elaborate opinion it was held in effect that under the Colonial Ordinance, except as to grants made prior to the ordinance, the State had full propriety in, and sovereignty over, the waters of great ponds, and could at discretion divert the waters and authorize their diversion for public uses without providing compensation to riparian owners injured thereby; that riparian lands on a river or stream flowing out of a great pond are subject to this right of the State to authorize a diversion of the water of the pond for public purposes and must bear without compensation any damage caused by the exercise of that right by the State unless the State shall choose to make compensation; that where the State, in granting authority to divert the water, has not required compensation to be made to riparian owners for damages sustained, none need be made. . . In *Auburn* v. *Union Water Power Co.,* 90 Maine 576, the same doctrine in all its extent was without dissent declared to be the law of this State."

This law seems to be reasonably extended as set out in an Opinion of the Justices, 118 Maine 505:

> "While the State may hold the waters of great ponds in trust for the people and may regulate them as it sees fit, while the littoral proprietors may use them for their private purposes as hereinafter stated, while the Legislature may grant their use to water power companies to be controlled for manufacturing and industrial purposes, or to municipalities for domestic and other uses regardless of damages to millowners on the outlet streams (*American Woolen Co.* v. *Kennebec Water District,* 102 Maine, 153, 66 Atl., 316), yet it has never been suggested that the State had the right to compel either the littoral proprietor to pay for the uses to which he may lawfully put the water of such pond by reason of his having access to its shore, as distinguished from that of the general public, nor that the millowner on the outlet stream could be com-

pelled to pay for the use of the waters that constitute the natural flow of the stream. We think such millowner is entitled to that use without paying compensation therefor, although in some cases its full enjoyment may be secondary to that of the domestic needs of a municipality or other public uses."

While our Court recognizes that private property cannot be taken for public uses without making compensation for it, it also clearly states that the waters of great ponds and lakes are not private property.

> "They are owned by the state; and the state may dispose of them as it thinks proper."
>
> *Auburn* v. *Water Power Co., supra,* at 587.

Our conclusion is based upon the premise that water taken by the Department of Inland Fisheries and Game for the purpose of supplying a fish rearing station, under a Legislative Act authorizing the Department to construct and maintain such a station, would be for a public purpose. It would in any event be a taking of the water by the State for a State purpose, and a taking of its own property. See Chapter 37, Section 19, R. S. 1954, authorizing the Commissioner of the Department to perform such function as above contemplated.

Further evidence to the effect that such a taking would be a public purpose for which no damages would be payable can be seen in Section 15 of Chapter 37. Section 15 authorizes the Commissioner, after hearing, and for the use of the State for prosecution of the work of fish culture and scientific research relative to fish, to set aside any inland waters for a term not exceeding 10 years.

JAMES GLYNN FROST
Deputy Attorney General

January 10, 1956

To Honorable Edmund S. Muskie, Governor of Maine

Re: Trustee Process

In response to your memorandum in regard to the request of Mr. Gallahan of the Internal Revenue Service to have the State recognize trustee process, I submit the following information:

Approximately a year ago we had one or two conferences with local officials of the Internal Revenue Service and one conference with Regional officials. These conferences were at their request and were for the same purpose as their letter of November 18th to you, namely to have a former opinion of this office overruled.

It has been, and is, the ruling of this office that our State laws prohibit the service of trustee process upon the State. It is the contention of the officials of the Internal Revenue Service that a federal law permits service of such process. We have denied that this is so and suggested that they bring an action against us in order to obtain a court ruling.

I note that Mr. Gallahan's request to you is that you take action that will permit State fiscal officers to honor levies made by the Internal Revenue Service.

I submit that our suggestion of court action is a better proceeding, in that it would result in a ruling by the court on which any future action could be based.

FRANK F. HARDING
Attorney General

January 16, 1956

To George W. Bucknam, Deputy Commissioner, Inland Fisheries and Game

Re: Opening Areas Closed by Commissioner

Under Section 119 of Chapter 37 of the Revised Statutes of 1954, as amended, the Commissioner of the Department of Inland Fisheries and Game may, after due notice, close areas to beaver trapping. You inquire if he may rescind such action and at a later date open that area which had been closed in accordance with the provisions of Section 119.

It is our opinion that the Commissioner may open an area which he has closed.

The same procedure should be followed in opening an area as should have been used in closing it.

JAMES GLYNN FROST
Deputy Attorney General

January 16, 1956

Adam P. Leighton, M. D., Secretary, Board of Registration of Medicine

Re: Requirement of Internship

This is in reply to your letter stating that you have an application from a Chinese physician to take the examination to practice medicine, but that he cannot show compliance with the latest amendments to your law, in that he has had no internship in an approved hospital in the United States. You ask if you can accept extensive post-graduate work in lieu of internship.

It is our opinion that Chapter 66, Sections 3 and 4 of the Revised Statutes of 1954, as amended, require as a condition precedent of the taking of the examination that the applicant shall have interned for twelve months in a hospital approved by the American Hospital Association and the American Medical Association, and that such condition cannot be dispensed with.

JAMES GLYNN FROST
Deputy Attorney General

January 27, 1956

To Kermit Nickerson, Deputy Commissioner of Education

Re: Salary Increases

We are returning herewith the letter written to you by Earle M. Spear, in which he asks the following question:

"Section 237 of Chapter 41 states in part—'Notwithstanding the provisions of this paragraph no town shall be required to increase the salary of any teacher more than $300 in any 1 school year.' Does the above limitation on the amount of increase that a town shall be required to give a teacher in any one school year apply to teachers who may become eligible for a higher salary by securing a degree, if the degree is secured since the law became effective?"

We are of the opinion that the limitation on the amount of increase that the town shall be required to give a teacher in any one school year *does* apply to teachers who may become eligible for higher salaries by securing degrees.

JAMES GLYNN FROST
Deputy Attorney General

February 9, 1956

To Donald K. Maxim, Chairman, Harness Racing Commission

Re: Race Meeting Dates

We have your memo of February 2nd in which you ask two questions.

Question 1. "Section 8 of Chapter 86, R. S. 1954, states that no race meeting shall be allowed for more than 6 days in any 28-day period except night harness racing etc. This now applies only before June 15th and after October 15th of each year."

"Can any one track be permitted to hold a two week race meeting, one week before June 15th and one week after that date? For instance, the first week might be June 11 to 16 and the second week might be June 18th to 23rd, one week under the 6 day clause and the other week under the night harness racing section. We have had such an application."

Answer. Yes.

Question 2. "The last paragraph of Section 11 of Chapter 86, R. S. 1954, states that the commission shall issue a license, where pari-mutuel betting is permitted to Gorham Raceways to hold day or night harness races or meets in Gorham each year for a period of 4 weeks, and no more, beginning in June on the Monday of the last full week therein which has 7 calendar days; etc."

"Can Gorham Raceways be granted a license by the Commission to hold a race meeting the week before the 4 week period begins? We have had such an application."

Answer. No.

An examination of the growth of Sections 9 and 12 is necessary to see the legislative intent clearly, in relation to the permissible racing dates to which a track might be eligible.

As seen in the 1944 Revised Statutes, racing periods were comparatively simple to determine. Section 9 of Chapter 77 provided that there should be no race or meet on Sunday; that no meeting shall be allowed for more than 6 days in any 30-day period, except that between the 1st day of July and the 1st Monday of August a meeting may be allowed for not exceeding 18 days on mile tracks. In the latter event (an 18-day meeting) no further meetings where pari mutuel betting is permitted shall be allowed during the same calendar year.

At that time Section 12 contained no provisions giving cause for substantial question, merely setting forth prohibitions against racing, other than agricultural fair associations, in certain periods, and generally prohibiting meets or races between November 30th and May 1st.

In 1947 the 30-day period above referred to, in Section 9, was changed to 28 days.

In 1949 both Section 9 and Section 12 were amended. Section 9 was amended to include the following exception to the 6-day meet:

> "No meeting shall be allowed for more than 6 days in any 28-day period *except night harness racing as hereinafter defined and except day harness racing as provided in the last paragraph of section 12 and*"

Logically following the above amendment of Section 9, Section 12 was amended to include the definition of night harness racing:

> "Notwithstanding anything in this chapter to the contrary, the commission shall issue a license, where pari mutuel betting is permitted, to hold night harness races or meets for a period of 8 weeks and no more between June 15th and October 15th of each year, daily except Sundays, between the hours of 6 P. M. and midnight. The commission shall grant such licenses for night harness racing to such applicants only, who shall have and maintain adequate pari mutuel facilities, which facilities shall include a totalizator or its equivalent where odds will change at least once every 2 minutes, adequate stable facilities for not less than 400 horses, and shall have and maintain a track adequate in width to start 8 horses abreast. Said licensees shall also pay purses at least equal to minimum purses paid at any other New England harness racing track."

and to add paragraph 6, referred to in the Section 9 amendment as the last paragraph of Section 12:

> "During the remaining time of the period, if any, between June 15th and October 15th, the commission may grant to a track or tracks a license to operate day or night harness racing for no more than 2 weeks in any 4-week period without necessarily meeting the specifications set forth in the preceding paragraph."

At this point in the history of the harness horse legislation we can see that, by the amendments of 1949, an added benefit had been granted to the licensee. In addition to the 6-day meet in any 28-day period, a properly qualified track might, within the period of June 15 and October 15 of each year, have night races or meets for a period of 8 weeks and no more. At this point Gorham Raceway had not yet been mentioned by name.

That this section was intended to benefit the licensee with additional time can be seen in the Legislative Record, April 30, 1949, pages 1157-58. A House Amendment was accepted whereby a track having an 18-day meet under the provisions of Section 9 could still qualify for 8 weeks of night racing under the new amendment to Section 12. It was thought by one gentleman to be an unnecessary amendment because of the use of the words, "notwithstanding anything in this chapter to the contrary. . ."

Stopping at this point we see that Gorham, or any other track duly qualifying with the provisions of paragraph 5 of Section 9, could hold an 8-week night meet and also hold the races or meets authorized by Section 9.

The last paragraph of Section 12, as seen in the law after the 1949 amendments, was a further exception, granting to tracks the privilege of having day or night meets for a period not to exceed 2 weeks in any 4-week period between June 15 and October 15 without necessarily meeting the specifications set forth in paragraph 5 of Section 12.

The amendments of the 1951 Legislature in no way touched the problems with which we are concerned.

