STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

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ATTORNEYS GENERAL OF MAINE

1820 - 1960

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, Ellsworth	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
Frank E. Hancock, Cape Neddick	1959

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
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
* Ralph M. Ingalls, Portland	1938-1940
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
Samuel H. Slosberg, Gardiner	1942-1943
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	1946-1956
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	1951-1958
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-
Ralph W. Farris, Portland	1957-
Richard A. Foley, Augusta	1957-
Frank A. Farrington, Augusta	1958-
Stanley R. Tupper, Hallowell	1959-1960
Thomas W. Tavenner, Freeport	1960

*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	Laurier T. Raymond, Jr.	Lewiston
Aroostook	Ferris A. Freme	Caribou
Assistant	John O. Rogers	Houlton
Cumberland	Arthur Chapman, Jr.	Portland
Assistant	Theodore Barris	Portland
Assistant	Kenneth H. Kane	Cape Elizabeth
Franklin	Calvin B. Sewall	Wilton
Hancock	Kenneth W. Blaisdell	Ellsworth
Kennebec	Jon Lund	Augusta
Assistant	Foahd J. Saliem	Waterville
Knox	Peter B. Sulides	Rockland
Lincoln	James Blenn Perkins, Jr.	Boothbay Harbor
Oxford	David R. Hastings	Fryeburg
Penobscot	Ian McInnes	Bangor
Assistant	Howard M. Foley	Bangor
Piscataquis	Arthur C. Hathaway	Greenville
Sagadahoc	Donald A. Spear	Bath
Somerset	Lloyd H. Stitham	Pittsfield
Waldo	Richard W. Glass	Belfast
Washington	Harold V. Jewett	Calais
York	John J. Harvey	Saco

DEDICATED

TO

JAMES GLYNN FROST

Assistant Attorney General

1951 - 1952

Deputy Attorney General

1952 - 1961

Died

June 3, 1961

whose genuine ability
as a lawyer
and
friendly qualities
as a man
are acknowledged with
affection and respect
by this Office

whose distinguished service
in the public interest
is acclaimed by all
branches of State Government

STATE OF MAINE

Department of the Attorney General

Augusta, December 1, 1960

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 E. HANCOCK

Attorney General

REPORT

HOMICIDE CASES, 1959 - 1960

STATE vs. RICHARD A. BRINE

This case was pending on the date of the last report. The respondent was indicted and tried for murder in the Cumberland County Superior Court in the January 1959 Term. He was found guilty of murder and sentenced to life imprisonment.

STATE vs. GEORGE BURBANK

This case was also pending on the date of the last report. The respondent was indicted for murder by the October Grand Jury of Sagadahoc County. The case was tried at the January 1959 Term in Cumberland County Superior Court after respondent's motion for change of venue was granted. The respondent was convicted of manslaughter and was sentenced to serve 10 to 20 years in State's Prison.

STATE vs. FREDITH BURBANK

This matter was also pending on the date of the last report. This respondent was the daughter of George Burbank. Indicted for murder, as an accessory to murder and for conspiracy to commit murder, she was tried at the Sagadahoc Superior Court January 1959 Term for murder. She was convicted of manslaughter and sentenced to 4 to 8 years. Following conviction the case was taken to the Supreme Judicial Court on respondent's exceptions. At the February 1960 Term the Supreme Judicial Court overruled those exceptions.

STATE vs. RUSSELL W. MOSES

Another case which was pending on the date of the last report. Indicted and tried for murder at the January 1959 Term of Cumberland County Superior Court, he was found not guilty by reason of insanity and committed to the Augusta State Hospital.

STATE vs. EUGENE J. PAPALOS

On February 16, 1959, Eugene J. Papalos of Waterville, with a shotgun, shot and killed John L. Emond who had been keeping company with Papalos' former wife. The shooting occurred outside the building in which the former Mrs. Papalos maintained an apartment in Waterville. The respondent was arrested at the Waterville police station where he had gone to give himself up. He was indicted and tried for murder at the June 1959 Term of Kennebec County Superior Court. He was convicted of murder and sentenced to life imprisonment.

STATE vs. VINCENT G. DOYON

On August 10, 1959, Vincent G. Doyon shot and killed his former wife, Alice, at her apartment in Augusta. Earlier in the day Doyon had been ordered by the court to make up back support payments. He began drinking and became enraged which eventually led to the shooting. He was indicted and tried for murder at the October 1959 Term of Kennebec County Superior Court, convicted of murder, he was sentenced to life imprisonment. Deputy Attorney General James Glynn Frost represented this office.

On June 15, 1960, a petition for writ of habeas corpus was denied by Associate Justice Harold Dubord. At the October 1960 Term of the United States Supreme Court, the respondent's petition for writ of certiorari was denied.

At this writing the respondent has pending a petition for writ of error coram nobis before the Superior Court.

STATE vs. JOSEPH A. LEVESQUE

On December 12, 1959, Joseph A. "Blackie" Levesque, a state prison parolee, stabbed to death Marguerite Couture at her apartment in Lewiston. After having met Mr. Couture in a bar in the afternoon, Couture invited Levesque to his home where they continued to drink. After her husband went to sleep, Marguerite Couture went to bed and Levesque followed her. She resisted his advances to make love and he then stabbed her with his jackknife. He was indicted at the January 1960 Term and tried at the March Term of Androscoggin County Superior Court. He was convicted of murder and sentenced to life imprisonment.

STATE vs. VINCENT E. DUGUAY

On December 28, 1959, Vincent E. Duguay shot and killed Mrs. Annette Cross at Lewiston. Duguay had been living with Mrs. Cross off and on for over a year. An argument ensued late in the evening. He shot her with a .22 caliber rifle. He then went to the sheriff's office at the Androscoggin County Court House and told of the shooting. Mrs. Cross died over 24 hours later without regaining consciousness. Duguay was indicted at the January 1960 Term of Androscoggin County Superior Court and tried for murder at the March Term. He was convicted of murder and sentenced to life imprisonment.

Following conviction the case was taken to the Supreme Judicial Court on respondent's exceptions. It is now pending before the Law Court.

STATE vs. CONRAD JOSEPH LAGASSE

On January 12, 1960, Conrad Joseph Lagasse stabbed his wife, Anita, to death at Lewiston. Lagasse had been under a doctor's care for a nervous condition. He was indicted for murder at the June 1960 Term of Androscoggin County Superior Court and pleaded guilty to manslaughter at the same term. He was sentenced to 10 to 20 years in State's Prison.

STATE vs. GAYLON LOUIS WARDWELL

On the evening of March 5, 1960, the home of Gaylon Wardwell burned to the ground at Woodland, Maine. The remains of his wife, Anita, and son, 15 month old Joseph, were found in the ruins. About a week later his actions aroused suspicion. An investigation was made and an autopsy performed on the remains of the body of Anita Wardwell. It was determined that she died from a fractured larynx before the fire. Wardwell confessed his crime to the authorities. He was indicted and tried for murder at the April 1960 Term of Aroostook County Superior Court. He was convicted of murder and sentenced to life imprisonment.

His appeal is now pending before the Supreme Judicial Court of the State.

STATE vs. HENRY LOUIS MARTELL

On April 26, 1960, the bodies of Amanda Martell and her son, Edward, were found in her home at Limerick shot to death. Henry Louis "Peter" Martell, Amanda's grandson, was apprehended two days later at Baldwin, Maine. "Peter" Martell was indicted for both killings and tried for the murder of Amanda at the May 1960 Term of York County Superior Court. He was convicted of manslaughter and sentenced to 10 to 20 years. He pleaded guilty to manslaughter in the death of his uncle, Edward Martell, and was sentenced to 5 to 10 years at the same term.

STATE vs. KATHERINE J. PAIGE

On September 27, 1960, Mrs. Katherine J. Paige of Belfast brought her six weeks old daughter, Brenda Lee, to the Waldo County Hospital. The child was pronounced dead on arrival and an autopsy revealed a fractured skull. Mrs. Paige first claimed that her 3 year old son had struck the baby with a bottle while the baby was lying in a crib. She later admitted to striking the child herself. She was indicted for murder by the Waldo County Grand Jury at the October 1960 Term. The matter is now pending and will be tried at the January 1961 Term of the Waldo County Superior Court.

OTHER HOMICIDES

On May 14, 1959, at Limerick, Maine, Gordon E. Hamlin, who had experienced some financial setbacks, apparently went berserk. He shot and killed his wife, Rose, from the doorway of his home. He then fired upon a state trooper who attempted to speak with him. Barricading himself in his home, he carried on a running gun battle with police officers. During the battle he shot and killed Chief Pierre Harnois of Westbrook and severely wounded Stephen Regina of the State Police. Hamlin's body was later found in the cellar of his home, a victim of police bullets or by his own hand.

On August 28, 1959, a family argument resulted in the shotgun shooting of Ralph Sprague by his stepson, Dennis Lockwood. The boy apparently

fearing harm to his mother, fired at his stepfather and also injured his mother resulting in the loss of her arm. He was indicted at the September 1959 Term of the Penobscot County Grand Jury for manslaughter. He pleaded guilty at the same term and was placed on two years probation.

On September 21, 1959, Hiram Johnson, a woodsman, shot and killed Leslie Spear at Johnson's cabin at Chesuncook. A companion of Spear's notified the authorities and as they approached the cabin, it became engulfed in flames. The remains of Johnson were found after the fire. A complete investigation unveiled murder and suicide.

On October 5, 1959, the bodies of Fernand L. Cote, 32, and his wife, Dorothy, 29, were found in the backyard of their home at Arundel, Maine, by a state trooper. Cote apparently shot his wife with a 22 target revolver and then took his own life.

On October 30, 1959, Louis Fournier shot and killed Myron Jordan at Portland. He was indicted for manslaughter at the January 1960 Term of Cumberland County. He was tried and found guilty of manslaughter and sentenced to seven and one-half to fifteen years in the State's Prison.

On December 16, 1959, the body of a newborn child was found in a rubbish barrel in Portland. Mrs. Sadie Higgins, a widow 34 years of age, was apprehended in Norway, Maine, and admitted doing away with the child. She was indicted for manslaughter and pleaded guilty to manslaughter at the January 1960 Term of Cumberland County. She was sentenced to 3 to 6 years at State's Prison.

On January 5, 1960, at Whiting, Maine, Albert Richardson shot and killed his sister-in-law, Mrs. Eunice Ackley, and her brother-in-law, Aubrey Ackley, with a 45 caliber pistol. He then took his own life by shooting himself with a 30-30 rifle. Investigation disclosed murder and suicide.

On March 5, 1960, the body of John A. Norris, Jr., was found in Waldo County. Investigation revealed that one Gordon Thompson of the United States Army had killed Norris at Fort Sill, Oklahoma. Thompson was returned to Oklahoma and tried by a courts-martial and found guilty of murder.

The unsolved killing of Shirley Coolen has been further investigated and it is believed that a former suspect who is now incarcerated in California was the perpetrator. The 1951 case is still under investigation.

The deaths of Danny Wood in 1954, Ethel Kelley in 1957, and Dennis Down in 1958 are still under investigation by local authorities and this department.

OTHER CASES

In March of 1959 the Attorney General and Assistant Attorney General George Wathen represented the state in the petition of Paul N. Dwyer for writ of error coram nobis at Rumford, Maine. Mr. Dwyer's petition was denied. He later petitioned for commutation of sentence before the

Governor and Council and in October, 1959, the commutation was granted and sentence reduced from life imprisonment to 28 years and 5 months. Mr. Dwyer was later released under the commutation and placed under the jurisdiction of the parole board.

In May of 1959, because of the illness of the York County Attorney, the Attorney General and Assistant Attorney General George Wathen went to York County to try one Hubert Barden charged with assault with intent to kill one Vernon Dunn. Barden was found guilty of assault with intent to kill and was sentenced to three and one-half to ten years.

On October 17, 1959, Sharon Simmons was abducted from her baby-sitting chore in Damariscotta by Rodney Austin, an ex-convict. He traveled with her for six days through Maine, New Hampshire and Vermont and was eventually apprehended in Massachusetts after having released the girl in Vermont. Austin was returned to this State and was eventually tried on nine counts of abduction, rape and illegal transportation of a minor under duress. In November of 1959 in the Lincoln County Superior Court, he was found guilty on eight counts and was sentenced to life imprisonment.

There has been a substantial increase in the number of post-conviction petitions since the Dwyer cases. These have taken a great deal of time. One of these brought by Robert H. Mottram in September of 1960 resulted in the granting of a new trial. At the October 1960 Term of the Cumberland County Superior Court, he was again found guilty of larceny.

John D. Duncan who had been transferred to the federal prison system was returned from Alcatraz, California, on his petition for writ of error coram nobis in 1960. His petition was denied and he was returned to Alcatraz. Since that time he has petitioned the Federal District Court, United States Supreme Court and the State Supreme Court for various remedies.

Statistics have shown that certain crimes are on an increase and others on a decrease, for example, breaking, entering and larceny has shown a steady increase up to 1958 and for the past two years there has been a decline of 26.5%. There was a sharp decrease of felonious assault of 75%; a 50% decrease in larceny cases; a 20% increase in forgery cases. There was a general decrease in overall categories of crime of 1023 cases less than the previous biennium. Tables with statistics compiled for the biennium may be found starting at page 178.

BAXTER STATE PARK

It was my pleasure to serve as a member of the Baxter State Park Authority. This Authority is by statute composed of the Attorney General, the Forestry Commissioner and the Commissioner of Inland Fisheries and Game. During the biennium we have made two inspection trips of the Park with the donor of the land, former Governor Percival P. Baxter. The attendance at the Park for the two years of the biennium has been steadily increasing and people from all over the United States have visited the

Park and climbed Mount Katahdin. It is contemplated that gateways will be installed to better control entry to the Park. This area composed of 193,254 acres is one of the most beautiful wilderness areas in North America. The top of Mount Katahdin is the end of the Appalachian Trail which begins in Oglethorpe, Georgia. We are indeed fortunate to have such an area in the State of Maine and I urge every citizen in Maine to make an attempt to visit this Park which exists because of the generosity of Governor Baxter.

ATOMIC ENERGY

I succeeded former Attorney General Frank F. Harding, as a member of the Atomic Energy Committee of the National Association of Attorneys General and at the present I am serving as Chairman of that Committee. Over the past two years, the Association in conjunction with the Atomic Energy Commission has been attempting to formulate federal and state legislation for the gradual change-over of control in the radiation field to the states from the federal government. Deputy Attorney General James Glynn Frost, who has been on the National Advisory Committee for the past four years, and I have attended conferences in Washington and Chicago. It has been one of the functions of the National Association Committee to urge all states to legislate in this field and toward that end legislation will be introduced into the Maine Legislature in 1961.

ANTI-TRUST

The Attorney General is also a member of the Anti-Trust Committee of the National Association of Attorneys General, which has been an extremely active Committee because of recent federal action in the field. This state became involved in an anti-trust action after the federal authorities had brought criminal and civil actions in the Massachusetts District Court against asphalt, tar and bituminous companies. The State of Maine brought its action against six tar companies for conspiracy in November, 1960, to recover over a million dollars in treble damages. We are hopeful at this time that this civil action will result favorably to the State of Maine.