The 1953 Legislature, however, enacted further laws which relate to the present problem. Paragraph 6 of Section 12 was so amended that it now applies to both day and night races or meets:

> "Notwithstanding anything in this chapter to the contrary, the commission shall issue a license, where pari mutuel betting is permitted, to hold *day or* night harness races or meets for a period of 8 weeks and no more between June 15th and October 15th of each year, daily except Sundays."

A new paragraph was passed by the Legislature, seen as the last paragraph of Section 12 and enacted by Chapter 423, Section 2, P. L. 1953, directly bearing upon the right of Gorham to conduct races or meets:

> "Notwithstanding anything in this chapter to the contrary, the commission shall issue a license where pari mutuel betting is permitted to Gorham Raceways to hold day or night harness races or meets in Gorham each year for a period of 4 weeks, and no more, beginning in June on the Monday of the last full week therein which has 7 calendar days; provided, however, that if no running racing is held at Scarborough Downs after Labor Day each year, Gorham Raceways may be permitted to hold harness races or meets at Gorham. Except that for the year 1953, the commission shall issue such a license to Gorham Raceways to hold harness racing or meets in Gorham from June 15th to July 11th, both days inclusive."

As noted above, before this amendment became effective, Gorham, like other similarly qualified tracks, could, in addition to the early spring meets, race for not exceeding 8 weeks between June 15 and October 15 of each year.

The 1953 amendment removes Gorham from paragraph 6 of Section 12 and particularly provides that Gorham may begin its races or meets on a day certain (beginning in June on Monday of the last full week therein that has 7 calendar days) and continue for a period of 4 weeks, and no more. The only exception to the 4-week period is that set out in paragraph 8 and, excluding the year 1953, it would permit Gorham to hold harness races or meets at Gorham after Labor Day if no running racing is held at Scarborough.

Clearly, in our opinion, Gorham is no longer eligible to race between the dates of June 15 and October 15, except as authorized under paragraph 8 for a 4-week period beginning on a date easily ascertainable and established by statute.

We would further point out that the amendment we are here considering relating to Gorham Raceway was part of a compromise bill intended to settle differences between Gorham Raceways and Scarborough Downs. The bill was finally passed by the Legislature with the understanding that racing would be permitted at Gorham for a period of 4 weeks, and that such racing would produce a

certain sum of money because of the simultaneous amendment of the "stipend" fund. See Legislative Record, 1953, p. 2531.

This Legislative intent can be seen even more clearly in the Record at pp. 2533-2535, where the intent of Mr. Childs' offer of House Amendment "A" is discussed. Upon being questioned by Mr. Center, it appears that no amendment was intended to permit Gorham to hold races longer than the 4-week period, except after Labor Day.

It would thereby appear that the Legislative intent, as set forth in the Legislative Record, is consistent with the words of the statute, and with our conclusion.

JAMES GLYNN FROST
Deputy Attorney General

February 15, 1956

To David H. Stevens, Chairman, State Highway Commission

Re: Acceptance of Second Lowest Bid on Shovels

You have requested my opinion as to whether or not the Commission can accept the bid of the second lowest bidder under the following facts:

1. that certain specifications were set up to furnish a basis for competitive bids,
2. that the lowest bidder was only a small amount lower than the next lowest bidder,
3. that the shovel of the second bidder was considerably superior in grade and quality (far beyond the price differential),
4. that the second shovel was much better adapted for the uses required by the Commission, and
5. that the date of delivery of the shovel of the second bidder was a week or two in advance of the delivery by the first bidder.

My answer is, Yes. The intent of the competitive bid statute was to achieve economy and not to compel the purchase of the cheapest priced item. It is not of necessity economy to buy the cheapest product.

The statutes applicable to this problem are section 36 and section 42 of chapter 16 of the Revised Statutes of 1954. Section 36 of said chapter says in part:

> "It being the intent and purpose of this statute that the State Purchasing Agent shall purchase collectively all supplies for the state or for any department or agency thereof *in the manner that will best secure the greatest possible economy consistent with the grade or quality of supplies best adapted for the purposes for which they are needed.*"

You will note the words,

> "consistent with the grade or quality of supplies best adapted for the purposes for which they are needed."

The facts in this case plainly come within the purview of this language. It is apparent that the grade or quality of the product can be considered as well as the

use of the product for the purposes for which the department needs it. It is proper to consider not only the grade or quality of the shovel, but also its comparative efficiency for the work it is to be used for. For example, if the price of one was 20% higher and the quality was 50% higher, the higher priced shovel could be accepted without doubt.

Moreover, section 42 of said chapter says in part:

"shall be awarded to the lowest responsible bidder, *taking into consideration* the qualities of the articles to be supplied, their *conformity with the specifications,* the purposes for which they are required, and *the date of delivery.*"

It would seem obvious that when the quality of one article is superior to another and it is better fitted for the purposes required and the date of delivery is sooner and the price differential is reasonably in favor of the purchase, the better article could and should be purchased.

Moreover, it must be remembered that the administrative code was aimed mainly at bulk transactions that could be fairly standardized. The field of heavy road equipment with the varying sizes, weights, adaptability, durability, etc., of the machine does not lend itself to standardization except in a comparative manner.

It is my opinion that there is clear language in the statutes to authorize consideration of the superior values and uses of one type of equipment over another and that the Commission is not compelled to buy the equipment that meets the minimum specifications.

L. SMITH DUNNACK
Assistant Attorney General

February 20, 1956

To Paul A. MacDonald, Deputy Secretary of State

Re: U. S. Government Employee Convicted of Drunken Driving

We have the following fact situation: X was convicted of operating under the influence of intoxicating liquor. His license was revoked under the provisions of Section 150 of Chapter 22, R. S. 1954.

He is employed by the U. S. Government and part of his duty is apparently to drive fire fighting equipment located at Fort Williams. The question involves his right to operate the U. S. Government fire fighting equipment upon the highways of the State of Maine.

In the first instance the State of Maine could not have required him to have a license to operate U. S. Government equipment over its highways. *Johnson* v. *Maryland,* 254 U. S. 51. This being true, the State of Maine is powerless to suspend any right that may be granted him by a federal law to operate over the highways in this State while under orders from the Federal Government. His right to operate in all other capacities stands suspended.

If he operates U. S. Government equipment pursuant to an order from his superior on the highways of the State of Maine, it is our opinion that he is not violating the laws of this State.

ROGER A. PUTNAM
Assistant Attorney General

February 29, 1956

To Roland H. Cobb, Commissioner of Inland Fisheries and Game

Re: Breeding and Sale of Pheasants

Reference is made to your memo of February 16, 1956, in which you draw our attention to two sections under Chapter 37 which appear to be in conflict.

Section 15 provides that the Commissioner may issue permits to any person, firm or corporation to engage in the business of propagating game birds. It is further provided that such licensed breeders may at any time sell, transport, or kill and sell game birds.

Section 85 of Chapter 37 provides that no person shall at any time buy or sell any partridge, grouse or pheasant. The same section also regulates migratory game birds.

Section 88 defines game birds and migratory game birds. Game birds are defined as being partridge, grouse and pheasant. We will not cite all the birds contained within the definition of migratory game birds, but such birds do not include those in the game bird category.

In interpreting statutes, and to subserve the general intent, it is assumed that the legislature has a consistent design and policy. To that end, all words are considered operative whenever possible and all statutes relating to a particular subject matter are read as a whole for the purpose of harmonious construction.

Reading Sections 15, 85 and 88 together, in so far as they relate to the problem concerned, we are of the opinion that the permit provided for in Section 15, which authorizes the Commissioner to issue permits to persons to propagate game birds and to sell or transport such birds, is a clear and deliberate exception to the provision in Section 85, which prohibits the selling of such birds.

Thus, in answer to your question, "Can this man raise pheasant under the game breeder's license and sell them to restaurants?" we are of the opinion that he may do so.

JAMES GLYNN FROST
Deputy Attorney General

March 8, 1956

To Adam P. Leighton, M. D., Secretary
Board of Registration of Medicine

Reference is made to your inquiry in regard to the taking of an examination by a man who has served a six months' internship but must serve two or three years' internship at the Massachusetts Eye and Ear Infirmary before he can start his practice. Under these conditions you ask if he can now take the State Board exams in Maine.

We must answer your question in the negative. Reference is made to an opinion furnished you by Mr. Frost on January 16, 1956, where a similar problem was posed.

In our opinion, Chapter 169 of the Public Laws of 1955, which amended Sections 3 and 4 of Chapter 66 of the Revised Statutes of 1954, requires as an absolute condition the service of internship for a minimum of twelve months in

a hospital approved by the American Hospital Association and the American Medical Association, and in no circumstances may this be waived.

ROGER A. PUTNAM
Assistant Attorney General

March 8, 1956

To Frank S. Carpenter, Treasurer of State

Re: Withholding of Funds

. . . You ask if it is proper for you to withhold town funds to pay Social Security, which, as you state, is a federal agency.

It is our opinion that under the provisions of Section 4, subsection IV of Chapter 65 of the Revised Statutes it is proper for you to withhold money from a town which owes money to the Maine State Retirement System by virtue of an agreement executed by the town and the System, whereby the town agreed to pay periodically moneys due for Social Security.

JAMES GLYNN FROST
Deputy Attorney General

March 14, 1956

To Frank S. Carpenter, Treasurer of State

Re: $10,000 State of Maine Highway 4% Bonds numbered 30013-22, due May, 1941, and Vesting Order 14772, Alien Property Custodian.

Reference is made to an opinion of Attorney General Ralph W. Farris, dated July 26, 1950, at which time the Attorney General advised that the sum due on the above mentioned bonds plus interest accrued and unpaid not be turned over to the Office of the Alien Property Custodian. The basis of his opinion was that there would not be sufficient protection to the State of Maine if the bonds were presented for payment at your office.

Since Mr. Farris's opinion there has been a great deal of litigation in regard to the right of the Attorney General of the United States as successor to the Alien Property Custodian to vest in himself title to an obligation, in this case a bond, which was not present within the borders of the United States. In *Cities Service Co.* v. *McGrath,* 342 U. S. 330, the Supreme Court of the United States had an opportunity to pass on practically the very situation that faces us here. In that case the Attorney General sought payment of two 5% gold debentures, face value of $1000 each, payable to bearer. These obligations were outside the country at the time the vesting order was made. The Supreme Court held that under the provisions of the Trading with the Enemy Act the Attorney General had the power to vest title of these obligations in the United States Government, notwithstanding the fact that the debentures themselves were outside the United States at the time of vesting and that he had never at any time come into the physical possession of the bonds, which were the evidence of indebtedness.

Such is the situation we are faced with. The vesting order discloses that the original title was in Allianz Lebensversicherungs, a German corporation, at the

date of the vesting order, an alien enemy of the United States. The vesting order is conclusive as to the title or right to possession in the vested property in the Attorney General for the United States. Questions of title to the property which is vested in him by virtue of the Trading with the Enemy Act, can be tried only in a suit brought under the provisions of that Act. See Section 9 (a) of the Act. The State is protected by Sections 7 (e) and 5 (b) (2) of the Trading with the Enemy Act, which provide that any payment or transfer made by virtue of any vesting order under the Act shall be a full acquittance and discharge for all purposes of the obligation and of the person making the same and no person shall be held liable in any court for or in respect of anything done or committed in good faith in connection with the administration of this Act.

In the *Cities Service* case above mentioned, the trustee was the Chase National Bank, who argued that there was a possibility that the debentures could be presented at one of their branch banks outside the United States and that there was a possibility that a foreign court could order them to pay in the foreign jurisdiction; therefore they would be subject to double liability, and this might well be a taking of their property in violation of the Fifth Amendment. The Court held that if this event happened, the bank would have a right to recoup from the United States for a taking of their property within the meaning of the Fifth Amendment, to the extent of their double liability.

In view of the *Cities Service* case and the protection given to the State by the provisions of the Trading with the Enemy Act, as construed, it is our opinion that there is now sufficient protection to the State of Maine on double liability to warrant the transfer of the face value of the bonds plus the accumulated interest on each to the Attorney General of the United States for account No. 28-18501.

ROGER A. PUTNAM
Assistant Attorney General

March 15, 1956

To Earle R. Hayes, Secretary, Maine State Retirement System

Re: Disability Retirement—Occupational Disability

We are returning herewith all materials submitted by you for our consideration *re* an application for retirement under the provisions of Section 7, subsection II, Occupational Disability.

You requested an opinion as to the definition of the word "injuries," as used in subsection II, paragraph A. The essence of the occupational disability law is that an employee may be retired if he has incurred disability as the result of injuries received in the line of duty.

> "A. Upon the application of a member or of his department head, any member who has had 10 or more years of creditable service, or any member in service regardless of years of creditable service upon the determination by the Board that he has incurred disability as the result of injuries received in the line of duty, may be retired by the Board of Trustees on a disability retirement allowance upon filing such application; provided that the medical board, after a medical examination of such member, shall certify that the member is mentally or physically

incapacitated for further performance of duty, that such incapacity is likely to be permanent and that he should be retired. The Board of Trustees shall determine upon receipt of proper proof that the injury received in line of duty occurred while in actual performance of duty at some definite time and place and was not caused by the wilful negligence of the member."

Generally, a statute giving benefits to individuals for injuries sustained during the course of employment, such as workmen's compensation laws, have as a condition that such injury must have been sustained as a result of an accident.

Under such laws idiopathic diseases such as occupational diseases are quite uniformly held not to be regarded as accidents.

In those instances where occupational poisoning have been determined to be compensable, it is because the legislature has so declared it and not because of extension by way of interpretation or construction. See the occupational diseases portion of our Workmen's Compensation Act, Chapter 31, Sections 57-71.

Where, however, the Act does not contain the condition that the injury must have been inflicted as a result of an accident, the courts have been inclined to include occupational diseases as compensable. See *Johnson's Case,* 217 Mass. 338, where the court held that plumbism, or lead poisoning, absorbed over a period of twenty years, resulting in incapacitation, was such an injury as arose out of and in the course of employment. Likewise with loss of sight induced by coal tar gases, and glanders.

In the present Act the legislature did not use the word, "accident." Confined, then, to the word, "injuries," we feel that the word is not limited to injuries caused by external violence, physical forces (traumatic injuries) or as a result of accident in the sense the word is customarily used, but includes any bodily injury.

Thus, if the Board finds that a person otherwise eligible has incurred disability as a result of occupational poisoning received in the line of duty and occurring while in the actual performance of duty at some definite time and place, and such poisoning was not caused by the wilful negligence of the member, then we are of the opinion that under such circumstances the injury is such that it comes within the intent of the Retirement Act.

JAMES GLYNN FROST
Deputy Attorney General

March 15, 1956

To Labor and Industry

Re: Telephone Answering Services

. . . You ask if females employed by a telephone answering service are within the provisions of Section 30 of Chapter 30, Revised Statutes of 1954, as amended by Section 1 of Chapter 348, Public Laws of 1955, *et seq.*

Section 30 as amended relates to the employment of females in "workshops, factories, manufacturing, mechanical or mercantile establishments, beauty parlors, hotels, commercial places of amusement, restaurants, dairies, bakeries, laundries, dry-cleaning establishments, telegraph offices and telephone exchanges."

The following is a description of the telephone answering service as contained in your memo:

"The New England Telephone & Telegraph Co. rents to the answering services what they call 'secretarial turrets,' which have a 40-line capacity. The larger companies might have more than one such turret, but probably not more than two. The answering services then contract with doctors or other professional men or businesses to answer their telephones when they are out. The 'customer' then arranges with the N. E. T. & T. to buy a line to the turret, paying to the answering service a monthly charge for the 24-hour service.

"The only connection with N. E. T. & T. is the renting of the turret to the answering service and the buying of the lines to the turrets by the customers. The services are individually owned and operated."

We are of the opinion that such employment does not come within any of the above activities contained in Section 30.

JAMES GLYNN FROST
Deputy Attorney General

March 19, 1956

To Sulo Tani, Director of Research and Planning, Development of Industry and Commerce

Re: Federal Assistance under the Federal Housing Act

This is in response to your request for an official opinion as to whether or not the Department of Development of Industry and Commerce, Division of Research and Planning, meets the qualifications to act as applicant for federal assistance to local planning under the Federal Housing Act of 1954, Title VII, Section 701. Said section appropriates a sum of money to be spent on a matching basis with non-federal funds for the purpose of clearing slums and blighted areas and to stimulate State assistance for local planning in those areas.

The procedures for eligibility are set out in "A Guide to Urban Planning Assistance Grants." On page 1-3 of the aforesaid booklet the qualifications of applicants are set forth:

"In order to qualify for grants, States acting by and through their legally created State planning agencies must be:

"a. Empowered, under their State laws, to provide planning assistance to small municipalities in the solution of their local planning problems.

"b. Legally empowered to receive and expend Federal funds and expend other funds for the purpose stated in a. above, and to contract with the United States with respect thereto.

"c. In position to provide State or other non-Federal funds in an amount at least equal to one-half the estimated cost of the planning work for which the Federal grant is requested.

"d. Technically qualified to perform the planning work, either with their own staffs or through acceptable contractual arrangements with other

qualified agencies or with private professional organizations or individuals.

"e. Ready and able to assume full responsibility for the proper execution of the program for which the grant is made and for carrying out the terms of the Federal grant contract."

In respect to c, d and e above set forth, which relate to the non-Federal funds to be used, and to the qualified personnel to plan the work, and the readiness and ability of the Department to assume responsibility for the execution of the program, you have submitted the following:

"c. The matching funds in every case will be provided by the municipality receiving the aid, which funds shall be deposited with the state for disbursement by the state on behalf of the community. A sample agreement form to cover the state-local relationship is attached.

"d. All proposed planning work will be carried out by technically qualified consultants employed by the state under contract, using funds provided by federal and local governments.

"e. The department is ready to assume the responsibility for the conduct of such programs."

With respect to a. and b. above, we would draw your attention to the fourth paragraph of Section 2 of Chapter 38-A of the Public Laws of 1955, and Section 4, subsection VIII of the same chapter.

The fourth paragraph of Section 22 reads as follows:

"The commissioner is authorized and empowered to accept for the State any Federal funds apportioned under the provisions of Federal law relating to urban planning and planned public works and to do such acts as are necessary for the purpose of carrying out the provisions of such Federal law; and to accept from any other agency of government, individual, group or corporation such funds as may be available in carrying out the provisions contained herein."

By subsection VIII of Section 4 the Division of Research and Planning is empowered to:

"Assist in planning any public or private project involving Federal grants or loans; advise, confer and otherwise cooperate with municipal planning boards, agencies, officials, civic and other groups and citizens in matters relating to zoning, and planning relating to schools, housing, health, land use controls, assessment and taxation, and other objectives; initiate, encourage and assist local planning boards and other municipal agencies and officials in regional planning."

In view of the powers of the Commissioner of the Department of Development of Industry and Commerce as set forth in Chapter 38-A, portions of which have been referred to above, we are of the opinion that your Department is qualified to act as an applicant for Federal assistant to local planning under the Federal Housing Act of 1954, Title VII, Section 701.

JAMES GLYNN FROST
Deputy Attorney General

March 22, 1956

To Hon. Harold I. Goss, Secretary of State

Re: Use of State of Maine Flag

We have your request for an opinion, dated March 19th, enclosing a cut of a proposed use of our Maine State Flag in an advertisement for Coca-Cola.

It is our opinion that the proposed use of the flag would be a violation of Section 28 of Chapter 1, R. S. 1954, and that the proposed use does not come within the exceptions found in Section 30 of that chapter.

We note particularly that many States have passed legislation along this line, and it has been held in *Halter* v. *Nebraska,* 205 U. S. 34, that a State, in the absence of Congressional legislation, may prohibit the use of the flag of the United States in advertising material, saying that such use tends to degrade and cheapen the flag in the estimation of the public, as well as to defeat the object of maintaining it as an emblem of national power and honor. We feel that the use of our flag in the manner described would have the same effect.

ROGER A. PUTNAM
Assistant Attorney General

April 4, 1956

To Kermit S. Nickerson, Commissioner of Education

Re: Merit Increases

We have your memo of March 23, 1956, to which was attached a copy of a letter to you from Robert F. Crocker, Jr., superintendent of schools in Caribou.

Mr. Crocker's letter includes a plan for rewarding teachers by varying increments of money, depending upon the success of the individual teacher in the classroom. The question is asked if such merit schedules will be in conflict with Chapter 41, Section 238, of the Revised Statutes of 1954, which reads as follows:

> "In assigning salaries to teachers of public schools in the state, no discrimination shall be made between male and female teachers, with the same training and experience, employed in the same grade or performing the same kinds of duties."

It is our opinion that before such a plan for merit increases can be put into effect, Section 238, above quoted, should be amended to permit such planning. It would appear to be the intent of Section 238 to see that male and female teachers with the same training and experience, employed in the same grades or performing the same kinds of duties, should receive equal pay. Under Mr. Crocker's plan, quite obviously, their pay would depend upon the performance of their duties and not upon their training, experience or assignments.