OTHER MATTERS

The staff of the Attorney General's office now consists of the Deputy Attorney General, 10 full-time assistant attorneys general and 2 part-time assistant attorneys general with 2 investigators and 3 clerical employees.

Assistant Attorney General Milton L. Bradford and Frank Farrington are assigned to and maintain their offices at the Maine Employment Security Commission. These assistants handle the legal problems for the agency; render legal opinions on request of the Commission; attend all employer liability hearings before the Commission and represent that body in Superior Court and in the Supreme Judicial Court, on appeals from Commission decisions, both in claimant cases and in cases of determination of employer liability under the Maine Employment Security Law, as well as suits brought to collect delinquent employer contributions.

They also have charge of a four-man investigation unit, the function of which is to look into cases where fraud is suspected in obtaining unemployment compensation benefits, and in uncovering improprieties even when unsuspected.

During 1959 and 1960 collection of delinquent employer accounts (including interest and penalties) amounted to $243,271.89. In the process of collecting these accounts, 177 statutory liens were filed; a total of 121 suits were instituted in Superior Court, and 37 proofs of claim were filed in the Bankruptcy Court. A total of 10 liability cases were brought by employers against the Commission in Superior Court, two of the cases being later appealed to the Supreme Judicial Court and seven claimants appealed from Commission decisions to the Superior Court.

A total of 1,639 claimant investigation cases were completed. The investigators during this period made 3,174 calls and developed as a result thereof a total of 395 fraud cases. Also during this two-year period, Municipal Court action against violators resulted in 75 convictions; fines were assessed in 39 cases, but suspended in 11 of them; jail sentences were imposed in a total of 58 cases but suspended in all but one; and 46 claimants were placed on probation. Several individuals later served jail sentences due to violation of probation.

A total of $37,085.37 was collected on claimant overpayment and fraud cases.

Milton L. Bradford has worked with the Commission since 1954 and Frank A. Farrington since 1958.

Assistant Attorney General George C. West and Assistant Attorney General Frank W. Davis are both assigned and maintain their offices in the Department of Health and Welfare. These assistants are concerned with rendering opinions to the Commissioner of Health and Welfare and other divisions of that department and more specifically with actions for collections of money to the State for old age assistance, aid to dependent children, reciprocal support and the like. During the fiscal years 1958-59 and 1959-60 they have collected from estates for old age assistance, aid to the blind and aid to the disabled, the sum of $340,735.83 and during the same fiscal period they have collected from fathers for aid to dependent children, including collections under the Uniform Reciprocal Enforcement of Support Act the total of $493,123.99 and during the same fiscal period they have collected from fathers for child welfare the total sum of $80,704.90. Total collections from the above and miscellaneous items amounted in that fiscal period to $936,307.98. Mr. West, the senior assistant, has been with the department since 1947 and Mr. Davis has been with the department since 1953.

Assistant Attorney General L. Smith Dunnack is assigned and maintains an office with the State Highway Commission. His duties consist of advising the Commission and the various bureaus within the department upon legal questions arising in the course of the department's business. He supervises and directs the work of title attorneys in connection with the acquisition of land for rights of way in highway construction. This, of

course, has been a major function since the expansion of the highway program under the federal government. This federal highway program has continued to result in a great number of condemnation procedures. These cases are prepared by Mr. Dunnack and his staff and usually tried by private attorneys in the field, hired by the State Highway Commission with the approval of this office. Mr. Dunnack's office has handled 300 motor vehicle accident cases and a large number of claims, such as blasting, salt damage, etc. Violations of the "posted roads" law, outdoor advertising law and legal weight of loads law are frequently called to their attention. Forcible entry and detainer actions are often brought to clear new rights of way in time for the work to begin.

Mr. Dunnack has been with the department since 1949.

Assistant Attorney General Orville T. Ranger is assigned to and maintains an office on a part-time basis with the Insurance Department. Mr. Ranger's duties encompassed the following: Preparation and prosecution of seven administrative hearings for the suspension or revocation of agents' licenses. Preparation of waivers of hearing in several other cases in which the Commissioner suspended or revoked licenses. Defense of the Commissioner and the Attorney General in two court cases with a third now pending. The bringing of nine court actions for the removal of fire hazards with several others pending.

The giving of advice and opinions on many occasions involving the power and duties of the Insurance Commissioner and insurance companies. A review of policy filings with respect to legal technicalities. The attendance at numerous conferences at which these matters were discussed.

The preparation of all departmental legislation including the revision of the laws pertaining to agents, brokers, adjusters, and fees, and the addition of necessary penalty provisions where none existed. Attendance and testimony at several hearings before legislative committees as a representative of the department. Compilation of an index for the excerpt of the insurance law for the first time.

The assembling of a modest library of Maine Reports, digests, statutes, insurance texts, and the insurance laws and rulings of the fifty states for efficiency and convenience in answering insurance questions. Obtaining dictating equipment on a rental basis instead of hiring a part-time secretary, in the interest of economy.

Mr. Ranger has been with the department since 1955.

Assistant Attorney General Henry Heselton is assigned to and maintains his office at the State Liquor Commission on a part-time basis. In this capacity he answers letters from licensees, vendors of spirituous and vinous liquors, municipal authorities and agencies of other states dealing with liquor problems. He consults with and advises the Commission on questions of law and rules and regulations pertaining to the functions of the State Liquor Commission. He also prepares cases and represents the Commission in appeals from decisions of municipal officers in connection with licensing and represents the Commission in the various courts of the

state. He also attends to liquor aspects of building leases for the State Liquor Stores. He consults with and advises the chief inspector of the enforcement division of the Commission. The operations of the Commission are continually increasing; for instance as of June 1, 1960, there were five additional State Liquor Stores in operation. There has been an expansion of store building which has required the drafting of the usual leases and the execution of preliminary agreements for the building and the use of the new premises by the Commission. There has, of course, been added to the licensing classification Class A Restaurants which has required considerable attention on the part of Mr. Heselton.

Mr. Heselton has been with the department since 1946.

Assistant Attorney General Ralph W. Farris is assigned to and maintains his office at the Bureau of Taxation. His activities consist of advising the state tax assessor on questions of law in the business of the department. He is specifically assigned to the Inheritance Tax Division and assists in handling sales and use tax appeals. There were three sales tax appeals argued before the State Supreme Judicial Court in 1960 and there are 18 cases pending in the Superior Court awaiting the decision of our Law Court of the three argued cases.

There are many other sales tax appeal cases pending in the Superior Court which involve a good deal of work by Mr. Farris and Assistant Attorney General Richard Foley, also assigned to the Bureau of Taxation, Sales Tax Division. There are several pending inheritance tax appeals in Superior Courts throughout the state. Assistant Attorney General Foley is specifically assigned to the Sales Tax Division where the volume of tax collections has increased steadily over the past four years. The accounts receivable as of June 30, 1960, were $178,101.12 representing 730 cases pending collection. In 1959 as of the same date the accounts receivable were $147,628.72 representing 690 cases pending collection. It is interesting to note that the volume of taxes collected and cases closed has increased substantially from 1956. In 1956 the amount collected was $64,865.02 and cases closed 309. In 1959 the amount collected was $135,869.91 and cases closed 534. Because of the substantial increase in the volume of taxes referred for collection, it has been increasingly difficult for one attorney to properly fulfil the duties relating to sales taxes. The office procedures involved in tax collections normally require the full time of one attorney. The additional requirement of traveling throughout the state for investigation of assets, attendance at disclosure hearings, appearing at administrative hearings, attendance at Superior Court and Federal Bankruptcy Courts is enough to require the services of a full-time assistant. Toward that end, this office will request an additional assistant attorney general to be assigned to the Bureau of Taxation in the ensuing year.

In the fall of 1959 Stanley R. Tupper was retained as an assistant attorney general to compile and bring up to date the Lawrence Digest of Maine cases. Mr. Tupper did an excellent job on this and other office matters until March, 1960, when he resigned to run for Congress. I am extremely happy to say that he was successful and is now enjoying his term in the Congress.

Mr. Thomas Tavenner was retained as an assistant to replace Mr. Tupper and has continued to complete the Lawrence Digest which is expected to be printed sometime in 1961. He has further spent a good deal of time preparing an administrative procedure code for state departments which will be presented to the One-Hundredth Legislature of 1961. Mr. Tavenner's duties have been that of general assistance in the main office of the Attorney General along with Assistant Attorney General George A. Wathen and Deputy Attorney General James Glynn Frost.

Assistant Attorney General George Wathen is assigned to the main office and his activities are many and varied. Mr. Wathen provides legal services for the Department of Education, providing advice and legal services of a general nature to the Commissioner and the members of the department. Within the same department he furnishes legal services to the Maine School Building Authority and the Maine School District Commission which agencies take a great deal of his time, especially with regard to the Maine School District Commission. In fact, the work load for this particular department with regard to legal services has increased to such an extent that a full-time assistant assigned to Education would be advisable. The Maine Industrial Building Authority has taken a considerable amount of time and their requests for legal services have increased in the past two years. Services are also rendered to quite an extent to the Maine Mining Bureau with attendance at their meetings to render legal interpretations. During the biennium Mr. Wathen drew up the first Maine Mining Bureau lease which was quite lengthy and ran from the State of Maine to the Roland F. Beers Company. Since that time he has rendered assistance in drawing up other mining leases. A great deal of time is devoted to legal assistance for the Department of Mental Health and Corrections. He represents that department in post-conviction procedures which is showing an ever-increasing trend. There has been a steady increase since the Dwyer petitions received so much publicity and Dwyer's eventual release on parole in 1959.

In the calendar year 1959 there were 33 miscellaneous petitions, 6 education cases and 4 appeals to the Supreme Judicial Court, a total of 43 actions. The miscellaneous petitions consist mainly of Maine State Prison petitions. The education cases required a great deal of research and preparation and had to do with school administrative districts.

In the calendar year 1960 there were 87 miscellaneous petitions, 3 education cases and 9 appeals to the Supreme Judicial Court, a total of 99 actions. The year 1960 showed more than 100% increase over 1959. Nearly 50% of the work done by this assistant has been on post-conviction procedures. Statistical data may be found on pages 193, 208 and 209 of this report with detailed information with regard to post-convictions, etc.

All certificates of incorporation, changes of purposes and mergers are reviewed by this assistant. In 1959 he reviewed 690 certificates of incorporation, 16 changes of purposes and 13 mergers. In 1960 he reviewed 659 certificates of incorporation, 17 changes of purposes and 10 mergers.

Mr. Wathen has been with the Department since 1955.

Assistant Attorney General Neal A. Donahue maintains his headquarters in the main office of the Attorney General and is assigned mainly to the handling of cases under the Workmen's Compensation Act. He represents both the State and the employee before the Industrial Accident Commission and his work involves a good deal of travel. He also does considerable work with regard to title relating to lands the state wishes to acquire or in which it may have an interest. Mr. Donahue has been with the Department since 1942.

Deputy Attorney General James Glynn Frost maintains his office at the main office of the Attorney General and is endowed by law with many of the powers of the Attorney General in the absence of the Attorney General. His functions are also many and varied, similar to those of Assistant Attorney General Wathen, and on occasion he has represented this office at trials for murder. Mr. Frost does a good deal of advising and giving of opinions to all department heads and the Office of the Governor. He examines all medical examiner's reports that are forwarded to this office. He examined approximately 2,150 medical examiner's reports for the biennium; 1,052 in 1959 and 1,098 in 1960. For additional breakdown with regard to counties see chart on page 210 of this report.

Mr. Frost has approved 309 applications for excuse of corporations in the biennium; 154 in 1959 and 155 in 1960.

He examines the sufficiency of extradition papers including those instances where Maine is the asylum state and where Maine is the demanding state.

A specific and important function is to examine and approve contracts for various departments.

His services over these two years have been invaluable to the Attorney General. Mr. Frost has been with the Department since 1951 and has been Deputy Attorney General since 1952.

Philip W. Wheeler and Walter C. Ripley are the investigators for the department. Their duties are also many and varied, usually at the request of state departments or county officials on both civil and criminal matters.

Miss Helen Cochrane, who has been with the Attorney General's Department since 1942, retired in January of 1959. She first worked on a part-time basis in 1942 and 1943 and then full-time from 1943 on. She became Law Clerk in 1951. Miss Cochrane's work was very detailed and technical in nature, consisting of indexing and annotating all opinions rendered by the department, annotating the Revised Statutes with respect to all changes made by the various Legislatures and also as to Maine cases relating to the statutes and prepared the biennial for printing. She set up a complete index to all opinions rendered by this department since 1864 which is invaluable to all attorneys connected with this department. It was through her efforts that the Private & Special Index was first printed and she completed the supplement to this index prior to her retirement.

Her services to the department have been invaluable and she is missed by those who knew her and had an opportunity to work with her.

At the present time Mrs. Olive E. Fessenden, Mrs. Phyllis A. Matthews and Mrs. Cecelia B. Hinkley comprise the clerical staff of the office. During the biennium Mrs. Fessenden took a leave of absence for six months and was replaced at that time by Mrs. Agnes Stevenson who performed an excellent service.

These girls perform many duties which make the task of the Attorney General, Deputy and Assistant Attorneys General much easier.

My special thanks to Mrs. Matthews for compiling the material and preparing this report.

Both Deputy Attorney General Frost and Assistant Attorney General Wathen have submitted their resignations to take effect in 1961. They will enter private practice together in Augusta. George Wathen will be leaving on January 15, 1961, and Glynn Frost in June, 1961. George Wathen has been with the department since 1955 having first served in the Bureau of Taxation and since 1958 in the main office of the Attorney General. He is an extremely capable lawyer who has performed his duties well. His services will be greatly missed.

Glynn Frost will have served ten years as of April, 1961. It is difficult for me to say enough nice things about Glynn, and I am sure that those other Attorneys General whom he served will agree that he is about as perfect a deputy as one could ask for. His disposition and personality fitted the position so well that the best description of Glynn is "a fine lawyer and a gentleman." He will indeed be missed not only by this department but by all other departments in the State. He will be extremely difficult to replace and we all wish both him and George well in their new endeavor of private practice and know that they will be successful.

Respectfully submitted

FRANK E. HANCOCK

Attorney General

OPINIONS

January 6, 1959

To: Philip A. Annas, Executive Director of Division of Instruction, Education Department

Re: Federal Funds — Unorganized Units — School Current Expense

We have your request for an opinion as to whether the State Department of Education or the Commissioner of Education, by virtue of his office, has, under the law and practice in the state, the authority to accept and disburse Federal funds which may be granted under P. L. 874 for assistance for school current expense purposes in unorganized units in the State of Maine.

It is our opinion that the Commissioner of Education under the laws of the State of Maine has the authority to accept and disburse Federal funds which may be granted under P. L. 874 for assistance for school current expense purposes in unorganized units in the State of Maine when so authorized by the Governor and Council.