JAMES GLYNN FROST
Deputy Attorney General

April 12, 1956

To George F. Mahoney, Insurance Commissioner

Re: Compatibility of Certain Employments and Offices

. . . The propriety of the appointment of certain employees of your department to various positions outside State employment is questioned.

Among the positions accepted by Insurance personnel are bail commissioner, deputy sheriff in two counties, and member of a school committee. The question was asked if the holding of such positions was compatible with their positions in your department.

Aside from express provisions in the Constitution or statutes where it is stated that certain offices are incompatible, there is common-law incompatibility, to the effect that

> "two offices are incompatible when the holder cannot in every instance discharge the duties of either . . . as if one be under the control of the other."

No facts come immediately to our minds as to the incompatibility of the offices mentioned above except as to bail commissioner; but we would consider that such questions could be determined in your office as a matter of policy, particularly where such outside position interfered with the performance of the State employee's duties.

With respect to bail commissioner, it is our opinion that such office is incompatible with that of law enforcement officers. A bail commissioner must be a justice of the peace and our court has held that the offices of constable or deputy sheriff and justice of the peace are incompatible. *Pooler* v. *Reed,* 73 Me. 129.

JAMES G. FROST
Deputy Attorney General

April 12, 1956

To Richard E. Reed, Executive Secretary, Maine Sardine Industry

Re: Sardine Canning License

In your memo of April 4, 1956 you refer to two sections of our law which require in each instance a separate license which must be obtained by a sardine canner:

1. Section 111, Chapter 38, R. S. 1954 (Wholesale Sea Food Dealer's and Processor's License, to be obtained from the Department of Sea and Shore Fisheries), and
2. Section 258, Chapter 32, R. S. 1954 (Sardine Packer's License, to be obtained from the Department of Agriculture).

You further state that certain of the sardine canners complain that this dual licensing is unfair and is an unnecessary tax for the privilege of conducting a business enterprise. As a result of the canners' complaint you ask for an opinion as to whether the licensing requirement of the Department of Sea and Shore Fisheries must be complied with if they wish to operate during the coming season.

The constitutionality of the statutes referred to, which is the underlying basis for your request, must be assumed by this office; and it is therefore our opinion that such licensing requirement must be complied with by the canners before commencing business.

JAMES GLYNN FROST
Deputy Attorney General

April 26, 1956

To Samuel H. Slosberg, Director, Legislative Research

Re: Milk Control

We have your memorandum of April 3, 1956, stating:

"The Legislative Research Committee requests an opinion of the Office of the Attorney General as to whether or not the State of Maine is subject to milk control, so called, under the provisions of Chapter 33 of the Revised Statutes of 1954."

More specifically, your question relates to Section 1 of Chapter 33, which defines "person" as meaning, "any person, firm, corporation, association or other unit."

This office has on two previous occasions given its opinion that this definition does not include the State, and therefore that the State is not subject to the provisions of this law. Those two previous opinions are attached hereto for your information.

We have not at the present time found any reason to reverse the previous opinions of this office. The case of *Maine* v. *Crommett,* 151 Maine 193, which states in part:

> "It is the general rule in Maine that the State is not bound by a statute unless expressly named therein."

rather strengthens our opinion to the effect that the State is not subject to the provisions of this statute.

FRANK F. HARDING
Attorney General

April 27, 1956

To Earle R. Hayes, Secretary, Maine Retirement System

Re: Col. Raymond E. Morang

This is in response to your request for an opinion as to whether or not Col. Raymond E. Morang should be given credits toward retirement for his military service.

Col. Morang began employment with the State in April of 1932 and left the service on the 24th day of February, 1941, to enter the Army. He was retired from the Army for reasons of physical disability on the 1st day of November, 1945. From November of 1945 to March 15, 1947, Col. Morang worked part-time in the City of Gardiner in the capacity of advisor to returning veterans. He returned to State employ in September, 1947.

Under the provisions of Section 28 of Chapter 63 of the Revised Statutes of 1954, the same being a section under the chapter entitled "Personnel Law," it appears that if a person does not return to employment with the State within a 90-day period from the date of his discharge from the military or naval forces of the United States, he may not receive credit on his pension rights for the time during which he was in the service.

However, the Maine State Retirement System Law was amended by the 1955 Legislature, and the last sentence of Section 3-VI of Chapter 63-A now reads as follows:

> "No member who is otherwise entitled to Military Leave credits shall be deprived of this right if his return to covered employment is delayed beyond the 90 days after his honorable discharge if the delay is caused by a military service incurred illness or disability."

Thus it would appear that under the existing state of our laws in 1947 Col. Morang could not have received credit for the time he was in the service unless he had returned to State service within 90 days from the date of his discharge. The issue now appears to be if the colonel can avail himself of the 1955 amendment cited above. It is our opinion that this amendment is not retroactive and that the colonel may not now receive the credit which he might have received if he had returned to State employment within 90 days after his discharge.

JAMES GLYNN FROST
Deputy Attorney General

May 8, 1956

To Donald K. Maxim, Chairman, Harness Racing Commission

Re: Licenses for Consecutive Weeks

You request our opinion on the following question:

"If a race track is permitted to hold a two-week racing meeting, June 11 to 16 and June 18 to 23, 1956, must the Commission issue two licenses, one for each week or would 1 license for the two weeks be sufficient?"

In 1935, being the year of the enactment of the State Racing Commission, it was provided that any person, association or corporation desiring to hold a harness horse race or meet for public exhibition could apply to the Commission for a license to do so. Such license expired on the 31st day of December, and each license contained the designation of the place where the races or meets were to be held and the time or number of days during which racing might be conducted by the licensee. At that time, with the exception of Sundays, and between the dates of August 1st and October 20th, meets could be held for no more than six days in any 30-day period. Under such laws the licensee could have eight or nine meets per year.

In 1937 the statute was amended to provide:

> "Not more than 3 licenses shall be issued authorizing the holding of harness horse races or meets for public exhibition, with pari mutuel pools, on any 1 track in 1 year."

Chapter 187, Public Laws of 1937.

It is our opinion that this amendment limits the number of meets that can be held on any one track to not exceeding three in the period of a year.

The answer, then, to your question is that the Commission, under the dates set forth in your question, must issue two licenses, one for each week.

JAMES GLYNN FROST
Deputy Attorney General

May 14, 1956

To Roland H. Cobb, Commissioner of Inland Fisheries and Game

Re: Profits from State-owned Land

We have your memorandum in regard to the payment of certain profits to municipalities in this State. More particularly, your problem arises from an apparent conflict in two of our laws.

The third paragraph of Section 17 of Chapter 37, R. S. 1954, provides as follows:

> "Fur bearers may be removed from said game management areas by controlled trapping conducted under the direction of the Commissioner in which case the furs shall become the property of the State and the proceeds from their sale shall be used for the maintenance of the game management areas."

In 1955 the legislature passed a complete revision of the laws in regard to taxation, and Section 44 of Chapter 399 of the Laws of 1955 provides:

> "In municipalities where the State owns land as the result of acquisition of such land through the use of federal aid funds under the Pittman-Robertson Federal Aid to Wildlife Act and upon which natural products are sold or leased, 50% of the net profits received by the State from the sale or lease of such natural products shall be paid by the State to the municipality wherein such land is located."

The question arises, if fur bearers are taken under the provisions of Section 16, *supra,* upon land acquired by the State with the use of federal funds under the Pittman-Robertson Federal Aid to Wildlife Act, must the profits be shared with the municipality as set forth in Section 44, *supra*?

It is our opinion that in such circumstance the money received from the sale of fur bearers need not be shared under the provisions of Section 44. It is our belief that the "natural products" referred to in Section 44, are timber and grass, sold under permits, which is the usual case, and that the legislature did not intend to amend Section 17 impliedly. The general rule is that there shall be no repeal by implication where a subsequent act can be so read that it is not repugnant to an existing statute. We believe that the legislature well knew that Section 17 was in existence and did not intend to amend it by implication or otherwise.

It is to be noted, further, that Section 44 does not apply to State-owned lands in municipalities as such, but only to State-owned lands acquired through the use of federal aid funds under the Pittman-Robertson Act. In no instance is the profit to be shared unless it can be clearly shown that the land from which the natural products are taken, sold or leased, was purchased in accordance with this provision.

It may be well, as your memorandum discloses, to submit new legislation to clarify this apparent conflict. This we leave to your best judgment.

ROGER A. PUTNAM
Assistant Attorney General

May 25, 1956

To Guy R. Whitten, Deputy Insurance Commissioner

Re: Substitution of Deposit, Manchester Insurance Corporation

We have your inquiry of April 27th with correspondence attached, which is returned herewith.

Section 50 of Chapter 60, R. S. 1954, requires a foreign insurance company, as a condition precedent to doing business in this State, to maintain a deposit, either in this State or in its State of domicile, which in the present case is New Hampshire. The section further provides that the deposit may be in securities under the same restrictions as the investments of companies in other States.

Presently there is deposited with the Insurance Commissioner in New Hampshire $100,000, par value, U. S. Government bonds, held under some sort of trust arrangement for the benefit of the policyholders in the company, primarily those in Maine. The corporation proposes to substitute therefor a certificate of deposit in the First National Bank of Boston in the amount of $100,000.

While I am no banker, a certificate of deposit can be defined as a written acknowledgment by a bank of the receipt of a sum of money on deposit, which it promises to pay to the depositor or his order or some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created. This order, I understand, may be placed in trust with proper endorsements thereon, which would allow the Insurance Commissioner to negotiate the same if any proper claim were made against the deposit. A certificate of deposit, in my opinion, may be a form of security, but I do not believe it is the type of security that is referred to in this section. I think that the term "securities," as used here, has its usual or ordinary sense, meaning stocks, bonds, or other evidence of indebtedness of similar nature.

I think it should be pointed out that the government bonds are much better security in the particular instance than the certificate of deposit might be. The certificate is merely a claim against the bank, and if the bank should fail it would be insured only if the bank belonged to the F. D. I. C. The maximum amount is $10,000 and there is a possibility that the other $90,000 would be unsecured and the claimants would stand only as general creditors to the bank. I think that in view of the fact that the statute was put upon the books to protect the policyholders and to give them a source of recovery, we must be restrictive in the quality of security that we require. We should give the policyholders the ultimate in protection. It is therefore our opinion that the substitution should be denied.

ROGER A. PUTNAM
Assistant Attorney General

May 25, 1956

To Lee Gardiner, Farm Supervisor, Insitutional Service

Re: Farm Contract, State School for Boys

Yesterday you orally presented the following problem: Can the State School for Boys contract in the spring with a canner to raise beans for same, the canner to furnish the seed, the State School, of course, to furnish the land and the labor, and the School to be paid so much per pound or possibly some sort of exchange in canned goods, for service rendered?

There is little mention of farms in the statutes. Section 1 of Chapter 27, R. S. 1954, provides that the Commissioner may employ a farm supervisor and provides for the payment of his salary. Section 19 of the same chapter refers to the prison farm and such other farms as there may be on leased land in the County of Knox. We note that Section 83 of the same chapter provides that the State School for Boys shall train the boys, if they are able, in the fields of agriculture and horticulture, and along this line, of course, the School maintains a farm where the boys are instructed. We note also that the legislature has seen fit, in Sections 30 and 31 of the chapter, to provide that prison-made goods may be sold and for marking the same.

It is our conclusion that the lack of specific statutory authority compels us to answer that the contract above mentioned could not be entered into. While it may be beneficial to the School, and of this we have no doubt, it does take on the complection of a business arrangement, and the School is to be operated primarily for the rehabilitation of the inmates. This does not mean, of course, that surplus commodities raised at any institutional farm cannot be sold in the general market, but this case is different. Here we should be contracting in the spring to have a known surplus in the fall, and this we feel is impossible under existing law.

Much as we regret to say so, we feel that it cannot be done and would suggest, if this is necessary for the proper operation of our institutional farms, that specific authority be sought at the next legislative session.

ROGER A. PUTNAM
Assistant Attorney General

May 29, 1956

To Ober C. Vaughan, Director of Personnel

Re: State Employees in Legislative Service

We have your memorandum requesting our opinion in regard to the employment in the Executive branch of our government of persons who are members of the Legislature, also the further question whether or not an employee of the Executive branch can take leave of absence without pay and serve in the Legislature as a member of that body.

Section 11, Part Third, Article IV of the Constitution of Maine provides:

> "No member of Congress, nor person holding any office under the United States (post officers excepted) nor office of profit under this state, justices of the peace, notaries public, coroners and officers of the

militia excepted, shall have a seat in either house during his being such member of Congress, or his continuing in such office."

Section 2 of Article III of the Constitution of Maine provides:

"No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted."

Based on the foregoing, it is our opinion that an employee of the Executive branch cannot carry out his duties as such and also be a member of the Legislature; nor should any member of the Executive branch be given leave to attend the annual session of the Legislature or any special session thereof.

Further, no member of the Legislature should be employed by the Executive branch after the regular session, unless and until he has resigned from that body.

If the Constitution were not so specific, undoubtedly public policy would dictate the same answer.

We trust that this answers your problems.

ROGER A. PUTNAM
Assistant Attorney General

June 13, 1956

To Norman U. Greenlaw, Commissioner of Institutional Service

Re: Contract—Costs of Return of Parole Violators

We have examined the letter dated May 21, 1956, from Brevard Crihfield of the Secretariat of the Council of State Governments, and the attached contract, which he requested you to execute, concerning costs of cooperative returns of violators of parole and probation.

In brief, the contract relates to a device whereby violators can be transported between States by officers deputized by this State, but who are actually officers of another State, with the payments of costs to such persons for necessary expenses incurred in the transportation of such violators. This would, in effect, mean that the State would pay to officers of another State expenses incurred in returning to this State violators of our laws.

While we do not have at hand the descriptive legal brief relating to informal cooperative agreements, we are of the opinion that legislation would be necessary, authorizing the Commissioner to execute this agreement with officers of another State.

It will be noted that on page 102 of the Handbook on Interstate Crime Control published by the Council of State Governments, it is stated,

"Thus, the key question to a plan for cooperative returns of violators rests with adequate statutory authority giving appropriate officals power to deputize parole and probation officers (out-of-State agents)."

We are returning herewith the above named Handbook, which accompanied your request for an opinion.

JAMES GLYNN FROST
Deputy Attorney General

June 22, 1956

To Sulo Tani, Director, Division of Research and Planning,
Department of Development of Industry and Commerce

Re: Federal Aid

This opinion is submitted to you so that it may be enclosed with certain applications which you are about to submit to the Urban Renewal Administration of the Housing and Home Finance Agency.

The Department of Development of Industry and Commerce is empowered, through its Commissioner, to accept for the State any federal funds which may be apportioned under federal law in relation to urban planning and planned public works. See Section 2 of Chapter 471 of the Public Laws of 1955.

The Commissioner is further authorized by the same provision to do such acts as are necessary to carry out the purposes of such federal law, and it is under this provision, we feel, that the Commissioner is empowered to enter into a contract with the appropriate agency of the United States to carry out the purposes for which the grant or funds shall be apportioned.

The Department above referred to is created by Chapter 471 of the Public Laws of 1955, and that Department is broken down into various Divisions, one of which is the Division of Research and Planning. Its powers are set forth specifically in subparagraphs I through VIII of Section 4 of Chapter 471 of the Public Laws of 1955. It is under subparagraph VII, above referred to, that the Department, through its Division of Research and Planning, is empowered to provide planning assistance to municipalities and other groups therein specified.

Application form H-6702 at page 7 requests that the applicant submit two authenticated copies of the resolution, minutes of the meeting, or other documents authorizing the execution of the application.

This request cannot be complied with, in view of the fact that, in our opinion, the Commissioner alone, under the powers vested in him by Chapter 471 of the Public Laws of 1955, has the sole discretion as to the making of this application and no authorization from any other source is necessary.

ROGER A. PUTNAM
Assistant Attorney General

June 29, 1956

To Doris St. Pierre, Secretary, Real Estate Commission

Re: Auctioneers

. . . You ask "whether or not auctioneers auctioning property for sale are included in the definition of a real estate broker defined in Sec. 2, Par. I of our Real Estate License Law; OR should the Law be amended to include these activities?"

At the outset it should be noted that a real estate broker is defined as follows:

"I. A 'real estate broker' is any person, firm, partnership, association or corporation who for a compensation or valuable consideration sells

or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or rents or offers for rent, or lists or offers to list for sale, lease or rent, any real estate or the improvements thereon for others, as a whole or partial vocation."

It should be further noted that this section also contains the following provision:

"A single transaction for a compensation or valuable consideration, of buying or selling real estate of or for another, or offering for another to buy, or sell, or exchange real estate, or leasing, or renting, or offering to rent real estate, except as herein specifically excepted, shall constitute the person, firm, partnership, association or corporation performing, offering or attempting to perform any of the acts enumerated herein, a real estate broker or real estate salesman within the meaning of this chapter."

If an auctioneer sells real estate, offers to sell real estate, or offers to negotiate the sale of real estate, it is our opinion that he comes within the definition of real estate broker and should, of course, be licensed.

Specific reference should be made to the single transaction definition quoted above. If our law did not contain this provision, I think that the general rule that persons who engage in a single sale or casual transaction relating to real estate brokerage are not real estate brokers within the meaning of Real Estate Licensing Laws would prevail. See Semenov, "Survey of Real Estate Brokers' Licensing Laws," 1941 Edition. The statute making a single sale an actual transaction would therefore place these auctioneers under the law. If there were no such provision, I believe they would be outside.

It should be further noted that auctioneers are not specifically exempted by the provisions of Section 2 of Chapter 84, R. S. 1954.

ROGER A. PUTNAM
Assistant Attorney General

July 5, 1956

To The Governor and Council

Re: Revised Statutes

We are returning herewith letter from Richard Strichartz, addressed to Harold I. Goss, Secretary of State, in which Professor Strichartz requests copyright clearance of the sections of our State law dealing with certain subjects, a list of which was attached to the letter.

Those sections of our statutes which Professor Strichartz desires are available to him without clearance. Statutes are not in themselves subject to copyright. Hence we do not consider that there would be any infringement in copying our statutes.

The legislature has not authorized anyone to grant permission to use copyrightable features such as the index and annotations.

JAMES GLYNN FROST
Deputy Attorney General

July 10, 1956

To George Mahoney, Insurance Commissioner

Re: Contracts with Mutual Insurance Companies

Inquiry has again been made of this office as to the legality of the State's entering into a contract with a mutual insurance company to cover State of Maine risks.

Opinions on the subject have been issued by this office on three occasions: May 1, 1929, September 1, 1943, and May 16, 1944. All are to the effect that the State may properly enter into contracts of insurance wtih mutual companies.

Contracts of insurance on a strict mutual plan would probably be in violation of Article IX, Section 14, Constitution of Maine, which provides that "The credit of the State shall not be directly or indirectly loaned in any case."

It is our opinion that the State may lawfully enter into contracts of insurance with properly licensed mutual companies covering State property, if the premiums to be paid are definitely certain and no contingent or additional liability is created by virtue of possible future assessments. See Section 85 of Chapter 60, R. S. 1954, for authority of domestic mutual fire insurance companies to issue non-assessable advance cash premium policies.

JAMES GLYNN FROST
Deputy Attorney General

July 13, 1956

To Paul MacDonald, Deputy Secretary of State

Re: Revocation of Licenses

We have your recent request for an opinion as to the proper date from which to determine when the license to operate a motor vehicle shall be revoked upon a person's conviction of driving under the influence.

It appears that the respondent in the instant case which gives rise to the question pleaded guilty in the Bar Harbor Municipal Court on June 13, 1955, to the charge of operating a motor vehicle while under the influence of intoxicating liquor. After sentence was imposed respondent appealed.

Thereafter, at the September term in the Superior Court in and for the County of Hancock, respondent again offered a plea of guilty and was sentenced $100 and costs, which was paid.

Pending respondent's appeal to the Superior Court, he retained his license to operate by virtue of court order authorized under the provisions of Section 150, Chapter 22, R. S. 1954.

Upon receipt of an abstract of the Superior Court Record concerning the case you issued an order under date of September 23, 1955, revoking the respondent's right to operate motor vehicles for a two-year period beginning with the date respondent's license was received in your Department.

Under these circumstances the question is asked if revocation for a two-year period should begin on September 16, 1955, the date of conviction and sentence in the Superior Court, the same being the date upon which you based your de-

cision, or whether such revocation should begin on June 13, 1955, the date of conviction and sentence in the Bar Harbor Municipal Court.

It is the contention of the respondent, through his attorney, that, having been convicted upon his own plea of guilty on June 13, 1955, the appeal goes only to the sentence and does not result in a trial *de novo,* with the result that conviction was of June 13, 1955, and therefore that revocation of license should properly become effective on that date, not as of September 16, 1955.