Unlike the average public school which is maintained in great part by the municipality in which it is located and which is governed by a local body, the burden of maintaining and governing schools in unorganized territories is vested in the Commissioner of Education, Sections 159 to 183, inclusive, of Chapter 41 of the Revised Statutes of 1954. Under the provisions of Section 176 of Chapter 41:

> "The treasurer of state is authorized to accept gifts, bequests and other funds from public or private agencies, subject to any conditions contained therein provided such conditions are approved by the state board of education, to be credited to the capital working fund. When any such gift, bequest or grant is made for a particularly designated purpose, the amount so received shall be used to reduce the total amount of capital outlay involved in the project designated and due to be returned to the fund as provided in section 169."

Section 15, Chapter 11, Revised Statutes of 1954, reads as follows:

> "The governor, with the advice and consent of the council, is authorized and empowered to accept for the state any federal funds or any equipment, supplies or materials apportioned under the provisions of federal law and to do such acts as are necessary for the purpose of carrying out the provisions of such federal law. The governor, with the advice and consent of the council, is further authorized and empowered to authorize and direct departments or agencies of the state, to which are allocated the duties involved in the carrying out of such state laws as are necessary to comply with the terms of the federal act authorizing such granting of federal funds or such equipment, supplies or materials, to expend such sums of money and do such acts as are necessary to meet such federal requirements."

An order passed in Council authorizing the Treasurer of State to accept Federal funds under P. L. 874 on behalf of any unorganized unit for

which application may be made by the Commissioner of Education and to expend such Federal funds as may be granted under the provisions of P. L. 874 when so authorized by the Commissioner of Education for current expenditure purposes for the schooling of children in unorganized units would be sufficient to invoke the authority contained in Section 176 of Chapter 41 and Section 15 of Chapter 11.

JAMES GLYNN FROST
Deputy Attorney General

January 6, 1959

To: Asa A. Gordon, Coordinator of Maine School District Commission

Re: Subsidy Payments under Chapter 41 to School Administrative Districts

You have requested the opinion of this office concerning the method of computing subsidy payments to a school administrative district.

When a school administrative district is formed and in operation, it is an administrative unit as defined in Section 237-E of Chapter 41. For the first year the subsidy payment of the subordinate units are to be paid to the school administrative district (Section 237-E). After the first year, in this particular fact situation, the school administrative district is classified for the purposes of the foundation program in the same manner as a municipality pursuant to Sections 237-D and 237-E.

GEORGE A. WATHEN
Assistant Attorney General

January 9, 1959

To: H. H. Harris, Controller

Re: Unexpended Balances from Appropriations under Chapter 378, P. L. 1957

My opinion has been requested as to the effect of the last sentence in Section 3 of Chapter 378 of the Public Laws of 1957.

Section 14 of Chapter 15-A of the Revised Statutes of 1954, as enacted by Chapter 34 of the Public Laws of 1957, reads as follows:

> "All appropriations by the legislature for the construction of buildings, structures, highways and bridges shall constitute continuous carrying accounts for the purposes designated by the legislature in such appropriations. The state controller is authorized to carry forward all such appropriations to the succeeding fiscal year, provided the construction shall have been begun by the letting of a contract or contracts or by actually starting the work during the year for which the appropriations were made. Any balance remaining after the completion of the object of the appropriations shall revert to the general fund in the state treasury or to the fund from which it was apportioned under existing provisions of law."

It is evident that the legislature directed that construction accounts that were encumbered because of agreements made within any fiscal year should not lapse. This statute was enacted at the same session as Chapter 378 and became effective on the same date.

The language used in Section 3 was copied from language used in former years to carry out the general policy of lapsing unexpended balances exclusive of construction accounts.

It is my opinion that the appropriation set up in Chapter 378 is definitely a construction account and that the use of the last sentence in Section 3 was not intented to change the law regarding construction accounts, but to provide for the lapsing upon the completion of the projects.

This opinion is further based on my personal knowledge that the drafters of the act had no intention to permit the lapsing of such funds, because they knew that there would be a considerable time lag between agreements and planning and the completion of the projects.

L. SMITH DUNNACK
Assistant Attorney General

January 12, 1959

To: Clayton Osgood, Chief of Division of Inspection, Agriculture

Re: Export of Substandard Sardines

I have your request for an opinion on the question of sardines which have failed to pass inspection as standard sardines, but are intended for export. As I understand the facts, these fish are packed containing at least the minimum fish per can and at least the minimum quantity of oil or sauce as required by Section 263. The cans were labeled "sardines". No broken fish were packed initially, but upon inspection, they were found to be below standard.

There are two criteria under Section 263 of Chapter 32 requiring fish to be marked "herring", namely, less than the minimum count of fish per can and less than the minimum quantity of oil or sauce. I have not been able to find any regulations issued by the Commission setting the standards for herring other than those in the statute.

Therefore, it is my opinion that in this situation, if the exporter is in compliance with the last paragraph of Section 263, that these fish can be shipped without being marked "herring".

GEORGE A. WATHEN
Assistant Attorney General

January 12, 1959

To: David H. Stevens, Chairman, State Highway Commission

Re: Authorization to Accept Federal Grant in Regard to Billboards

You have requested my opinion as to the authority of the State Highway Commission to accept the new bonus offered by the federal law in regard to billboard control.

Section 15 of Chapter 23 of the Revised Statutes authorizes the acceptance by the State Highway Commission of federal funds apportioned under the provisions of the Federal Aid Highway Act and its amendments. Sub-section (c) of Section 122 of the Federal Highway Act provides for the granting of the increase of one half of one percent in the case that the agreement set forth in sub-section (b) has been made.

There can be no question as to the power to accept the grant since it is apportioned under the provisions of the act.

The question of the right to make the agreement required by subsection (b) is not so clear. However, it is my opinion that Section 15 does delegate that power. The last sentence of that section authorizes the Commission

> ". . . to make all contracts and do all things necessary to cooperate with the U. S. Government in the construction and *maintenance of public* highways, *in accordance with the above* (Fed. Aid) Act, as amended and supplemented."

Maintenance of highways covers a broad field. It includes all things that go toward making the way safe and convenient for travellers. It should be noted that sub-section (a) of Section 122 of the Federal Act uses the words "to promote the safety, convenience and enjoyment of public travel" in its purpose clause.

It is my opinion that regulation of signs and billboards adjacent to a way in the alleged interest of the safety of the users of the way is one of the many items that go to the maintenance of the way for safe and convenient travel.

Moreover, if the legislature enacts a law that brings our regulations in line with the federal requirements, the subject matter of the agreement required by sub-section (b) would not require the State Highway Commission to agree to anything beyond enforcing the state law.

L. SMITH DUNNACK
Assistant Attorney General

January 19, 1959

To: Marion Martin, Labor Commissioner

Re: Work Permits for Minors

In reading your memo and the attached copy of a letter from an attendance officer of Portland public schools we gather his questions to be, as to students generally:

1) Is a child 15 years of age attending school while in session, who applies for a permit to work part-time and still continue in school, entitled to such part-time certificate, regardless of the grade in which he is enrolled, provided the work is of a nature otherwise permissible?

Answer. No. Section 26 of Chapter 30, R. S., reads in part as follows:

> "No minor under 16 years of age shall be employed, permitted or suffered to work, in, about or in connection with any gainful occupation, subject to the prohibitions set forth in section 23, unless the person, firm or corporation employing such child procures and keeps on file accessible to any attendance officer, factory in-

spector or other authorized officer charged with the enforcement of sections 22 to 45, inclusive, a work permit issued to such child by the superintendent of schools of the city or town in which the child resides, or by some person authorized by him in writing.

"The provisions of this section shall not apply to minors engaged in work performed in agriculture, household work or any occupation that does not offer continuous, year-round employment.

"The person authorized to issue a work permit shall not issue such permit until such child has furnished such issuing officer a certificate signed by the principal of the school last attended showing that the child can read and write correctly simple sentences in the English language and that he has satisfactorily completed the studies covered in the grades of the elementary public schools or their equivalent. . ."

The statute is clear and, with exceptions not here pertinent, provides that the permit shall not issue to a minor under 16, unless he has satisfactorily completed the studies covered in the grades of the elementary schools or their equivalent.

Inasmuch as these questions relate to students in a junior high school we note the following:

Elementary schools include those which offer courses preceding those given in high school (Section 236, Chapter 41). A junior high school may include up to two grades or years of high school (Chapter 41, Section 98). We are advised, however, that the Portland Junior High School does not include grades of a high school; so, for the purposes of this opinion, minors in a junior high school in Portland are in elementary grades.

2) Do permits issued under Section 26 have the effect of excusing a child from school attendance?

Answer. No. We see no provision of law which would lead to the conclusion that the issuance of such a certificate has the effect of excusing a child from school attendance.

The two forms of work permits submitted to us appear to be proper forms, except for statutory citations on form numbered 3, which citations have been changed since the form was printed.

JAMES GLYNN FROST
Deputy Attorney General

January 23, 1959

To: Asa A. Gordon, Coordinator of Maine School District Commission

Re: Subsidy and Bonus Payments to School Administrative Districts

I have your request for an opinion of this office regarding the method to be used to compute payments under the foundation program and the 10% bonus to newly formed School Administrative Districts.

Section 111-A of Chapter 41 is the declaration of policy of the State to encourage the development of School Administrative Districts. Section 236 defines the term administrative unit, and Section 237-E supplements this definition as there is no doubt that a school administrative district is an administrative unit as used throughout Chapter 41.

Section 237-D states that:

"The foundation program allowance for each *administrative unit*, except community school districts which do not offer educational programs for both grades and high school pupils, shall be determined as follows:

"The average of the 2 preceding years' average daily membership of the pupils attending school in the unit shall be multiplied by the applicable dollar allowance in Table I below. To this amount shall be added the average of the unit's 2 preceding years' expenditure for tuition, pupil transportation and board. The total of these items will be the total foundation program. From this total foundation program shall be substracted the average of the 2 preceding years' tuition collections and other school maintenance incidental receipts. The net cost thus obtained represents the net foundation program allowance on which state subsidy shall be computed biennially in accordance with section 237-E and Table II." (emphasis supplied)

Section 237-E provides the mechanics for the determination of the percentage of state support of the foundation program.

Section 237-E provides:

"On the basis of information available in the office of the Commissioner of Education on September 1st for the 2 years next preceding the biennial convening of the Legislature, as provided in returns of educational statistics required by him, the commissioner shall apportion subsidies to the school administrative units of the State for each of the next 2 years according to the following plan:"

Section 237-E further provides that for each classification the subsidy allocation thereafter shall be the same for each of the two years following.

It is my opinion that after a School Administrative District has been organized that this unit must be recomputed to determine state support for the unit pursuant to Section 237-E which charges the Commissioner of Education with the apportionment of subsidies according to the mechanics or formula of that section. The language in the last paragraph of Section 237-E:

"When a School Administrative District has taken over the operation of the public schools within its jurisdiction, the subsidy payment that would normally be paid to the subordinate administrative units which operated the public schools within the confines of the School Administrative District prior to the formation of said district shall be paid directly to the School Administrative District."

shows clearly that after organization of a School Administrative District only that unit is entitled to subsidy aid.

In order to remain consistent with the declaration of policy and further to carry out the duty imposed on the Commissioner, the treatment of a School Administrative District as a single unit is necessary. If one interprets the first paragraph of Section 237-E to mean that during the biennium that for the purposes of apportioning subsidies there can be no change in administrative units which existed at the time of the computation for

budget purposes, this would in effect freeze every unit as of that date. The effect of this "freezing" would mean that any change in the make-up of an administrative unit would not be reflected in its share of subsidy until a new computation was made. This would affect the withdrawal and addition of a municipality to a School Administrative District or Community School District as well as the formation of such a district.

It is my opinion, in keeping with the declaration of policy and the intent of the Legislature that the Commissioner must apportion subsidies to such units as have been created or changed during the biennium, and make such additional computations as required.

GEORGE A. WATHEN
Assistant Attorney General

January 26, 1959

To: Kermit Nickerson, Deputy Commissioner of Education

Re: School Administrative Districts — Agency of the State

I have your request for an opinion concerning whether or not School Administrative Districts are agencies of the state for the purpose of receipt of monies from federal grants under Public Laws 815 and 874.

In my opinion a School Administrative District would qualify for grant for the same reason that a municipality qualified.

Section 236 of Chapter 41 of the Revised Statutes of 1954 defines an administrative unit "including all municipal or quasi-municipal corporations responsible for operating public schools".

Section 111-F defines a School Administrative District as a body politic and corporate. A School Administrative District is a quasi-municipal corporation set up for the limited purpose of providing education for the children of two or more municipalities. Therefore, it is an agency of the state and eligible for the federal grant under the terms specified in your memo. (Also see *Kelley v. Brunswick*, 134 Me. 414).

GEORGE A. WATHEN
Assistant Attorney General

February 9, 1959

To: Honorable Clinton A. Clauson, Governor of Maine

Re: Beach Erosion Survey

We are returning herewith the letter of Mayor Deschambeault dated January 12, 1959, and the attached copy of an application of the City of Biddeford to the Federal Government for a Beach Erosion Survey on certain portions of shores of the City of Biddeford, which papers were submitted to you for your approval under the provisions of Chapter 90-A, Section 8, Revised Statutes of 1954.

For convenience in considering this problem, we set out in its entirety said Section 8: —

"Sec. 8. Projects for improving navigation and preventing erosion. A municipality may acquire real estate or easements by the condemnation procedure for town ways as provided in chapter 96, and may contract with the State and Federal Governments to comply with requirements imposed by the Federal Government in authorizing any project which has been approved by the Governor for improving harbor and river navigation or preventing property damage by erosion or flood.

I. Two or more municipalities may act jointly in performing the operations authorized by this section.

II. The Governor, with the advice and consent of the Council, may do the following with regard to such a project:

A. Designate a state agency to make any investigation considered necessary.

B. Provide for the payment by the State of not more than one-half of the contribution required by the Federal Government, when an appropriation has been made for it by the Legislature.

C. Make an agreement with the Federal Government to hold and save it harmless from resulting claims."

It can be seen from the above-quoted statute that the Governor's approval relates to projects for the *actual* improvement of harbor and river navigation, or the prevention of property damage by erosion or flood.

For instance, note the power given the municipality to condemn property for the purpose of carrying on the project. Such condemnation might be necessary in case the work is to be carried on on private land and the State was required to hold the Federal Government harmless from claims as provided by paragraph C of Section 8. We would note that for all such actual projects carried out in the past, the State has been required to execute such assurances.

The present application for the City of Biddeford is not for such a project, but for a survey, the results of which will determine whether or not the project such as is contemplated by Section 8 is necessary or practicable. It is for these reasons that we believe the work has not reached the state where the Governor's approval is required or proper.

Our opinion on this matter is based on the statute above quoted, the letter of Mayor Deschambeault, and the copy of the city's application to the Federal Government, along with the Mayor's statement that such application is all the information he has on the matter.

If there are any other facts that have not been drawn to our attention, we would be happy to consider them.