Without determining whether appeal from the sentence, after a plea of guilty, is "conviction" for the purpose of revoking a license after receipt of the abstract of Court Record, we are of the opinion that you properly based your decision revoking respondent's license upon receipt of the Abstract of the Superior Court record, thus making September 16, 1955, the governing date, rather than June 13, 1955.

We believe you are utterly without the power to revoke a license retroactively to cover a period when that license was retained by respondent on authority of a court order. While

> "The license or right to operate motor vehicles of any person convicted of violating the provisions of this section shall be revoked immediately by the Secretary of State upon receipt of an attested copy of the court records, without further hearing," (Sec. 150, Chapter 22, R. S. 1954)

this right is limited, in favor of a respondent by the first sentence in the next succeeding paragraph:

> "If any person convicted of any violation of the provisions of this section shall appeal from the judgment and sentence of the trial court, his license and right to operate a motor vehicle in this state shall be suspended during the time his appeal is pending in the appellate court, unless the trial court shall otherwise order."

The next above quoted section is the *only* provision authorizing retention on court order by the respondent of his license to operate after conviction, and the privilege is one accorded when and if the trial court so orders, and in the event the person convicted *"shall appeal from the judgment and sentence of the trial court."* (Underline ours.)

In the instant case, the trial court, under authority of this section, permitted the respondent, despite conviction, to retain his license pending appeal.

There cannot be any revocation of a license which would permit a respondent to retain and use that license. The very meaning of revocation of license is to deprive one of the privilege of using such license. Having used the license from June to September, 1955, it is now impossible to revoke the right to use that license to cover that same period.

To further consider respondent's contention, and if he were right it would have to be said, in order to make revocation effective June 13, 1955, that the above quoted section of law permitting retention of license pending appeal did not apply to respondent, and his license should have been immediately revoked.

However, we note that in the attorney's letter dated July 9, 1955, he asserts that the section does apply, that the Municipal Court Judge had endorsed the record to the effect that respondent was "allowed to retain operator's license pending appeal," and the same should be honored by the Secretary of State.

This endorsement prevented the Secretary of State from revoking the license then; respondent had the benefit of his license during that period, after which his revocation would go into effect. See *State* v. *DeBery,* 150 Me. 28, for discussion of revocation and suspension.

Respondent cannot be heard to say that "appeal from the judgment and sentence" gives authority to the trial Judge to permit retention of license pending appeal, thereby preventing revocation, and then, after appeal, that the same clause now means that revocation should have been from date of initial conviction. One cannot take the benefits of a statute and at the same time deny the liabilities of the same statute.

We would also point out that in the next to the last paragraph in Section 150 as amended, revocation is for a period of two years after the conviction of a person violating the provisions of this section. We cannot see how you, administratively, can make a revocation effective for a period of less than two years, except as authorized by statute, or over a period which by judicial action the court has prevented an earlier revocation.

Inasmuch as counsel for respondent has indicated an intention to file a petition for declaratory judgment *re* the matter, in the event of a ruling from this office adverse to respondent's interest, we would add that under the decision of *Steves et al.* v. *Robie,* 139 Me. 361, such a petition might be improper.

JAMES GLYNN FROST
Deputy Attorney General

August 7, 1956

To George W. Bucknam, Deputy Commissioner, Inland Fisheries and Game

Re: Baxter State Park

. . . You state that a Resolve to simplify the open-water fishing laws by counties was enacted by the 97th Legislature and that under Piscataquis County you have:

"Baxter State Park. Daily limit 5 fish from any of the waters."

You ask whether that means 5 fish in the aggregate from any or all of the waters, or only that it is unlawful to take more than 5 fish from any one of the waters.

It is our opinion that this law means that only 5 fish in the aggregate may be taken from any or all of the waters.

JAMES GLYNN FROST
Deputy Attorney General

August 7, 1956

To Paul A. MacDonald, Deputy Secretary of State

Re: Expenses of Party Headquarters

This is in response to your memo of July 11, 1956, to which you attached a letter from Donald Nicoll, executive secretary of the Maine Democratic Party.

You ask if in our opinion legal expenses incurred in maintaining a year-round Democratic headquarters are a reportable expense in accordance with Chapter 9 of the Revised Statutes.

Sections 5 and 7 of Chapter 9 require that within 15 days after any election every treasurer and every political agent shall file an itemized sworn statement of expenses and that every candidate for public office within 15 days after the election at which he was a candidate shall file an itemized statement of his expenses.

It is with respect to these two sections that you ask if the expenses incurred in maintaining the headquarters should be reported.

It is our opinion that legal expenses incurred in maintaining year-round Democratic headquarters are reportable expenses.

The first paragraph of Section 2 of Chapter 9 defines the term "political committee" to include every committee or a combination of three or more persons to aid or promote the success or defeat of any political party or principal in any such election (primary or other elections) or to aid or take part in the nomination or election of any candidate for public office.

Paragraph 2 of said Section 2 defines the term "treasurer" to include all persons appointed by any political committee to receive or disburse moneys *to aid or promote the success or defeat of any such party, principal or candidate.*

Section 4 of Chapter 9 outlines lawful expenditures incurred by any treasurer or political agent and provides that expenses for any other purposes by the treasurer or political agent are not authorized.

It would appear quite clearly that persons maintaining a year-round Democratic headquarters comprise a political committee as above defined, because the purpose is to aid or promote the success or defeat of a political party, principle or candidate.

Maintaining a Democratic headquarters is either a proper expense of a political committee made in furtherance of aiding the Democratic party, or the expense is such that it is not proper under the last sentence of Section 4. We believe the correct answer to be that a year-round party headquarters is a proper expense of a political committee and that an itemized account, as required by Section 5, must be made.

FRANK F. HARDING
Attorney General

September 7, 1956

To Paul A. MacDonald, Deputy Secretary of State

Re: Togus Residents

We have your memo of August 28, 1956, and the attached copy of a letter, as a result of which you ask the following question:

"Can a person acquire a legal voting residence in Maine in accordance with Section 1 of Article II of the Maine Constitution by residing on the government reservation at Togus for a period of six years, and if such residence can be established in this manner, in what city or town would such person be registered?"

Answer. A person may not acquire a legal voting residence in Maine by residing on the government reservation at Togus for a period of six years.

By virtue of Chapter 66 of the Public Laws of 1867 and Chapter 612 of the Private and Special Laws of 1868, legislative jurisdiction was ceded by the State of Maine over Togus to the United States. The only jurisdiction retained by the State of Maine was the right to serve process, and this right relates only to processes arising out of activities which have occurred outside the reservation.

With respect to Togus our Court has stated in *Holyoke* vs. *Holyoke,* 78 Me. 401:

> "The laws of this State do not reach beyond its own territory and liquors sold in the ceded territory (Togus) cannot be considered sold in violation of the laws of this State."

It thus appears that a person residing on government property, over which the State of Maine has ceded jurisdiction to the federal government, is not residing on Maine property and for this reason cannot acquire a residence in the State of Maine.

JAMES GLYNN FROST
Deputy Attorney General

September 20, 1956

To Harold I. Goss, Secretary of State

Re: Corporations Doing Business in this State

You request an opinion on the following fact situation:

"One of our corporate clients is desirous of maintaining a stock of merchandise in public warehouses and of authorizing independent brokers to make sales from this stock in your state. The corporation does not plan to have a branch office or other salesmen or employees in the State. The brokers, who are to be paid on a commission basis only, will not be exclusive agents of the corporation inasmuch as they act as brokers for many other companies producing a similar line of goods. In case law and statutes we have not been able to find a clear indication that this type of activity constitutes the doing of sufficient business to require the corporation to qualify to do business in your State. We would be most appreciative, therefore, if you would inform us whether it is the policy in your State to require qualification of corporations engaged in similar activities."

It is the opinion of this office that the activities described above, when conducted within the State of Maine, would constitute the doing of such business as is contemplated by Sections 127 and 128 of Chapter 53 of the Revised Statutes of 1954 and it would therefore be necessary to require qualification in this State by such corporation.

JAMES GLYNN FROST
Deputy Attorney General

October 1, 1956

To Paul A. MacDonald, Deputy Secretary of State

Re: Financial Responsibility Law

In your memo of September 24th you relate that a son, while driving a car borrowed from his mother for his own use, was involved in an accident, as a re-

sult of which he was eventually convicted. The vehicle was not insured, and under the provisions of Section 77 of Chapter 22, R. S. 1954 (Financial Responsibility Law), both mother and son are required to furnish security to satisfy judgment and a proof of financial responsibility for three years (Section 77-II-B):

> "B. Upon receipt by him of the report of an accident other than as provided for in paragraph C of this subsection, which has resulted in death, bodily injury or property damage to an apparent extent of $100 or more, the secretary shall, 30 days following the date of request for compliance with the 2 following requirements, suspend the license or revoke the right to operate of any person operating, and the registration certificates and registration plates of any person owning a motor vehicle, trailer or semi-trailer in any manner involved in such accident, unless such operator or owner or both:
>
> 1. shall have secured a written release, duly authenticated, from the other party or parties involved in such accident, or shall have previously furnished or immediately furnished sufficient security to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against such owner or operator by or on behalf of the aggrieved person or his legal representative, and
>
> 2. shall immediately give and thereafter maintain proof of financial responsibility for 3 years next following the date of filing the proof as provided under the provisions of subsection II of section 81."

You state that under such circumstances as above described, where a gratuitous bailment is involved, you have been requiring proof of financial responsibility on the part of the owner, which actually is proof of insurance covered from the owner, in accordance with an oral opinion in a similar case given by Abraham Breitbard when he was Deputy Attorney General. You then ask if in our opinion the Secretary of State has any authority under the law to require that proof of insurance coverage be filed by the owner in the instant case.

Answer. Yes. In our opinion the Secretary not only has authority to require proof of insurance coverage, to be filed by the owner of such vehicle, but under the express wording of the statute we do not see how he could avoid requiring such proof.

Reading the entire section as a whole it can be seen that the legislature clearly intended such proof to apply to the owner who consented to his car being used by another person. If there be any doubt in reading paragraph B of Section 77 that the legislature meant to require proof of financial responsibility of the owner of the car, it should be resolved in reading subsection V, which sets forth those instances in which the owner or operator is excluded from the operation of the law.

Paragraph A of subsection V provides that such proof (as required by subsection II) shall not apply

> "to the owner of a motor vehicle . . . operated by one having obtained possession or control thereof *without* his express or implied consent."