JAMES GLYNN FROST
Deputy Attorney General

March 10, 1959

To: Peter W. Bowman, M.D., Superintendent, Pineland Hospital & Training Center

Re: Commitment of Pineland patients to Augusta & Bangor State Hospitals

We have your memo of February 24, 1959, in which you inquire when the legal proceedings for the commitment of patients from Pineland Hospital and Training Center to Augusta State Hospital and Bangor State Hospital may be commenced in the Cumberland County Probate Court. You state that presently you start such proceedings in the county of settlement.

It appears that the statute, Chapter 27, Section 110, R. S. 1954, permits an alternative, where the person resides or is found. We are of the opinion that an inmate of your hospital, for the purposes of legal proceedings for commitment to either Augusta State Hospital or Bangor State Hospital, is for such purpose found in Cumberland, with the result that commitment proceedings may be instituted before the Judge of Probate of Cumberland County.

JAMES GLYNN FROST
Deputy Attorney General

(In Re: Cash 40 N.E. 2d, 312, 313, 314)

March 11, 1959

To: Major General E. W. Heywood, Adjutant General

Re: "Dispute Clause" in Contracts executed by the State

In response to an oral request by Major Pynchon, we offer the following with respect to the desire that the "dispute clause" be included in contracts executed by the State. We assume that by "dispute clause" is meant arbitration.

It is the opinion of this office that the provision submitting disputes to arbitration is an improper provision for the State to agree to.

Generally speaking, everyone who is capable of making a disposition of his property or a release of his right, may make a submission to arbitration, but no one can who is either under a natural or civil incapacity of contracting. The basis for determining that municipalities can submit controversies to the decision of arbitrators is the fact that they have corporate capacity to sue and be sued and, consequently, to submit their controversies to arbitration.

With respect to a State, however, which has an immunity from suit by virtue of constitutional provision, there remains a substantial question as to the right of the State officials to submit a controversy to arbitration. The immunity from suit, which is an immunity peculiar to States and the Federal Government, prevails until such time as the State, in our case, grants the right to sue. This right, of course, must come from the legislature.

An agreement to arbitrate, which at least impliedly includes an agreement to abide by the arbitration decision, is probably an evasion of the im-

munity from suit. By accepting such arbitration decision, the parties to the contract may be undertaking a responsibility that the legislature would have refused to undertake. For these reasons, we are of the opinion that it is improper for the State of Maine to submit disputes to arbitration.

JAMES GLYNN FROST
Deputy Attorney General

March 24, 1959

To: Niran C. Bates, Director of Bureau of Public Improvements

Re: Deeds — With Respect to Sale of Land by the State

We are in receipt of your memo of February 13, 1959 addressed to all Departments and Institutions, which memo contains instructions to be followed by all state departments and institutions with respect to the manner in which deeds which evidence the sale of land by the state should be handled.

We must advise that in our opinion your instruction would impress upon a state employee a most unusual and improper responsibility. Your memo reads in part as follows:

"In establishing Records of the State's ownership in Land it has become apparent that certain procedures should be followed when a parcel is *sold* so that there will be continuous records of all transactions.

"The description in the deed should be as complete as possible. It should contain adequate references to the State's title in the parcels involved including the data as to recording in the Registry of Deeds.

"Arrangements should be made with the *Grantee* so that upon receipt of payment, the original deed would be forwarded to the proper County Registry by the department handling the transaction. The Register of Deeds should be instructed to record it and return it to the *Grantor*. The department will then write on the copy the date of record, the book and page reference as they appear on the certificate of the registry.

"The original should then be delivered to the Grantee, and the copy filed with the State Forest Commissioner, except for Highway Deeds."

We would point out that the deed to which you refer is the muniment of title belonging to the grantee. It is his property. The State, as grantor should not attempt to so control an instrument that belongs to another person. There is no law that requires the recording of a deed, and the grantee may have good reason for delaying the filing of such an instrument.

For the reasons stated, we believe your instructions violate the rights of one who is entitled by law to the possession of that instrument which is evidence of his title, and also places an undue responsibility upon a state employee with respect to the property of another person.

We are of the further opinion that a plain copy of the deed properly filed in the office of the Forest Commissioner, with perhaps another copy or abstract in your office, is all that is needed for the sake of state records.

FRANK E. HANCOCK
Attorney General

March 24, 1959

To: The Honorable Joseph T. Edgar
Speaker of the House
State House
Augusta, Maine

Dear Mr. Edgar:

This memo is in response to your oral request for an opinion as to whether the municipalities in this state under existing law have the authority to require that all businesses be subject to licenses issued by the municipality in which the business is located. Answer: No. Municipalities in this state do not have such authority.

38 Am. Jur., p. 12, Section 320. "Unless inhibited by a constitutional provision, the legislature has power to delegate to municipal corporations authority to levy and collect license taxes, either for revenue or regulation, and, for such purpose to classify various occupations and impose taxation of different amounts on the separate classes. The legislature may delegate licensing power to a municipal corporation to its full extent, so as to enable the corporation to license practically all callings to a limited extent, so as to enable the corporation to license dangerous callings; or it may withhold such power or delegate it only with limitations and restrictions."

38 Am. Jur., p. 19, Section 326. "If a charter or statute enumerates the occupations or businesses which may be regulated and licensed by a municipal corporation, the enumeration, if on the whole such appears to be the legislative intent, is exclusive, and the municipality has no power to license or regulate occupations or businesses not embraced in the enumeration."

The Legislature in this state appears to have handled licensing by the towns of Maine in a limited manner, particularly enumerating those businesses that may be licensed. See Chapter 90-A, Section 3, V, as an example where the power to regulate certain commercial activities is granted by the legislature, and where the power to regulate is accompanied by the power to require the persons running such business to obtain a license. The result of such enumeration is that a municipality may not require a license of a business not included among those enumerated.

In *State v. Brown*, 135 Maine 36, the rule is clearly stated at page 40:

"The power of a municipal corporation to license an occupation or privilege or to impose a license tax thereon is not an inherent power, but to be exercised only when conferred by the state either in express terms or by necessary implication. The power to license and impose a license tax is generally implied from the power to regulate an occupation or privilege."

For the above reasons we are of the opinion that municipalities do not have the authority generally to license businesses or occupations, but are limited so that they may license only those businesses or occupations which the legislature has granted them power to license.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

April 1, 1959

To: John R. Dyer, Purchasing Agent, Bureau of Purchases

Re: Bids on Belt Loaders

This memo is in response to your recent oral inquiry concerning bids for certain heavy equipment to be purchased for the State Highway Department.

The equipment in question is a belt loader designed to gather stone, dirt, gravel, snow, etc. and convey such material, by means of a belt to trucks for quick removal.

On February 17, 1957, your department sent out requests for bids on the above equipment, the requests containing such specifications as would advise the bidder of the type, model and other characteristics of the equipment desired to be purchased by the State.

In all, three bids were received in response to the request for bids.

It appears that one bid was rejected as being informal. It was deemed desirable by you to reject a second bid, that of Company A, as being too high.

> Question: You ask if the third bid, that submitted by Company B, could be accepted, that company having submitted dollar-wise the lowest bid.
>
> Answer: We are of the opinion that bid of Company B is not acceptable.

In examining the two bids in question, it appears that Company A submitted a bid wherein no exceptions were taken to the specifications set forth in the State's request for bids. The form of Request for Bids supplied by the State, was returned by Company A unchanged, except for the filling in of blank spaces provided for notation of bid prices and other pertinent information.

Company B, on the other hand, returned the bid, and accompanied same with a letter in which the bidder set forth dimensions and other variances of its machine which did not comply with the specifications contained in the request for bids.

For instance, the State requests a machine having a stand-up cab, with a minimum over-all length of 39′. The bid of Company B proposes to offer a machine with a sit-down cab with an over-all length of 31′ 3″. In other respects the machine would also vary from the specifications.

The bid of Company B is, in effect, a counter proposal.

Under our laws counter proposals, or alternative bids, may be submitted. Such alternative bids however, may be considered only under certain circumstances, i.e., where bids submitted in conformity to specifications are not received.

Sub-section V, of section 39, Chapter 15-A Revised Statutes of Maine, as enacted by Chapter 340, Public Laws of 1957, reads as follows:

> "Bids shall be received only in accordance with the specifications contained in the proposal or invitation to bid. However, a

bidder may submit an alternative bid on services, supplies, materials and equipment which do not conform to but approximate the specifications contained in the proposal or invitation to bid, provided such alternative bid sets forth complete specifications pertaining to the alternative services, supplies, materials or equipment being offered. Bids which do not conform to the foregoing provision shall be disregarded. *Alternative bids shall be considered only in the event no bid is received for the services, supplies, materials or equipment specified in the proposal or invitation to bid and the foregoing requirements have been complied with.* The State reserves the right to reject any or all bids, in whole or in part, to waive any formality and technicality in any bid and to accept any item or items in any bid. No bid may be withdrawn during a period of 21 calendar days immediately following the opening thereof;"

The above statute clearly prohibits consideration of Company B alternative bid, when another bid was received which, in all respects, appears to be in conformity with the written specifications.

The said sub-section V shows clearly a Legislative directive that deviations from specifications cannot be permitted at will by administrative decision.

Bids shall be received only in accordance with the specifications contained in the invitation to bid. The second and fourth sentences of sub-section V are in derogation of the principle that a purchaser may purchase an article which complies with, or substantially complies with, the specifications. The second sentence provides that bids not in conformity with, but approximating the specifications, may be submitted only as alternative bids. As pointed out above, the fourth sentence of sub-section V provides that such alternative bid can be accepted only in the event a bid conforming to the specifications is not received.

Such a law does not permit the exercise of discretion in purchasing articles which approximate, but do not conform to, the specifications.

It is for the above reasons that we are of the opinion that the State may not award a contract on the basis of the Company B bid.

It has been suggested that the specifications were so drawn that no bidder could comply with them, and that as a result all bids might be considered as alternative bids and the contract awarded to the lowest of such alternative bidders.

The specifications may have been so written. However, one of the bids makes no exceptions to the specifications, but proposes to supply the equipment as requested. This being so, it cannot be considered as an alternative bid.

Two of the bids have already been rejected. We are of the opinion that the third and final bid should be rejected, and therefore suggest that a new request for bids be sent out for the desired equipment.

FRANK E. HANCOCK
Attorney General

April 7, 1959

To: Fred A. Clough, Jr., Commissioner of Economic Development

Re: Lease — Waiver of sovereign immunity of the State; Purchase of Liability Insurance.

We are returning the lease between Company A and the Department of Economic Development, without our approval.

We would advise that the department cannot comply with the requirements of Section 5, as that section is written.

The first portion of Section 5 provides that the Lessee shall indemnify Company A against claims that may, in fact, have been caused by the negligence of Company A's servants, agents, or representatives, and whether or not the injury occurred in an area in the custody of the Lessee.

> "Section 5. It is hereby understood and agreed throughout the initial and any additional term hereof, that Company A shall have no liability for, and Lessee hereby waives, and indemnifies Company A, its employees, agents and representatives, against any and all claims of Lessee or Lessee's agents, employees or customers for any death or injury or loss or damage of any kind or character sustained or suffered in or upon or about the Leased Space from any cause whatsoever, . . ."

We would point out initially that a State Department is powerless, without statutory authorization, to enter into contracts whereby the Department agrees to indemnify any person. Such indemnification would be an ineffectual attempt to waive the sovereign immunity of the State.

With respect to the last portion of Section 5, liability insurance may be purchased by a State Department if such purchase is approved by the Governor and Council.

Perhaps the lessor would feel that its interests are sufficiently protected if the lessee purchases liability insurance without further agreements. We would suggest that Section 5 be amended so as to provide only for the purchase of such insurance.

We offer the following as a suggested amendment to Section 5:

> "Lessee shall procure and maintain throughout the leasing period or periods at its own expense in responsible insurance companies acceptable to Company A, adequate amounts of insurance, satisfactory to Company A, for liability for death or injury, or loss or damage, caused by the negligence of lessee, its employees, agents, or servants, sustained or suffered in, on, or about the Leased Space."

JAMES GLYNN FROST
Deputy Attorney General

April 15, 1959

To: Ronald W. Green, Commissioner of Sea and Shore Fisheries

Re: Building Fishway on the Aroostook River

We have your memo of March 6, 1959 having reference to Chapter 171, Private and Special Laws of 1957. Your memo states that along

with present budget request, the combined sums authorized under this law will be $45,000 for the purpose of building a fishway on the Aroostook River. The fishway, if constructed, will be in New Brunswick. If the fishway is built, you state a contract will be necessary between the dam owner in New Brunswick and the Atlantic Sea Run Salmon Commission. You ask the following question:

> "Does the law provide for such a contract? In the event that it does not, what legislation is necessary to provide for such a contract?"

In orally discussing this matter with you it is indicated that your question is very limited — "Does the Atlantic Sea Run Salmon Commission have the right under the provisions of the act to turn over the sums appropriated by the legislature to the person finally selected to build the fishway?"

We answer your question in the affirmative.

The legislative appropriation contained in Chapter 171 is not for the purpose of the construction of the fishway by the Commission, but is a sum to be contributed by the Commission in its discretion in order to defray a portion of the cost of such fishway. We think that the statute contemplates that the actual work of construction be carried on by someone other than the State and that the State should share in such costs, because the benefits of the fishway would accrue to the citizens of Maine.

There have been numerous instances when the Legislature has appropriated funds to be expended on the Aroostook River for the purpose of aiding in the construction or maintenance of a fishway in the vicinity of the proposed fishway (in Tinker Dam location).

One of the first such appropriations is to be found in Chapter 205, P. & S. 1927, where $4,000.00 was appropriated from the funds of the Department of Inland Fisheries and Game,

> "to aid in the construction of a fishway at Aroostook Falls on the Aroostook River in the province of New Brunswick; provided the same can be constructed with the consent and co-operation of the Canadian government, and the balance necessary for such construction is furnished by said government, or interested persons."

See also, Chapter 71 Resolves of 1935
" 88 " 1941
" 41 " 1945
" 146 " 1947

In the absence of a proper compact consenting to this State's building such a fishway in Canada, we assume that such funds will be expended as they have in the past — that is, a contribution to a project which the State approves, and which will, in the wisdom of the Legislature, benefit the State of Maine.

There appears to be adequate discretion lodged in the Atlantic Sea Run Salmon Commission to determine when and if payment of the sum would be proper.

JAMES GLYNN FROST
Deputy Attorney General

April 17, 1959

To: The Honorable William R. Cole
Senate Chambers
State House
Augusta, Maine

Dear Senator Cole:

I have your request for an opinion concerning the last sentence of Section 111-P, Chapter 41, Revised Statutes of 1954, which states:

> "No such withdrawal shall be permitted while such School Administrative District shall have outstanding indebtedness or shall be obligated to the Maine School Building Authority pursuant to any contract, lease or agreement."

It is our opinion that this language is proper and is not void under the theory that the Legislature cannot bind itself to prevent any further change or repeal of a statute. One of the questions in *Greaves v. Houlton Water Co.*, 143 Me. 207, was whether the Legislature has suspended its power of taxation. The language which you have cited refers to the sovereign power of taxation which the Legislature is prohibited from surrendering or suspending. (Article IX, Section 9, Constitution of Maine)

Article VIII of the Constitution of Maine provides in part:

> "A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important object, the legislature are authorized, and it shall be their duty to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of the public schools; . . ."