From a reading of these laws we gather that the owner of a motor vehicle driven by another person shall, in the event of an accident involving that motor vehicle as set forth in Section 77-II-B, give proof of financial responsibility, un-

less such other person was using the vehicle without the express or implied consent of the owner.

JAMES GLYNN FROST
Deputy Attorney General

October 2, 1956

To Captain Lloyd H. Hoxie, Maine State Police

Re: Records of Juveniles

You ask whether or not the records of juveniles in your custody can be made available to bona fide law enforcement officers and agencies.

Answer. Yes. Making such records available to law enforcement officers is not making them available to the public.

In response to your further request we herewith give you the statutory citations that deal with the records of juveniles:

Chapter 146, Section 4, R. S. 1954: "Records of such cases shall not be open to inspection by the public except by permission of the court."

Chapter 27, Section 77, R. S. 1954 (Juveniles committed to the State School for Boys): "The records of any such case by order of the court may be withheld from indiscriminate public inspection. Such record shall be open to inspection of the parent or parents of such child or lawful guardian or attorney of the child involved."

An identical provision appears in Chapter 27, Section 89, R. S. 1954, in the case of juveniles committed to the State School for Girls.

JAMES GLYNN FROST
Deputy Attorney General

October 8, 1956

To Samuel S. Silsby, Jr., Assistant Director of Legislative Research Committee

Re: School Milk

Your memorandum of September 17, 1956, is as follows:

"The Legislative Research Committee requests an opinion of the Office of the Attorney General relative to the price-fixing jurisdiction of the Maine Milk Commission, specifically with reference to school milk, so called, financed wholly or in part by federal funds."

The school lunch program is authorized by Chapter 41, Sections 219-222, R. S. 1954. Section 221 reads in part as follows:

> "The superintending school committee of any town may establish, maintain, operate and expand a school-lunch program for the pupils in any school building under its jurisdiction, may make all contracts necessary to provide material, personnel and equipment necessary to carry out the provisions of the act, ..."

On April 26, 1956, in a memorandum to the Legislative Research Committee, we re-affirmed two previous opinions that the State was not subject to the milk

control law. Following the same rule of law, and not considering the question of the source of funds, it is our opinion that the superintending school committee, in entering into a contract to provide milk for a school-lunch program, is excluded from the provisions of this law.

FRANK F. HARDING
Attorney General

October 12, 1956

To Captain John deWinter, Director, Traffic Division, State Police

Re: Defrauding an Innkeeper

We have your request in regard to defrauding an innkeeper.

Section 44 of Chapter 100 provides:

> "Whoever obtains food, lodging or other accommodations at any hotel, inn, boardinghouse or eating house, with intent to defraud the owner or keeper thereof, shall be punished by a fine of not more than $100 or by imprisonment for not more than 3 months."

You can see that this is an intentional crime and that the intent must be proved. At common law a mere failure, refusal or inability to pay does not constitute the offense contemplated by the statute. There must be an intent to defraud existing at the time the board or other accommodation is obtained. To overcome the common-law rule, Section 45 of Chapter 100 provides that certain acts shall constitute *prima facie* proof of the fraudulent intent. Among these acts are refusal to pay on demand or absconding without paying or offering to pay for the accommodations received. This, of course, is *prima facie* only, and the burden is on the respondent to rebut it.

The question of arresting under certain circumstances is raised. For instance, assuming, as you state, that a person has defrauded an innkeeper by refusing his bill, that an officer is outside the establishment, and that the complainant follows the alleged respondent out and tells the officer the facts, can the officer under such circumstances make an arrest without a warrant?

The answer to that particular problem is, No. See *Palmer* v. *M. C. R. R.*, 92 Me. 399, which, of course, was a civil case, involving false imprisonment. In that case the original defendant was a passenger on the plaintiff railroad. He refused to state to the conductor whether he was the person named on the proffered railroad ticket. The conductor then refused to accept the ticket and demanded cash fare. The defendant refused, and upon getting off the train, the conductor caused a constable to arrest him on a charge of fraudulently attempting to evade payment of his fare. The defendant was subsequently found not guilty of the charge and sued the railroad, in the above cited action, for the act of its agent, the conductor. In this instance the court covers the field of arrest and states that a private individual may arrest for an affray or for a breach of the peace committed in his presence and while it is continuing. In this instance they decided that the alleged offense was not a breach of the peace. In attempting to justify, the defendant railroad used that section of the Revised Statutes which says that every officer shall arrest and detain persons found violating any law of the State until a legal warrant may be obtained. The court held that the statute did not aid

the defendant, as the plaintiff was not found violating any law of the State and states as follows:

> "The constable had no lawful authority to arrest him (i. e., the plaintiff) for a misdemeanor of which he was not guilty, on information merely, without a warrant."

Thus the court concluded that the arrest was unlawful.

Under the circumstances given in your case the plaintiff would not be found violating the law. The court evidently construes this statute to mean that the officer must actually find the person breaching the law. For instance, he stops a person who is driving under the influence of intoxicating liquor, or something of a similar nature, and does not rely upon information furnished by any other person.

My advice, therefore, would be that under similar circumstances, in order to protect the officer from civil liability—for you must always bear in mind that the respondent may be found not guilty—the alleged respondent's identification should be obtained, if at all possible, and a warrant sought at the local municipal court. This will give the officer the necessary protection.

ROGER A. PUTNAM
Assistant Attorney General

October 17, 1956

To Honorable Edmund S. Muskie, Governor of Maine

Re: Appointment of Probation Officer

You have inquired if there is any method by which a probation officer can be appointed immediately to fill the vacancy created by the resignation of a probation officer during a term of court.

The provisions having application to the appointment of a probation officer are contained in Chapter 149, Section 24, R. S. 1954, and in part the qualification for the position is that the person be a citizen of the county in which said appointment is made. In view of the duties of the probation officer and his relation to the parolee, it would appear that this qualification would be held to be a necessary one.

The only provision we can find where a parole officer can receive a temporary appointment is contained in Section 33 of Chapter 149. Section 33 provides that where the case is that of a juvenile, then the court having jurisdiction may appoint a person to serve as probation officer for that case only.

It is our opinion that Section 33 provides the only opportunity for a *pro tem.* appointment and that an appointment by the Governor and Council would have to follow the usual procedure: nomination and confirmation by the Council.

Because of the requirement of citizenship we would feel that it would be improper for the probation officer of another county to take over affairs in the county where the vacancy exists.

This answer, we think too, is bolstered by Section 33 and the provision therein contained with respect to *pro tem.* appointments.

JAMES GLYNN FROST
Deputy Attorney General

October 18, 1956

To W. H. Bradford, Right of Way Engineer, State Highway Commission

Re: Taxes on State-owned Property Rented for Temporary Use Only

You have requested my opinion as to the State's liability for taxes imposed by a town on property acquired by the State for highway purposes, but which property has been leased by the State pending sale or the advantageous use of such property for highway purposes.

The fact that the State is leasing this property has no effect on the question of taxability, since Section 24 (of Chapter 23, R. S. 1954) authorizes the leasing pending a sale or use. In other words, the State is carrying out its duties or executing its rights under the law.

It has long been established law that municipal governments have no power to tax the sovereign unless that right is specifically given.

L. SMITH DUNNACK
Assistant Attorney General

November 1, 1956

To Henry McCabe, Civil Defense and Public Safety

Re: Power of Arrest

We have your request for an opinion as to whether or not auxiliary police are able to enforce arrests for violations during alerts, under the provisions of the State Civil Defense and Public Safety Laws. We gather that such auxiliary police are members of the Civil Defense program of local, state or sheriffs' organizations.

It is our opinion that auxiliary police, if our interpretation of the words "auxiliary police," as used by you, is correct, are included within safety law enforcement officers of local, state and sheriffs' organizations and have the power of arrest only in times of emergency. We draw your attention to Section 9 of Chapter 12, R. S. 1954. L. D. 353 purported to amend said Section 9 and to incorporate as an amendment that paragraph that is now the last paragraph in Section 9:

> "Duly appointed civil defense and public safety law enforcement officers of local, state and sheriffs' organizations shall have power to make arrests of persons found in violation of any provisions of this chapter or any rules and regulations promulgated thereunder in times of emergency necessary to carry out the provisions of section 6 of this chapter."

House Amendment "C" was duly adopted and can be seen as paragraph 2 of Section 9. Paragraph 2 of Section 9 relates to the authority of arrest in times of emergency or during authorized alerts, and grants such power to duly appointed law enforcement officers of local, state and sheriffs' organizations.

The last paragraph of Section 9 relates to the power of arrest in times of emergency, and, in addition to those officers mentioned in the second paragraph of Section 9, such power of arrest in times of emergency has been granted to

duly appointed Civil Defense and Public Safety law enforcement officers of local, state and sheriffs' organizations.

Clearly, the power of arrest varies as to whether or not the period is one of an emergency or one of an authorized alert. Following this clear distinction in the laws recently enacted by the 1955 legislature, we are of the opinion that officers appointed for the purposes of Civil Defense and Public Safety do not have the power of arrest except in times of emergency.

JAMES GLYNN FROST
Deputy Attorney General

November 6, 1956

To Harold E. Trahey, Rating Analyst, Insurance Department

Re: Multiple Line Policies

We have your memo of September 27, 1956, in which you ask for an opinion on multiple line policies and the incorporation of the Maine standard fire insurance policy into such multiple line policies by separate slip or rider.

Due to the unusual nature of the problem, we feel that substantial portions of your memo should be here quoted, in order that the background for your question can be seen:

"Until 1949 it had been the conventional practice of insurance companies licensed to do business in Maine to offer the insuring public policies of insurance providing coverage on the basis of insurance by line, i. e., fire, inland marine or casualty. Of these three lines, inland marine insurance most commonly and frequently had and continues to encroach upon the fire and casualty lines, thereby affecting insurance contracts considered to be of a modified multiple line nature.

"In 1949 the Maine Legislature enacted the present section No. 31 of Chapter 60, Maine Insurance Laws, dealing with the subject of multiple line insurance. Said section permits under certain conditions any foreign company licensed to do business in Maine to write the several lines of insurance previously mentioned. Since the enactment of this statute, there has been an increasing tendency within the industry to submit to this Department for its consideration so-called multiple line or package policies covering not only dwelling risks but, more recently, proposing to cover both mercantile contents and buildings. These policies, in our opinion, are a combination into one unit of the several lines of insurance which have always been classed as fire, inland marine and casualty. These same proposed forms of policies purport to provide all physical loss coverages with exclusions as to certain property and perils.