This article points up the proposition that education is a function of the State and is governed only by the Legislature. The control of education is in the hands of the Legislature, *Opinion of Justices*, 68 Me. 582; *Sawyer v. Gilmore*, 109 Me. 169.

In this instance the Legislature has provided standards for the formation of districts and reserved unto itself the right to pass on withdrawal of any municipality from a school administrative district once formed pursuant to the duties set out in Article VIII. It has further set a prohibition against withdrawal based on outstanding indebtedness. This provision is binding on future legislatures in the same manner as any other statute. There is nothing in this sentence which attempts to prevent change or repeal by future legislatures, but it is binding only on the municipalities in a School Administrative District.

It is our opinion that the legislature has enacted a law in a field in which only it has authority to act.

Very truly yours,

GEORGE A. WATHEN
Assistant Attorney General

May 5, 1959

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Summer Schools

You have requested an opinion concerning whether it would be legal for a superintending school committee to charge tuition for summer school.

It is my opinion that it would not be proper to charge tuition to students attending a public school during the summer, based on the provisions of our present law. Public funds would be used to pay the teachers and administrative personnel. School buildings would be utilized, and section 121-A of Chapter 41 states that the cost of inspection by the Board of Education shall be paid from the state appropriation for the support of public schools.

You have requested an opinion regarding a hypothetical situation, and, therefore, we have no facts to which the law can be applied. I have necessarily been forced to make assumptions which may not be the facts. Therefore, we must conclude that based on our understanding of the summer school program, we feel that it would not be proper to require tuition from those attending. Public funds cannot be used for private purposes.

GEORGE A. WATHEN
Assistant Attorney General

May 11, 1959

To: Roland H. Cobb, Commissioner of Inland Fisheries & Game

Re: Contract between Inland Fisheries & Game Department and Pembroke

I have your request for an opinion regarding the legality of the so-called contract which you have forwarded.

Section 57, Chapter 37, authorizes the Commissioner to grant permits to take alewives for market under such rules and regulations as he may establish, but prohibits the granting of exclusive territory permits.

Chapter 49, Private & Special Laws of 1957 gives the Town of Pembroke exclusive rights for taking of alewives in the town and further authorizes the town to operate the fishing itself or sell the privilege through the selectmen or a committee appointed for that purpose.

Therefore in Pembroke the taking of alewives is exclusively in the hands of the town.

Section 13 of Chapter 37 provides for construction and repair of fishways by the owners or occupants of a dam. There is no information regarding the owner or occupant of the dam, but I understand the fishway was put in by your department.

Section 12, V, E, Chapter 90-A, provides that a municipality may appropriate money for propagating and protecting fish in public waters, limiting this to a $500.00 appropriation annually to be spent by the municipal officers or a person appointed by them, who shall report to the legislative body annually.

The statement that you have sent to me is not a contract, but merely a promise to do an act in the future. If this were a contract, the officers of the town apparently have no authority to execute it, unless authorized at a town meeting. I do not find anything in Chapter 37 that would authorize the Commissioner to enter into such a contract. Therefore, in the absence of authority to enter such a contract, it would not be binding on the Town of Pembroke.

GEORGE A. WATHEN
Assistant Attorney General

May 13, 1959

To: Peter W. Bowman, M. D., Superintendent of Pineland Hospital & Training Center

Re: Legality of Marriage of Mental Patients

We have your memo of March 30, 1959 in which you ask for a ruling on the legality of marriage in the case of a Pineland Hospital patient; the patient having been married while on a trial visit, age 19 years, Wechsler-Bellevue FIQ 74.

Chapter 166, section 2 of the Revised Statutes of Maine provides that no insane or feeble-minded person or idiot is capable of contracting marriage. Section 51 further provides that any such marriage solemnized in this State is absolutely void, without legal process.

Under such circumstances, where marriage is void without legal process, there is, of course, no way of having such fact recorded. If, as you indicate, you would like something for recording at the Bureau of Vital Statistics, perhaps section 52 of chapter 166 could be used —

> "When the validity of a marriage is doubted, either party may file a libel as for divorce; and the court shall decree it annulled, or affirmed according to the proof; but no such decree affects the rights of the libelee, unless he was personally notified to answer or did answer to the libel."

JAMES GLYNN FROST
Deputy Attorney General

May 18, 1959

To: John B. Nichols, Inspector, Aeronautics Commission

Re: Registration of Aircraft Leased to Residents by Out of State Owners.

We have your memo of February 18, 1959, in which you ask if our present law is sufficient to demand registration of aircraft operated by a Maine resident, which aircraft is leased by such resident from out of state companies whose business is the leasing of aircraft.

It is our opinion that aircraft leased by a Maine resident from an out of state corporation and operated by the Maine resident in this State is subject to excise tax if the aircraft is used in air commerce.

Chapter 24, section 13, II, reads as follows:

> "II. Aircraft. All aircraft owners resident in the state and operating planes in the state shall register such aircraft with the commission and pay a fee of $1 for each registration. All non-resident aircraft owners engaged in air commerce within the state shall register such aircraft with the commission and pay a fee of $25 for each registration."

While this section seems to contemplate registration only by Maine residents *owning* and operating aircraft in this State, you state —

"Section 16 I B however may make enforcement possible, but only if operation is within the state. We quote "It shall be unlawful:" "for any person to operate or authorize the operation of any civil aircraft in air commerce within the state which is not possessed of a currently effective airworthiness certificate and a state registration certificate." By reference to our definitions in Section 3 relative to the "Operation of Aircraft" and "Air Commerce" the paragraph may be sufficient except in those cases where the operator will claim that his flying involves flights to and from Maine but never around in Maine. Would 16 I B help us in court despite the omission in 13 II?"

All sections of law relating to the same subject matter should be read and construed together.

In addition to section 16 I, B, section 16 I, A, is also helpful in considering your problem. We herewith quote both paragraphs:

"Sec. 16. Prohibitions and Penalties.

> "I. Prohibitions. It shall be unlawful:
>
> > "A. for any person to operate or authorize the operation of any civil aircraft which is not possessed of a valid identification mark assigned or approved therefor by the administration, or if owned by a resident of the state, is not also possessed of a currently effective airworthiness or experimental certificate and a state registration certificate;
> >
> > "B. for any person to operate or authorize the operation of any civil aircraft in air commerce within the state which is not possessed of a currently effective airworthiness certificate and a state registration certificate;"

In paragraph A we find a law consistent with section 13, II, in that again a resident owner of aircraft must possess a state registration certificate.

What then, is the effect of section 16 I, B? This section, and sections 13, II, and 13, IV, C, must be read together.

An aircraft owned by a non-resident, registered in another state, and used in this state for a purpose not air commerce, is exempt from registration. (Sec. 13 IV, C)

An aircraft owned by a non-resident, which aircraft is authorized to be used in air commerce in this state, must have a state registration certificate. Sec. 16, I, B.

Air commerce is defined in Sec. 3, Chapter 24, as meaning " . . . the carriage by aircraft of persons or property for compensation or hire, *or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation.*"

From our examination of the above-quoted sections of law, we are of the opinion that aircraft leased by a Maine resident from an out of state corporation and operated by a Maine resident in this state is subject to an excise tax if the aircraft is used in air commerce.

JAMES GLYNN FROST
Deputy Attorney General

May 25, 1959

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

Re: Relating to the Closing of Waters by the Commissioner

We have your memo of April 23, 1959, asking for an interpretation of Chapter 37, Section 9 of the Revised Statutes of 1954 relating to the closing of waters by the Commissioner with the advice and approval of the Advisory Council. You ask the following question:

> "Could a petition be sent in in January, and a hearing held in January, with a ruling made according to the law shortly thereafter?"
>
> Answer: No.

We assume that by "ruling made according to the law shortly thereafter" that you mean: issue an effective rule and regulation.

Section 9 is a law whereby a procedure is established, based upon a petition addressed to the Commissioner of Inland Fisheries and Game, to alleviate a condition which adversely affects the fish in waters in this State. The section sets up the following procedure:

1. Petitions must be filed in the office of the Commissioner on August 1, or before;
2. Hearing on the petition shall be had prior to September 14th of the year in which the petition was filed;
3. After hearing, pursuant to the petitions filed, the Commissioner with the advice and approval of the Advisory Council, shall make such regulations as may be deemed remedial of any adverse conditions proven to exist at the time of said hearing, such regulations to become effective on January 1 of the year next following the date of the petition.

It is our opinion, following the above schedule, that any such rule or regulation promulgated on the basis of petition and hearing on the petition, could not become effective until January of the following year. The words of the statute would clearly prohibit a rule and regulation becoming effective shortly after the hearing held in January, as set forth in your question.

You indicate that it was your belief that the Legislature intended that the hearings be held between August 1 and September 14. As we recall

the most recent amendment to this statute, that, indeed, was the legislative intent.

JAMES GLYNN FROST
Deputy Attorney General

May 25, 1959

To: Stanley A. Jones, Chairman of Harness Racing Commission

Re: Collecting of $10 license fee for Harness Racing

We have your memo of April 6, 1959, relating to the collecting of a $10 license fee for each six days or less of harness racing whether or not pari mutuel pools are sold.

You ask if it is correct for the Commission to collect such $10 license fee for races which do not have pari mutuel wagering.

Answer: No.

In considering the laws of 1952, which laws in relation to your question were then substantially as they are today, the Maine Law Court in *Maine State Raceways vs. LaFleur*, 147 Maine 367, 374, said no license is required of anyone who wishes to engage in the business of harness horse racing if there is no pari mutuel betting permitted.

On the basis of the Law Court decision, it is our opinion that the Commission should not collect a license fee for harness horse racing having no pari mutuel pools.

JAMES GLYNN FROST
Deputy Attorney General

May 25, 1959

To: Miss Ruth A. Hazelton, Librarian, Maine State Library

Re: Stipends — Municipal Appropriations or Expenditures

We have your memo of April 9, 1959, in which you ask if the state stipend as provided for in Chapter 42, Section 33, of the Revised Statutes of 1954 as amended, should be a percentage of the municipal appropriation or a percentage of the municipal expenditure.

In the 1954 revision of our laws, separate sections applied to the stipend to be paid municipalities according to whether the municipality maintained its own free library or secured for its inhabitants the free use of a library in another town.

In each case the 1954 law provided that "the officers shall annually, on or before the first day of May, certify to the State Librarian the amount of money appropriated and expended during the preceding year," for the aforesaid purposes of maintaining a library or securing the use of a library for its inhabitants. The state would then pay over to that municipality a sum of money according to the following formula:

"To municipalities appropriating and expending $475 or less, 10%;

To municipalities appropriating and expending $476 to $1,900, 7%;

To municipalities appropriating and expending $1,901 to $5,000, 4%.

No municipality shall receive annually more than $200. The stipend shall be used for the purchase of books to be placed in said library. (R. S. c. 38, Sec. 25, 1953, c. 308, sec. 75.)"

In 1955, however, the two separate sections of law were substantially integrated and the words "and expended" were eliminated in the formula but remain in the first paragraph of the section.

" 'Sec. 33. State aid for municipalities maintaining free public libraries. The officers of any municipality may certify to the State Librarian annually, before the 1st day of May, the amount of money *appropriated and expended* by said municipality during the preceding year for the benefit of a free public library established therein, or for the free use of a library in an adjoining town. Upon such certification the State Librarian, if satisfied with the quality of service performed by such library, shall approve for payment to such municipality an amount based on the following schedule:"

(Chapter 185, sec. 13, Public Laws 1955)

Payment of the state stipend is conditioned upon the certificate of the municipality. A certificate stating merely that money had been appropriated would not comply with the statute, for the statute says such certificate must be as to money *"appropriated and expended."* If no money could be paid by the state on such a certificate (on appropriation only) it seems clearly that the stipend is based on money appropriated *and* expended.

The deletion of the words "and expending" from the formula does not change the necessity of a township having to expend money for library purposes in order that the state aid be paid, and we are of the opinion that the amount of money so expended is the basis upon which payments shall be made by the state to the town.

JAMES GLYNN FROST
Deputy Attorney General

May 27, 1959

To: Nathan W. Thompson, Esquire
Woodman, Skelton, Thompson & Chapman
85 Exchange Street
Portland 3, Maine

Dear Mr. Thompson:

We have your letter of May 25, 1959 and the attached copy of a proposed lease between the Town of North Haven and the Maine Port Authority, whereby the Port Authority leases property of the town on which to build a ferry terminal.

You ask for our comments on the following paragraph of the lease:

"If following the construction of said Ferry Terminal, Maine Port Authority, or such other body as may be delegated by the Maine Legislature to run a regular ferry service to said Town of North Haven, should for any reason terminate regular ferry service to said Town of North Haven, this lease shall terminate and the ferry terminal shall revert to the Town of North Haven free of any costs or charges."

We understand that there is nothing unusual, when one leases property upon which structures are placed, that at the termination of the lease such constructed property may belong to the lessor. We are also familiar with the fact that leases may provide for the removal of such structures by the lessee.

This office has no objection to the intent of the questioned paragraph; however, in so far as the lease will be executed on behalf of the State, we offer the following amendment (underlined) to the paragraph in order to safeguard State interests:

If following the construction of said Ferry Terminal, Maine Port Authority, or such other body as may be delegated by the Maine Legislature to run a regular ferry service to said Town of North Haven, should for any reason terminate regular ferry service to said Town of North Haven, *for a period longer than two years,* this lease shall terminate and *title to* the ferry terminal shall *vest in* the Town of North Haven free of any costs or charges.

There is the possibility that at some time, even in the infancy of the operation, that some presently unpredictable factor will cause an interruption in service between sessions of the Legislature, — perhaps a lack of funds. The Legislature, however, could well desire to continue the service, and it should have the opportunity to so decide before the facility were to vest in the town, We, therefore, suggest the proposed amendment.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

May 27, 1959

To: David J. Kennedy, Secretary
Commission of Pharmacy
Milbridge, Maine

Dear Mr. Kennedy:

We have your letter of May 18, 1959, in which you ask two questions concerning applicants desiring to take examinations under the provisions of Chapter 68, Revised Statutes of 1954, as amended.

The first question relates to examination for qualified assistants under the provision of Section 7 of Chapter 68.

Question No. 1:

> "May members of the Armed Services take the examination for qualified assistant when their experience in the field of pharmacy has been in the armed forces?"

Answer: No.

Section 7 of Chapter 68 is that section setting forth the qualifications of an assistant.

1. He must be not less than 21 years of age.
2. He shall have served 3 full years "in an apothecary store where physicians' prescriptions are compounded".

Section 33 of Chapter 68 defines, for the purposes of this chapter, the term "Apothecary Store" as meaning:

> "A place registered by the board where drugs, chemicals, medicines, prescriptions or poisons are compounded, dispensed or sold."

The qualification that to be eligible to take the examination for a qualified assistant one must have worked for three years in an apothecary store, means, according to Section 33, work in an apothecary store registered by the Maine Board of Commissioners of Pharmacy. One who has not worked in such a store, but rather in a pharmacy in the armed services, does not comply with the statutory qualification.