"Of the three lines of insurance herein mentioned, we have in our Maine insurance statutes only one statutory contract applicable thereto; namely, fire insurance. Section 104 of Chapter 60 consisting of seven subsections, sets forth the manner in which a company may impose upon the policy format. With particular reference to subsection VII thereunder, a company is permitted to rearrange the first page of the statutory fire insurance contract to provide space for the listing of amount of insurance, rates and premiums for the basic coverages or perils insured under endorsements attached, and such other data as may be conveniently included for duplication of daily reports for office records. Keeping in mind the

restrictive terminology of subsection VII, this Department has, in our consideration of these various types of multiple line contracts, continued to adhere to the opinion that such forms of policies should incorporate the terminology of the Maine Standard Fire Insurance Policy.

"We are currently holding in suspense proposed forms of multiple line policies purporting to provide certain forms of coverage for the contents of mercantile buildings as submitted by three separate insurance organizations. The original filing of each company involved contained a policy form, the first page of which only slightly resembles that of the Maine Standard Fire Insurance Policy and contained provisions which, although in a great many instances similar to those contained in the Maine statutory policy, were not exact as to either title or terminology. On each occasion we advised the filing company that in view of the above, their proposal was not acceptable. The several companies have to date been unanimous in their attempts to resolve the problem by offering for our consideration a form of endorsement incorporating the *provisions* only of the statutory contract to be attached to their multiple peril policy form. However, they have not to date condescended to reword the first page of such policy form to track with that of our statutory policy. It is each company's contention that our objections to the present format of page one of their contracts are offset by their expressed willingness to incorporate within the contractual proposal a so-called Conformance clause reading as follows: 'The terms of this policy which are in conflict with the applicable Statutes of the state wherein this policy is issued are hereby amended to conform to such Statutes.'

"In view of the situation as above described, we respectfully request from you answers to the following questions with permission to consider such answers as official rulings from your office for future reference.

"1. Is it permissible for a company, with the approval of the Insurance Commissioner, to *reword* the first page of the Maine Standard Fire Insurance Policy?

"2a. Are you in accord with the Insurance Department's opinion that multiple line contracts should incorporate the entire terminology of the Maine Standard Fire Insurance Policy?

b. If your reply to 2a above is in the affirmative, is it your opinion that the incorporation of the entire statutory contract, or any part thereof, can be accomplished by reference as suggested in the form of the Conformance clause above described?"

While, from the nature of your questions, we are not attempting to answer them with either "yes" or "no," we do believe that the following should suffice as answers to all your questions.

It is clearly the intent of the law that all fire insurance policies on property in this State shall be those of the standard statutory form, with any changes to be as authorized by Section 104 of Chapter 60, R. S. 1954.

The words of this statute are clear:

"No fire insurance company shall issue fire insurance policies on property in this state, other than those of the standard form set forth in the following section, except as follows: . . ."

And the Court recognizes the clarity of these words. See *Knowlton* vs. *Insurance Company,* 100 Me. 481, where, in considering the original enactment of the statutory form, the Court said:

> "But the legislative enactment of 1895, chap. 18, prescribed a form for a standard policy of insurance, prohibited insurance companies doing business in this state from issuing policies of fire insurance in any other form. . ."

That the intent of the legislature was to make this statutory form the basic policy can be seen in subsection VII of Section 104, where, on the assumption that all such policies would be drawn in the form and words of the statute, authority is given to rearrange the first page of the policy:

> "VII. The 1st page of the standard fire insurance policy may in form approved by the commissioner be rearranged to provide space for the listing of amounts of insurance, rates and premiums for the basic coverages or perils insured under endorsements attached, and such other data as may be conveniently included for duplication on daily reports for office records."

Provisions adding to or modifying those contained in the standard form are to be accomplished by separate slips or riders, to be attached to the policy:

> "V (Section 104, Chapter 60). A company may write upon the margin or across the face of a policy, or write, or print in type not smaller than 8-point, upon separate slips or riders to be attached thereto, provisions adding to or modifying those contained in the standard form; and all such slips, riders and provisions must be signed by the officers or agent of the company so using them."

The proposals presented to us contemplate just the opposite procedure: the attachment to a multiple line policy of a separate slip or rider which would contain the provisions of the standard form insurance policy.

It is sufficiently difficult to read with understanding the ordinary insurance policy without beclouding that policy with a rider containing numerous conditions which must also be read and interpolated into the main policy.

Quite probably it was the intent of the legislature, in enacting the standard form insurance policy, to so standardize the provisions of the policy as to minimize the problems arising under a fire insurance policy, and also to enable the people to become familiar with the form of such a policy. To that effect, see Couch, Cyclopedia of Insurance Law, Section 72, where it is said, on page 96:

> ". . . on the theory that the business of insurance so far affects the public welfare that it is a proper subject for reasonable regulation by the state, by means of the elimination through uniformity of an infinite variety of forms, often containing ingenious and ambiguous clauses which were so inserted that policyholders suffered grievious injustices."

An examination of the policy presented to us, along with the proposed rider, convinces us that such a policy would be so clearly a departure from the mandatory requirement of the statutes that it would not be proper.

We therefore are of the opinion that a fire insurance policy sold in this State may not be incorporated into a multiple line policy by means of a rider or slip, but must be in the form prescribed by the legislature.

Such fire insurance policy must be a basic policy.

This would not prohibit riders granting extended coverage to other risks.

While Section 31 is entitled, "Multiple line insurance," such title is not the law and in the present instance it does not appear to be related to the content or intent of the section, if multiple line insurance is interpreted to mean inclusion of two or more types of coverage in one policy. Such section merely states that if a foreign corporation is authorized to write one or more of certain types of policy, then it may, with specific exceptions, write all kinds of coverage. It nowhere indicates that several types of coverage may be included in one policy, and, more particularly, does not, expressly or by implication, authorize a fire policy to be included in a multiple line policy, so called, by way of a slip or rider.

JAMES GLYNN FROST
Deputy Attorney General

November 13, 1956

To Honorable Harold I. Goss, Secretary of State

Subject: Dual Headlights

We have your memorandum of October 4, 1956, in which you ask our opinion as to whether or not a dual headlight system on motor vehicles violates the present Maine law covering that subject.

Chapter 22, Section 43, R. S. 1954, contains the law with respect to headlights, and that portion which relates to your question reads as follows:

> "Every motor vehicle and tractor on wheels, other than a motorcycle or motor driven cycle, shall have mounted on the front thereof a pair of lamps, one on the right side and one on the left side, each of approximately equal candle power; . . . . ."

Other portions of Section 43 define the candle power of the headlamps, their height above the ground, the manner in which the beam shall be controlled, etc.

The dual headlight system which gives rise to your question consists of two headlighting units, one mounted on each side of the car. Each headlighting unit includes two beam lights mounted in a single housing, and the system provides for both a lower or passing beam and an upper or driving beam.

In further clarification of this system we quote from a description prepared by the Automobile Manufacturers Association:

"Passing Beam

One of the lamps contains two filaments. In this lamp a filament located at the focal point of the reflector provides all of the light for a carefully controlled passing beam."

"Driving Beam

The other lamp contains a single filament also mounted at the focal point of the reflector. This filament is the primary source of the light providing the driving beam. The balance of the driving beam light is provided by the second filament in the two filament lamp. These filaments, when lighted, are so coordinated as to provide a single well-placed beam for open-road driving."

"Physical Characteristics

Each lamp in the dual headlighting system will have a diameter of 5¾" as compared with the present 7" lamps. The construction of the lamps will be similar to the present sealed beam construction.

Lamps with single filament will be interchangeable regardless of source. Lamps with two filaments will likewise be interchangeable regardless of source. Single filament lamps will not be interchangeable with two filament lamps."

"The wattage in the new system has been increased over the present system. The lower beam wattage is increased from 80 to 100 and the upper beam wattage is changed from 100 to 150. Maximum candlepower has not been increased and remains at 75,000, as presently specified."

It is alleged that the dual headlighting system is a distinct improvement over the present system, of a single light containing both high and low beams, which beams can only be used one at a time, one such light being on either side of the car.

Question: The question presented is, then, whether or not a dual headlight system, as above described, violates our present law.

Answer: No. This answer is, of course, conditioned upon the system's being subject to such rules and regulations as may have been promulgated, or will be promulgated, by the Secretary of State relative to the operation of such headlights.

In interpreting a statute designed to afford protection to the public, such statute should be liberally construed to effectuate the intent of the Legislature.

As above stated, the proposed system of headlights is an improvement over the present system and was developed by the motor vehicle and lamp manufacturers in cooperation with the American Association of Motor Vehicle Administrators.

In the present commonly known system of headlighting there is, of course, a single seal beam unit on each side of the car. Within each seal beam unit are elements which perform a dual function: a driving beam and a passing beam.

The proposed dual headlighting system is a separation of these functions, formerly combined, in one seal beam light, into two seal beam lights, one reflector and lens used on each side of the vehicle for passing beam, and both units of the system in use on high or driving beam.

This system comes within the definition of pair.

> "Primarily, 'pair' means 'two things of a kind, similar in form, identical in purpose and matched together.' "
>
> *Heywood* v. *Syracuse R. T. Ry. Co.*, 152 F. 451.

The word "pair," as used in the statute, refers not to a single lens unit or a double lens unit, but to a headlight system which consists of identical component parts, one on each side of the car, so designed that they meet the requirements set forth in the statute with respect to candle power, aiming, etc., and also comply with the requirements of the Secretary of State.

It could be argued, if this statute is to be narrowly construed, that a dual function in a single lamp or light is not permitted under a statute that requires "one" light on either side of a car; that a single light containing both a high and

a low beam would violate the statute. A reasonable construction of such statute would not, however, permit such a narrow interpretation.

Nor should the fact that those two functions may be separated into a dual unit call for any different interpretation. If the low beam section of the unit were to be eliminated, then the system would be inadequate, because the driver would be unable to comply with another section of our law which contemplates the dimming of lights upon passing another approaching car, and the provisions which generally require that the headlighting equipment be sufficient to adequately illuminate the road while such vehicle was being driven at night time at permissible speeds and at the same time not causing any danger or inconvenience to the driver of an approaching vehicle.

Are we to say that, because this low beam is added to the system of lighting by being separated from the high beam section of the unit, the lights are then illegal? We think not. As above stated, we believe that the dual headlight comes within the definition of "pair," as used in Section 43, Chapter 22, R. S. 1954.

JAMES GLYNN FROST
Deputy Attorney General

INDEX TO OPINIONS