Question No. 2:

> "We have applications under the terms of this act from non residents of Maine. Sec. 6 requires only U. S. citizenship. Please clarify for us that we may be consistent with the intent of the law."

Answer:

We assume, by your reference to Section 6, that you are referring to non-residents who desire to take the examination for a regular pharmacist.

There does not appear to be any requirement that one must be a resident of Maine in order to take such examination and be licensed if he is successful.

There is a larger requirement that he must be a citizen of the United States.

If a person is a resident of the United States and otherwise qualified under the provisions of Chapter 68 with respect to age, moral character, education, etc., then we are of the opinion that he need not be a resident of the State of Maine in order to take the examination and be licensed.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

May 27, 1959

To: Honorable Clarence Parker
Senate Chambers
State House
Augusta, Maine

Re: Parking in Municipalities

Dear Senator Parker:

In reference to my letter to you of May 1st regarding L. D. No. 1228, applying the tests relating to prima facie presumptions, it was my opinion that the proposed statute would be unconstitutional. My opinion was based on the factual determination that there was no rational connection between the unlawful parking and the presumption that the registered owner was the party responsible, and further that such legislation would shift the burden of proof to the respondent.

A further study of the law indicates that a majority of the courts of this country have held that there *is* a rational connection between the fact in evidence and the conclusion drawn *in those cases dealing with municipal parking.* These decisions are based upon the difficulty of proof of the person operating the automobile at the time of the violation and the public inconvenience to be averted. *The cases considered do not attempt to use this same logic in justifying an inference of a crime of a more serious nature, even that of speeding.*

Therefore, I feel compelled to explain to you, that by using the same reasoning as the courts did in arriving at a factual determination, my opinion is at a variance with these court decisions.

Very truly yours,

FRANK E. HANCOCK
Attorney General

June 1, 1959

To: Cyril M. Joly, Chairman
Industrial Accident Commission
State House
Augusta, Maine

Dear Sir:

In reply to yours of May 26, 1959, to the Attorney General, in reference to the legal status of Soil Conservation Districts in the State of Maine.

It is the opinion of this office that the Districts referred to are individual corporations and could rightly be considered assenting employers under Section 2, III, of the Workmen's Compensation Act.

The employees of such districts are not presently employees of the State.

Very truly yours,

NEAL A. DONAHUE
Assistant Attorney General

June 1, 1959

To: Maurice F. Williams, Administrative Assistant, Executive Department

Re: Procedure in Filling Vacancies in the House of Representatives

We have your oral request for information relating to the procedure in filling vacancies in the House of Representatives.

It appears that the Governor need not initiate any action but should await a request for a proclamation from interested cities or towns.

The statutes place the burden upon the cities or towns represented to take the steps necessary to fill such vacancies.

With respect to cities, the law is as follows:

> . . . "and when the municipal officers of any city have knowledge that the seat of a representative therein has been vacated, they shall call meetings of the wards for the purpose of filling such vacancy; and like proceedings shall be had at such meetings as at other meetings for the election of representatives. (R. S. c. 5, sec. 58.)"

The laws relating to towns are seen in sections 73 and 74 of Chapter 5:

> "Sec. 73. Vacancies in representative district. —When the selectmen of the oldest town in a representative district are notified or otherwise satisfied, that at the last meeting of the district for the election of a representative no choice was effected, or that the seat of their representative has been vacated, they shall, as soon as may be, leaving a convenient time for calling meetings in the several towns, appoint a day of election to fill such vacancy, and notify the selectmen of the other towns accordingly. (R. S. c. 5, sec. 74.)"
>
> "Sec. 74. Meetings and proceedings. — The selectmen of the several towns shall by warrant call meetings to be held upon the day appointed, and proceedings shall then be had as required by the constitution and laws for the election of representatives on the 2nd Monday of September. (R. S. c. 5 sec. 75.)"

Once the towns or cities have decided upon a date for election, the request will be made upon the Governor to proclaim the facts under the provisions of Chapter 4, section 46.

> "In case a vacancy occurs in any office except that of United States senator, governor or representative to congress which is to be filled at the next biennial state election for which no nomination has been made at the primary election held on the 3rd Monday in June of the same year, nominations shall be made as provided in this section. When such a vacancy occurs, the governor shall, by proclamation, declare such fact and fix a date and place for the meeting of the appropriate committees. Certificates for supplying the vacancy and the manner of placing the name of the nominee upon the ballots shall conform to the provisions of section 56. (R. S. c. 4, sec. 45, 1949, c. 300, 1955, c. 47, sec. 4.)"

The Secretary of State will assist in the procedures requested and, as usual, will administer the details relating to the Governor's proclamation.

We are advised by the office of the Secretary of State that the machinery to fill a vacancy takes at least three to four weeks, so that no steps can be taken to fill the vacancy of this current sitting of the legislature. It has been suggested by the Deputy Secretary of State that, barring unforeseen circumstances, it might be convenient if such elections were to be held at the time of the special September elections; such time for election would call for a minimum expenditure of funds.

JAMES GLYNN FROST
Deputy Attorney General

June 2, 1959

To: Honorable Allan Woodcock, Jr.
Senate Chambers
State House
Augusta, Maine

Dear Senator Woodcock:

We have your request to look into the relationship of the length of the legislative session to the referendum questions being submitted to the people for vote on the second Monday of September. As an example of such a question, one proposed constitutional amendment is being presented to the people on that date.

Under the provisions of Article IV, Part Third, Section 16, acts or joint resolutions of the legislature with certain exceptions not here pertinent including emergency legislation, become effective ninety days after the recess of the legislature.

For reasons discussed hereafter, we believe that the only safe course to follow is to assume that the above referred to ninety-day period should have expired in time for local officers to give seven days' notice to the electors of the coming September 14 election. In other words, the resolve presenting the question to the people should become effective at least seven days before the date of the September election. If the act does become effective in time to permit such posting prior to the election, then many possible difficulties will be obviated.

Article X, section 4, of the Maine Constitution, is that section relating to the procedure to be followed in amending the constitution:

> "Section 4. The legislature, whenever two-thirds of both houses shall deem it necessary, may propose amendments to this constitution; and when any amendments shall be so agreed upon, a resolution shall be passed and sent to the selectmen of the several towns, and the assessors of the several plantations, empowering and directing them to notify the inhabitants of their respective towns and plantations in the manner prescribed by law, at the next biennial meetings in the month of September, or to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of senators and representatives, on the second Monday in September following the passage of said resolve, to give in their votes on the question, whether such amend-

ment shall be made; and if it shall appear that a majority of the inhabitants voting on the question are in favor of such amendment, it shall become a part of this constitution."

It should be noted that this section of the constitution provides that the election at which the people indicate their vote for the proposed amendment must be held on definite dates and that the notice of the inhabitants of the towns and plantations shall be in the manner prescribed by law for calling and holding biennial meetings for the election of senators and representatives. The dates, therefore, on which proposed amendments may be submitted to the people are for the 1959 year, Monday, September 14, (second Monday in September) or the next biennial election date in 1960.

Following this direction, Chapter 52, Resolves, 1959, provides that the proposed Amendment to the Constitution to Provide Continuity of Government in case of Enemy Attack shall be presented to the people at a special state-wide election to be held on the second Monday in September, 1959.

In examining the law for the method of notifying the electors for the election of senators and representatives, we find that Section 16 of Chapter 5, R. S. 1954, directs that the manner of notifying the inhabitants of the biennial election shall be by warrant in the same manner as provided by law in the case of town meetings.

The manner of calling a town meeting is set forth in sections 30-33, Chapter 90-A, R. S. 1954 as enacted by Public Law 405, 1957. Each meeting shall be called by warrant (section 30) and, "an attested copy (of the warrant) posted . . . at least seven days before the meeting, unless the town has adopted a different method of notification." Section 31, IV.

It has been repeatedly and consistently held that noncompliance with the mode of notifying the electors renders the meeting illegal. *State v. Williams*, 25 Maine 561; *Bearce v. Fossett*, 34 Maine 575; *Brown v. Witham*, 51 Maine 29; *Sanborn v. Inhabitants of Machias Port*, 53 Maine 82; *Clark v. Wardwell*, 55 Maine 61.

Thus, notice of the election must be posted seven days prior to the election.

The question arises as to whether the seven days posting is so much a part of the resolve that the legislature must give consideration to the matter.

Generally, no act required to be taken under a legislative enactment may be taken until the enactment becomes effective under the provisions of the constitution.

If this were not so, then the referendum provisions of the constitution (Article IV, Part Third, Section 17) permitting the electors upon petition to the Governor within ninety days of the recess of the legislature to suspend an act, bill, or resolve, until the electors should have voted thereon, would be quite ineffective.

The purpose of the ninety-day period is to permit the people to finally pass on the work of the legislature. The result is that the acts passed are completely ineffective until the ninety-day period passes, unless the act is such that the ninety-day period is not required.

In conclusion, it is our belief that without a doubt the problem of posting is a real one and should be considered by the legislature.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

June 3, 1959

To: Honorable Allan Woodcock, Jr.
Senate Chambers
State House
Augusta, Maine

Dear Senator Woodcock:

You have asked this office to comment upon legislation authorizing the issuance of bonds which legislation, under the provision of Article IX, section 14, of the Maine Constitution, must be ratified by the people. Your question is asked with the thought that this general session of the legislature might continue sitting beyond this week before adjourning without day, and you request our opinion on the steps that should be taken if the legislature does continue to sit until a problem is reached in relation to the term of the session and the date such question can be voted upon.

It has been the custom for one of the bills referring questions to the people for ratification by a referendum vote to contain a date at which such referendum will be held.

Once such a date has been so set, all other referendum questions follow more or less automatically, and are voted upon at the same date.

As we indicated to you in our letter yesterday, such a date was set in Chapter 52, Resolves of 1959, a proposed Amendment to the Constitution providing for Continuity of Government in case of Enemy Attack. We also indicated that, under the provision of Article X, Section 4, Maine Constitution, the dates which proposed constitutional amendments can be voted upon are definitely established as being either the second Monday in September following the passage of the resolve, or the next biennial meetings in the month of November, 1960.

The date for such referendum was set, in the Resolve, for the second Monday in September.

All other referendum questions, would as above stated, be voted upon at the same date.

If the legislature were to sit beyond a point where the posting of notices and day of election could not be accomplished outside the constitutional 90 day waiting period, then all such referendum questions would, presently, be alike affected.

The legislature can take steps to eliminate the problem by proper Legislative Act.

We would point out that the bond issues involved have alternative dates upon which the electors could vote — the next general election, or at a special election.

Absent a special date at which such measures could be voted upon, they would come up for vote at the next general election date in 1960.

We understand that it is not the desire of the legislature to delay a vote until such time, but that the wish is to have a vote this year.

In such a case we offer the following as suggestions for possible solution to the problem:

1. Amend, by resolve, and by two-thirds vote of the members present, Chapter 52, Resolves, 1959, so as to delete the words setting the date of election on the second Monday of September, and insert in their place words indicating that the election will be held at the next biennial meetings in the month of November.
2. (a) Pass a private and special law by two-thirds vote of the members present stating, in general terms, that all bond issue measures being referred to the people for Referendum vote be held at a special election on a date certain (the date to be such as would permit posting of warning and election after the 90 day period following the recess of the legislature has expired); or,

   (b) Amend by a two-thirds vote of those present, one of the bond issue measures which has passed the legislature and been signed by the Governor, to include in such measure a definite date for the special election, having consideration again of the 90 day waiting period and the necessity for posting warning of the forthcoming election.

The foregoing amendments are suggested in view of the fact that the constitutional provisions relating to bond issues are not as restrictive in relation to the dates upon which the people may vote on such measures, as is the provision in the constitution relative to amendments to the constitution.

Such referendum measures may be voted upon "at a general or special election."

The legislature is free to establish such special election date for bond issue referendum when such date is not inconsistent with the above-mentioned 90 day limitation in regard to the effective date of such legislation.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

June 5, 1959

To: Stanton S. Weed, Director of Motor Vehicle Registration

Re: Termination of "national emergency."

We have your memo of May 11, 1959, requesting an opinion as to whether the "time of war or national emergency" has been terminated.

Section 60 of Chapter 22, R. S. 1954 as amended provides as follows:

" . . . on application to the Secretary of State, any person who is serving in the armed forces of the United States in time of war

or national emergency and who is otherwise qualified to operate a motor vehicle in this state, shall receive a license without the requirement of the payment of any fee."

Answer: There still exists a national emergency which has not been terminated.

Emergencies exist when the President of the United States so declares by proclamation, and such emergencies must be terminated by proclamation.

On December 16, 1950, 15 F.R. 9029 by proclamation #2914, a national emergency was declared by the President in view of the Korean events.

By proclamation #2974, April 28, 1952, the President terminated certain national emergencies, that of September 8, 1939 in connection with the enforcement of neutrality; and that of May 27, 1941, which proclaimed an unlimited national emergency, but expressly stated that the existence of the national emergency caused by the Korean events continued.

The emergency declared in proclamation #2914 has not been terminated.

JAMES GLYNN FROST
Deputy Attorney General

June 8, 1959

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Eligibility of City of Saco for National Defense Education Act Funds under Title III

Thornton Academy is actually not a public school within the strict meaning of the term, but it serves as a public school for the City of Saco on a contractual basis. It appears from your memorandum that a joint committee pursuant to Section 105, Chapter 41, Revised Statutes of 1954, operates the school, and the State gives financial aid under the foundation program.

It would, therefore, be my opinion that Thornton Academy should be considered a "public school" for these purposes by the Board of Education as long as the contract and control, as it now exists, remains in effect.

GEORGE A. WATHEN
Assistant Attorney General

June 8, 1959

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Summer School Tuition Charges

In reply to your request of May 27, 1959, for an opinion regarding summer school tuition I note that the fact situation is such that a private school is being operated during the summer. The propriety of use or rental of public school buildings by a private organization is a matter for municipal counsel. Fees may be charged to anyone attending a private school.

Chapter 83 referred to in your memorandum merely authorizes the State Board of Education to inspect and approve standards for summer schools within the State.

Another question which was asked in your memorandum of May 27, 1959, was whether or not a summer school operated by a superintending school committee could charge a fee. Please refer to my memorandum of May 5, 1959, concerning legality of tuition to resident students attending a public school during the summer.

It is my opinion that in one instance we are dealing with a public school and no tuition can be charged to resident students and in the other situation, a private school which may charge tuition.

I have not attempted to answer your question relating to the amount of the fees charged by a private school since that is their own concern. Neither have I attempted to explain how a town may legally lease or rent its school property to a private organization since that is a matter within their province.

GEORGE A. WATHEN
Assistant Attorney General

June 9, 1959

To: Harold I. Goss, Secretary of State

Re: Trailways of New England, Inc. Erroneously Registered as Foreign Corp.

You have referred to us the letter of Trailways of New England, Inc., a corporation which states that it is a public service corporation and further states that it had erroneously registered with the office of the Secretary of State under the provisions of Chapter 53, R. S. 1954, as a foreign corporation doing business in this state. The said corporation would like to correct the erroneous registration. Trailways makes the following statement:

> "Trailways of New England, Inc. is a common carrier of passengers for hire by motor bus duly certified by the Maine Public Service Commission as to its intrastate operations within the State of Maine all pursuant to Chapter 48, Section 1 et seq., of the Revised Statutes. As such, Trailways of New England, Inc. is a public service corporation within the purview of Section 127, Chapter 53, and, therefore, is expressly made exempt from the operation of Chapter 53."

Chapter 53, section 127, Revised Statutes of 1954, reads as follows:

> "Every corporation established under laws other than those of this state, for any lawful purpose, other than as a bank, savings bank, trust company, surety company, safe deposit company, insurance company or *public service* company. . ." (emphasis supplied)

A public service company is a company holding itself out to render service to the public for compensation. The primary purpose for the exclusion of such companies from the requirement of registration under the

provisions of section 127 et seq. of Chapter 43, is because such companies must observe rules in the conduct of their business with the public laid down by some state department or agency other than the Secretary of State. In the case of a common carrier, such carrier would be regulated by the Public Utilities Commission. Trailways of New England, Inc. is registered by our Maine Public Utilities Commission as a common carrier of passengers for hire by motor bus.

A common carrier of passengers for hire by motor bus duly certified by the Maine Public Utilities Commission is a public service company and is exempt from filing under the provisions of sections 127-135 of Chapter 53.

When such a company erroneously complies with the said sections and likewise erroneously pays a fee, such fee can be refunded only by legislative act. We cannot find any statutory authority permitting the Secretary of State to make such refund and, absent such statutory authority, the Secretary of State is powerless to make such refund.

We would suggest that you accept the affidavit supplied by the company, place it on file so as to record the action that has taken place, and to charge no fee for same.

JAMES GLYNN FROST
Deputy Attorney General

June 9, 1959

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

Dear Dr. Sleeper:

This is in response to your request to this office to examine two forms of "Permission for Operation", one entitled A — the other B.

Form A is presently in use in your hospital and form B is suggested by certain of the doctors who believe that expressed authorization of the administration of anesthetics is necessary in order to prevent suits for malpractice.

The general rule seems to have become well established that before a physician or surgeon may perform an operation upon a patient he must obtain the consent either of the patient, if competent to give it, or of someone legally authorized to give it for him, unless immediate operation is necessary to save the patient's life or health, although under exceptional circumstances consent may be regarded as having been impliedly given. 76 A L R 562.

We would point out also, that the general rule for the action for operating without consent seems usually to be regarded as one for assault or trespass rather than for negligence.

We think a consent should be in broad general terms permitting the surgeon to do what he deems, in his judgment, best for the patient.

Form B, excluding the clause relating to anesthetics, would seem to be a sufficiently broad consent along the lines of form 10; 1523, found in Am. Jur. Legal Forms Annotated.

It would seem that the administration of anesthesia and other necessary ministrations incident to an operation would be consented to in a broad general consent. Including specifically the additional consent to application of anesthesia might cause a court to construe the consent as being limited to the things mentioned in the consent. If it is insisted that the anesthesia clause be included, we would recommend also including the following paragraph:

> "Realizing that an operation by modern methods requires the cooperation of numerous technicians, assistants, nurses, and other personnel, I give my further consent to ministrations on the said by all such qualified medical personnel working under the supervision of Dr. before, during, and after the operation to be performed."

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

June 11, 1959

To: The Honorable Joseph T. Edgar
Speaker of the House
House of Representatives
State House
Augusta, Maine

Dear Mr. Edgar:

With reference to your oral request for an interpretation of the term "two-thirds of the members elected to each House" as that is used in Article IV, Part Third, Section 16 of the Constitution, as being the vote required to pass emergency legislation, your question arises as a result of vacancies in the House caused by death — these seats remaining unfilled.

> We are of the opinion that the term "members elected" means the total members originally elected to the Ninety-Ninth Legislature. The phrase requires all members elected to be taken into account whether present or not. (*Pollasky v. Schmid,* 128 Mich. 699; *Clark v. North Bay Village* (Florida), 54 So. 2d 240; Cooley's Constitutional Limitations at Page 291; Law and Practice of Legislative Assemblies — Cushing, Section 261, Page 100; and Mason's Manual of Legislative Procedure, Section 512 at Page 352.)

Very truly yours,

FRANK E. HANCOCK
Attorney General

June 11, 1959

To: Honorable Frank M. Pierce
Senate Chamber
State House
Augusta, Maine

Dear Senator Pierce:

I have your letter of May 28, 1959, in which you request my opinion on Chapter 36, section 84 and Chapter 97, section 38, Revised Statutes of 1954.

Chapter 36, section 84 was first enacted in 1949 by Chapter 363, section 2, Public Laws 1949, and reads as follows:

> "Slash and brush burning permits. — It shall be unlawful for any person to kindle a fire for purposes of clearing land or burning logs, stumps, roots, brush, slash, fields of dry grass, pasture and blueberry lands, except when the ground is covered with snow, without first obtaining a written permit. Requests for permits to burn under provisions of this section may be obtained from state forest fire wardens within the state and from town forest fire wardens outside of the limits of the Maine forestry district. For this purpose the commissioner shall prepare and cause to be furnished to all such state and town forest fire wardens blank permits signed by him. They shall have authority to countersign and grant such permits signed by the commissioner but shall not delegate such authority to subordinates except by written approval of the commissioner. State forest fire wardens working in the incorporated sections of the state shall have authority to countersign and grant such permits signed by the commissioner for any deorganized town or plantation not a part of the Maine forestry district and for state parks. The provisions of this section shall not exempt any person from securing a permit to burn on his own land. Moisture, wind, time of day, length of burning period needed, sufficient force and equipment and any other condition deemed necessary for granting such permits for burning shall be at the discretion of state and town forest fire wardens. Whenever possible town forest fire wardens of towns and plantations outside the limits of the Maine forestry district shall notify their state forest fire warden of any permit issued and particularly of any special burning job. Whenever in the opinion of the commissioner there is a serious forest fire hazard, due to dry weather conditions, he may prohibit all burning under the provisions of this section and in such periods state and town forest fire wardens shall refuse all requests to burn and declare void all permits already issued. Any person to whom a burning permit is granted is in no way relieved of legal responsibility if the fire is allowed to escape or causes damage to property of another. Nothing herein contained shall limit restrictions of any town or plantation ordinance regulating burning of refuse or debris. This section shall not apply to the rights of state forest fire wardens to set a backfire for the purpose of stopping a forest

fire actually burning. This section shall not conflict with the laws on kindling fires on land of another.

"Whoever violates any of the provisions of this section shall on conviction be punished by a fine not exceeding $100, or by imprisonment for not more than 30 days, or by both such fine and imprisonment."

Chapter 97, section 38, is a statute of much older origin, having its first appearance in Chapter 132, section 3, Public Laws 1855. Chapter 26, section 16, Revised Statutes 1857, was written exactly as the law is today.

"When lawful fires kindled. — Whoever for a lawful purpose kindles a fire on his own land shall do so at a suitable time and in a careful and prudent manner; and is liable, in an action on the case, to any person injured by his failure to comply with this provision."

If two statutes are in conflict with each other, then the latest expression of the legislative will prevails; thus, the statutes passed latest in time, would prevail over a prior statute when the two are in conflict. However, if the two statutes can be harmoniously read together so as to give effect to each of the acts, then that should be done.

Both statutes involve the same subject matter — the kindling of fires and conditions to be complied with before such fires are kindled. "All statutes on one subject are to be viewed as one and such a construction should be made as will as nearly as possible make all the statutes dealing with the one subject consistent and harmonious." *Turner v. Lewiston* 135 Maine 430.

Referring to the statutes in question, we are of the opinion that Chapter 36, section 84, embraces all lands within the categories mentioned, whether forest lands or private property situated in a municipality.

Chapter 97, section 38, appears to give to one injured a cause of action, action on the case, in addition to any common law right to an action he may have had for damages caused by one's failure to comply with the terms of section 38 in setting a fire on his own land.

Read together, no man may kindle a fire on his own land if the fire is of the nature described in Chapter 36, section 84, unless he first obtains the permit therein mentioned. Chapter 97, section 38, grants to a party injured by a fire not prudently or carefully kindled on one's own land, a special cause of action which he may not have had at common law.

See Chapter 97, section 59, for authority of Forest Commissioner to appoint forest fire wardens in each organized town, city, and plantation within the State outside the limits of the Maine Forestry District.

Very truly yours,

FRANK E. HANCOCK
Attorney General

June 12, 1959

To: Walter B. Steele, Jr., Executive Secretary of Maine Milk Commission

Re: Establishment of Milk Prices and Classifications

I have your request for an opinion on the following questions:

"Class IIB was established for Aroostook County some ten years ago after hearing and investigation in Aroostook County and is still in force there. May this IIB be established in additional marketing areas without prior hearing in the areas?"

"Also the Augusta, Brunswick, Lewiston-Auburn and Waterville markets have a bulk clause in their schedules to the effect that dealers supplying a person who buys 200 or more quarts per day on a year round basis may sell at 1c per quart less than the scheduled wholesale price. This was established after prior hearing and investigation. May this bulk clause be added in additional marketing areas without prior hearing and investigation?"

In my opinion the answer to both of the questions is in the negative. Section 4, Chapter 33 authorizes the Commission

". . . to establish and change after investigation and public hearing minimum prices. . . ".

Paragraph VI of Section 4 vests the Commission authority to specify prices and make classification after investigation and public hearing. It is further stated that minimum prices in any market which shall apply to the various classifications may vary in the several market areas.

It would thus appear that in viewing the intent of Section 4 in its entirety, that several factors must be considered in price fixing and classification, which may vary in different market areas. Therefore, it would be necessary to investigate and hold public hearings for two reasons — a statutory requirement and the practical necessity for facts to arrive at a determination.

GEORGE A. WATHEN
Assistant Attorney General

June 16, 1959

To: Lloyd K. Allen, Manager of Industrial Building Authority

Re: Office Buildings

I have your request for an opinion on the following fact situation: A corporation has three manufacturing plants in the state in different towns. None of these plants are insured by the Maine Industrial Building Authority. This corporation now wishes to construct an office building in a town apart from where the manufacturing plants are located.

Is an office building eligible for mortgage insurance under Chapter 38-B, Revised Statutes of 1954?

Section 3 of Chapter 38-B authorizes the Authority to insure the payment of mortgage loans secured by industrial projects. The term "industrial project" is defined in paragraph III, section 5, as "any building or other real estate improvement and, if a part thereof, the land upon which they may be located, and all real properties deemed necessary to their use by any industry for the manufacturing, processing or assembling of raw materials or manufactured products."

An office building is not a building or real property necessary for manufacturing or processing and therefore does not fit within the definition

of an industrial project. Reference should also be made to Section 2, Chapter 38-B to determine the purpose of the act.

It is my opinion that the construction of an office building as shown by the facts is not eligible for mortgage insurance under Chapter 38-B upon completion.

GEORGE A. WATHEN
Assistant Attorney General

June 19, 1959

To: Peter W. Bowman, Superintendent of Pineland Hospital & Training Center

Re: Establishment and Enforcement of Traffic Rules and Regulations on Institution Grounds

We have your memo of June 2, 1959, in which you ask this office to define your authority as Superintendent of Pineland Hospital and Training Center as it relates to the establishment and enforcement of traffic rules and regulations on the institution's grounds.

Establishment of enforcible traffic laws or rules and regulations must be authorized by the legislature and enforced by a court. Only a court may collect a fine or penalty imposed for violation of a law or a rule and regulation.

For instance, Chapter 158, Private and Special Laws of 1957, permits rules and regulations to be promulgated by the superintendent of public buildings subject to the approval of the Governor and Council and to be enforced by a special police officer employed by the State. This chapter, however, limits the scope of such rules and regulations to roads and driveways on lands maintained by the State at the seat of government (Augusta) and does not embrace grounds at Pineland.

We are of the opinion that such grounds would be considered public ways and complaint can be made to a court whenever laws relating to such ways are violated.

It would be proper for you to designate certain parking areas for institution employees, but such an administrative act would not be enforcible by way of fine, forfeiture, or like penalty.

JAMES GLYNN FROST
Deputy Attorney General

June 19, 1959

To: Kermit Nickerson, Deputy Commissioner of Education

Re: Teacher's Contracts

You have requested an opinion regarding the following fact situation:

A teacher was employed as a probationary teacher for a period of three years on annual contracts. At the end of the three-year

period, she was elected for a one-year period and both parties executed a written contract. Said teacher was given written notice of termination at least six months prior to the termination of the contract.

Was the one-year contract a valid contract?

The relationship between school authorities and a teacher is created by contract. This contractual relationship still exists after the probationary period. The authority on the part of the school authorities is entirely statutory for the employment of teachers. The extent of the authority to enter into a contract in this case is governed by Chapter 41 of the Revised Statutes of 1954.

See Chapter 41, Section 87, paragraph V, which reads in part as follows:

> "Except that after a probationary period of not to exceed 3 years, *subsequent contracts of duly certified teachers shall be for not less than 2 years*, and furthermore, that unless a duly certified teacher receives written notice to the contrary at least 6 months before the terminal date of the contract, the contract shall be extended automatically for 1 year and similarly, in subsequent years, although the right to an extension for a longer period of time through a new contract is specifically reserved to the contracting parties." (emphasis supplied)

Referring to 78 C. J. S. 1037, Section 185(b.) it is stated that a contract in excess of a term prescribed by statute is void. In *Collins v. City of Lewiston*, 107 Me. 220, the following language is found:

> "When a contract conflicts with a statute the former must yield. Otherwise statutes could be modified or repealed without even the approving caress of the referendum."

It is my opinion that the hiring agent had no authority to execute a contract for one year in the light of the statute.

GEORGE A. WATHEN
Assistant Attorney General

June 24, 1959

To: Harold I. Goss, Secretary of State

Re: Doing of Business in the State of Maine by Foreign Corporations

This is in response to your recent request for an opinion on the question posed in a letter from Harold F. Olsen, Counsel for Boeing Airplane Company, dated April 17, 1959. Mr. Olsen's letter reads as follows:

> "Your advisory ruling is respectfully requested as to the necessity for compliance with the provisions of the Maine Revised Statutes, Chapter 49, Sections 123-131, relating to the doing of business in the State of Maine by foreign corporations under the following conditions:
>
> "Boeing Airplane Company is a Delaware corporation, formally qualified to do business in the states of Washington, Califor-

nia, Florida, Kansas, New Mexico, and New York. It operates major manufacturing plants in Washington and Kansas and a missile test center in Florida. The Company maintains facilities in New York for the sale and distribution of jet transport spare parts and maintains extensive research and engineering facilities in California for certain commercial and government projects located there. The Company employs in excess of 65,000 persons.

"In connection with the performance of a contract with the U. S. Government, the Company is engaged as prime Government contractor in supervising the installation of a BOMARC missile base at Dow Air Force Base. Missiles and related equipment are shipped from outside the state to the site by Boeing and other suppliers, and such missiles and equipment are installed and checked out by an independent contractor under contract to Boeing. Approximately four Company employees have been temporarily assigned to supervise this operation. No local residents are employed by the Company in connection therewith.

"The Company is additionally engaged in a temporary program at Loring Air Force Base under Government contract. This program consists of performing modification work on Air Force B-52-type aircraft located at Loring. Approximately 129 Company employees are temporarily assigned to this program, with less than 10% being local hires. All activity connected with this program is confined to Loring Air Force Base, with no substantial contact outside the limits of the Federal reservation.

"Subject to the information set forth above, the Company has no business office in the State of Maine; it solicits no sales in Maine; it has no property located in Maine; and it has no officers or employees located there who have authority to enter into contracts on behalf of the Company or to make other commitments for the Company.

"The Company has not qualified to do business in the State of Maine, since it appears that the work being performed is not of the type within the purview of the applicable statutes relating to qualification to do business. We request your assistance in providing us with a ruling concerning the matters and conclusions set forth above.

"Your advice and assistance in this regard will be very much appreciated."

We are of the opinion that Boeing Airplane Company conducting business in the manner as outlined above, that it, its activities confined to work on land over which jurisdiction has been ceded to the United States and of a character which is temporary rather than continuous, is not so engaged in business in this State as to require compliance with the provisions of Chapter 53, section 127, et seq., of the Revised Statutes of 1954.

JAMES GLYNN FROST
Deputy Attorney General

July 2, 1959

To: Nathan W. Thompson, Esquire
Woodman, Skelton, Thompson & Chapman
85 Exchange Street
Portland 3, Maine

Dear Mr. Thompson:

This is in response to your most recent letter of June 24, 1959, and attached copy of a proposed clause to be included in the lease agreement between the town of North Haven and the Maine Port Authority, which proposed clause we have studied.

The effect of the clause is to vest the ferry terminal in the town if, for any period longer than two consecutive months, the State fails to provide regular ferry service from Rockland to the town of North Haven. In the interim two-month period the town is to be able to operate the ferry terminal without charge.

This proposal is an alternative to that proposed by this office in our letter to you dated May 27, 1959, that such vesting would take place if for a period of two years such regular service was not provided. This newest proposal is, in our opinion, objectionable for the same reasons stated in our letter to you. It would seem that the town would have achieved its desire if the two-year period as suggested were adopted with the towns having the right to use the terminal without charge in the event regular ferry service is terminated with the terminal vesting in the town after the two-year period.

The statute does not at all contemplate termination of the ferry service. It is a mandate upon the Maine Port Authority to supply the service and the statute provides the means for financing the venture. We believe that compliance with the request of the town would amount to a substantial amendment to the statute.

As we stated before, the two-year period seems to be reasonable when one considers that the legislature meets in regular session only once in two years. We do not see how, in good conscience, we could approve a lesser period.

An alternative may be condemnation of the site. Have you considered this?

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

July 2, 1959

To: Perry D. Hayden, Commissioner of Institutional Service

Re: Interpretation and effect of Chapter 312, P. L., 1959

I have your request for an opinion on the following question:

Does that part of Subsection I, Section 11, Chapter 312 of P. L. of 1959 apply to all life term prisoners or only to those who are released on parole after the effective date of the law, September 12, 1959?

It is my opinion that prisoners released under the present law can have a parole duration of no longer than four years, and those released after the effective date of the new law are subject to the terms of the new law.

Chapter 10, section 21, R. S. 1954, reads in part:

". . . The repeal of an act does not affect any punishment, penalty or forfeiture incurred before the repeal takes effect, or any suit, or proceeding pending at the time of the repeal, for an offense committed or for recovery of a penalty or forfeiture incurred under the act repealed."

Chapter 312, P. L. 1959 does not apply retroactively.

GEORGE A. WATHEN
Assistant Attorney General

July 6, 1959

To: Lloyd K. Allen, Manager of Maine Industrial Building Authority

Re: Custom Printing Plant

You have requested my opinion regarding the eligibility of a custom printing plant for mortgage insurance under Chapter 38-B.

As I have stated in previous opinions, one must have the detailed facts in determining whether or not the project would be considered an "Industrial Project" as defined by subsection III of Section 5, Chapter 38-B.

This is a service as well as a processing operation. In my opinion this may qualify, if they are processing or manufacturing a project as a primary purpose and not incidental to their service aspect. I hope this will be an aid to the Authority in arriving at the factual determination.

GEORGE A. WATHEN
Assistant Attorney General

July 6, 1959

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Payment of Subsidies in December, 1959

I have your request for an opinion on the following question:

> Is the 1958 valuation, as determined by the Board of Equalization, proper to use in computing subsidy payments to be paid in December, 1959?

Answer: Yes. The payments made under the foundation program are based on the 1958 valuation. The amendment of paragraph two of Section 237-E indicates this by removing the words "and effective on September 1st", and including the statement: "Such computation shall be subject to correction in accordance with the final statement filed by the Board of Equalization on December 1st". It appears that a recomputation will be necessary for the December, 1959 payments.

GEORGE A. WATHEN
Assistant Attorney General

July 10, 1959

To: Michael Napolitano, State Auditor

Re: Authorities Subject to Audit by the Department of Audit

We have your memo of May 22, 1959, which reads as follows: "The Department of Audit is governed by the statutory provisions of Chapter 19, Revised Statutes of 1954, as amended. The duties of the State Auditor with respect to postauditing are contained in the following:

> "To perform a postaudit of all accounts and other financial records of the State Government and any departments or agencies thereof . . ."

"My particular concern is with reference to the following:

> *Maine School Building Authority* Chapter 41, Section 243-259, as amended.
>
> *Maine Industrial Building Authority* Chapter 421, Public Laws of 1957 (Special Session).
>
> *Maine Turnpike Authority* Chapter 69, Private and Special Laws of 1941.

"I would appreciate a reply as soon as possible as to whether any of the above are subject to audit by this department."

It is our opinion that each of the above-named Authorities is subject to audit by the Department of Audit.

For a definition of the term "agency" as used in Chapter 19, section 3, Revised Statutes of 1954, we would refer you to an opinion of the Attorney General dated February 6, 1945, and addressed to the then State Auditor.

> "The words "agency of the State of Maine" in this sense mean municipal corporations, which include cities, towns, counties, taxing districts, and other subdivisions of a State erected for the purpose of government or administration."

Where a body organized by the legislature carries on a State function, then it is such a body as would be subject to audit. The exception to this rule would be where the legislature has provided otherwise; such as in the case of those bodies exempt under the code of 1931 or under certain conditions such as the manner in which the legislature dealt with audit of the town records.

With respect to the Maine School Building Authority, it is stated in section 246 of chapter 41, Revised Statutes of 1954, that that Authority is a "public instrumentality of the State."

The Maine Industrial Building Authority is a "public instrumentality of the State," chapter 421, section 4, Public Laws of 1957.

In connection with the Maine Turnpike Authority, our court has said "the Authority takes its powers immediately from the legislature and the enabling act delegates police power of considered precedence. . ."

Section 18 of chapter 69, Private and Special Laws of 1941, states:

> "It is hereby declared that the purposes of this act are public and that the authority shall be regarded as performing a governmental function in the carrying out of the provisions of the act."

For the reasons that each of the Authorities in question are instru-

mentalities of the State performing a State function, and not expressly exempt from audit, we are of the opinion that each Authority is subject to audit under provisions of chapter 19, Revised Statutes of 1954.

JAMES GLYNN FROST
Deputy Attorney General

July 15, 1959

To: Mr. A. Edward Langlois, Jr.
General Manager
Maine Port Authority
Maine State Pier
Portland, Maine

Dear Mr. Langlois:

This is to confirm our telephone conversation on July 15, 1959, concerning the use of the State seal. In regard to the use of the name of the State, I believe it would not be improper since this agency is operating a ferry line which is backed by bonds issued on the full faith and credit of the State of Maine.

May I refer you to Chapter 143, section 8, regarding the use of the State seal, and I would suggest that you request permission from Honorable Clinton A. Clauson, Governor, pursuant to this statute, before using the State seal.

Very truly yours,

GEORGE A. WATHEN
Assistant Attorney General

July 16, 1959

To: Harland H. Harris, Controller

Re: Compensation, Secretary of the Senate

I have your request for an opinion on the following statement of facts:

Senate Order dated June 13, 1959 states "that the Secretary of the Senate shall receive compensation of $1,000 for the year in which the Legislature is not in regular session." Is this order sufficient authorization for the State Controller to pay additional compensation to the Secretary of the Senate?

In my opinion, a Senate Order does not have the force and effect to amend a statute which would be necessary in this case to authorize a salary increase other than that provided in Chapter 10 of the Revised Statutes.

GEORGE A. WATHEN
Assistant Attorney General

July 16, 1959

To: Frank S. Carpenter, State Treasurer

Re: Levy on Accrued Salary of State Employee by U. S. Internal Revenue

In reply to your oral request for an opinion as to whether or not you are required to honor a notice of levy of property of a State employee in your possession by the U. S. Internal Revenue Service:

The case of *Sims, Petitioner, v. U.S.A.* (March, 1959) seems to be in point. There the U. S. Supreme Court stated:

> " . . . and it is quite clear, generally, that accrued salaries are property and rights to property subject to levy. In plain terms Section 6331 (26 U.S.C., Supp. V) provides for the collection of assessed and unpaid taxes 'by levy upon all property and rights to property' belonging to a delinquent taxpayer. Pursuant to that statute a regulation was promulgated expressly interpreting and declaring section 6331 to authorize levy on the accrued salaries of employees of a state to enforce the collection of any Federal tax.
>
> " . . . We think that the subject matter, the context, the legislative history, and the executive interpretation, i.e., the legislative environment, of section 6332 make it plain that Congress intended to and did include States within the term "person" as used in section 6332.
>
> "Accordingly we hold that sections 6331 and 6332 authorize levy upon the accrued salaries of state employees for the collection of any federal tax."

Section 6332 of the Code further reads: "Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand . . . surrender such property or rights, etc."

It is our opinion that the accrued salary of a State employee may be levied upon and that you as State Treasurer, having that accrued salary in the form of a check in your possession, must honor a levy of the Internal Revenue Service.

FRANK E. HANCOCK
Attorney General

July 24, 1959

To: Carleton L. Bradbury, Commissioner of Banks and Banking

Re: Authority of Credit Union to Purchase Real Estate

We have your request for an opinion regarding the authority of a State chartered credit union to purchase real estate.

Section 20, Chapter 55 of the Revised Statutes of 1954 provides for the investment of funds, and sections 21 through 23, both inclusive, set standards for the making of such loans.

There is no authority for credit unions to purchase or deal in real estate; therefore, it is my opinion that State chartered credit unions cannot do so. This opinion does not imply that a credit union may not make loans secured on mortgages on real estate, nor is it intended to dissuade a credit union from pursuing any legal remedy in the event of the default of a mortgage loan.

GEORGE A. WATHEN
Assistant Attorney General

August 5, 1959

To: Robert G. Doyle, State Geologist, Economic Development

Re: Certain legal questions raised by the Beers Co. concerning their impending lease negotiations with the Mining Bureau

I have your request for an opinion concerning the rights of lease holders on public lands.

The basic issue is the relationship between the holders of grass and timber rights and the holders of mining rights on this land.

Section 8 of Chapter 39-B provides that a person who has located a claim and been issued a mining lease:

> ". . . shall have the right of way across any lands owned or controlled by the State to and from said location, and the right to take from public reserved lots all wood and timber necessary to be used in the operation of the mine, by paying to the State or to the owner of the right to cut timber and grass, a fair and just price for the same."

From this language it would appear that there will be no difficulty between the different lease holders. This statute sets out the rights and duties of each.

GEORGE A. WATHEN
Assistant Attorney General

August 6, 1959

To: Fred L. Kenney, Director, Administrative Services, Education Department

Re: Computation of Subsidy under the Sinclair Act

I have your request for an opinion regarding the following questions:

Question 1: How are the subsidies computed in the case where an individual town is admitted after January 1 of the legislative year to a school administrative district in existence on that date?

This question is based on the law which will become effective on September 12.

It is my opinion that we should use the town computation plus 10% in addition to the district's own computation to arrive at the total computation for subsidy. A new district is not being formed, but this is merely

adding to an existing district. I believe this procedure would conform to the computation of subsidy under Chapter 353 of the Public Laws of 1959.

Question 2: Is the subsidy under section 18, Chapter 353, Public Laws of 1959, to a group of towns forming a new district, retroactive?

The district under the section set out would be entitled to the sum of the amounts that the component towns would have received based on a computation that was previously made for the individual towns plus 10% of that amount as a bonus.

Question 3: What is the computation of a subsidy to a district formed prior to the effective date of this Act?

It is my opinion that subsidy will have to be paid to those districts subject to the prior computations for subsidy which have been figured before the effective date of this law. The theory of the new provisions for computation of subsidy is that in the second biennium of the district's existence, the district shall receive a subsidy based on the average net foundation program of the district plus the bonus provided in section 237-G.

The newly formed district has no previous net operating cost experience since we have only the information from the component municipalities regarding that operating cost, which is not necessarily accurate when applied to the district.

If I have failed to answer any of your questions to your satisfaction, please let me know and I will attempt to clarify any points which you feel have been slighted.

GEORGE A. WATHEN
Assistant Attorney General

August 11, 1959

To: C. N. Dyke, Director, Municipal Audit

Re: Fines and Court Costs in Criminal Cases

We have your request for an opinion regarding the disposition by municipal courts and trial justices of fines and court costs in the case of criminal violations of the Inland Fish and Game laws, Chapter 37, and Sea and Shore Fisheries laws, Chapter 38, both of the Revised Statutes of 1954, as amended.

The facts indicate that there has been lack of uniformity in forwarding the fines collected as a result of these violations. Some courts forward the entire fine, while others deduct $5.00 or $10.00 in lieu of court costs.

Section 10, Chapter 108, Revised Statutes of 1954, provides a $5.00 fee in criminal cases and for the disposition of the funds.

Section 129, Chapter 37, provides for the collection and distribution of money received. Except in the case of short lobsters under Section 114, Chapter 38, I believe that the court may retain $5.00 and must pay the rest as the respective statutes provide.

GEORGE A. WATHEN
Assistant Attorney General

August 14, 1959

To: Paul A. MacDonald
Deputy Secretary of State
State House
Augusta, Maine

Dear Mr. MacDonald

This is in reply to your request for an opinion dated July 28, 1959, relative to Chapter 144 of Public Laws of 1959.

The Act amends Section 150 of Chapter 22 of the Revised Statutes principally by adding the following words:

> "only those prior convictions had within the 10 years immediately preceding a conviction shall be considered."

Question #1. Is this Act retroactive?"

Bowman v. Geyer, 127 Me. 351 at 354, sets forth the principles of construction of statutes.

> ". . . There is no general principal better established than that no statute ought to have a retrospective operation. In the absence of any contrary provisions all laws are to commence *in futuro* and act prospectively, and the presumption is that all laws are prospective and not retrospective. (Citation omitted.) It is a rule of statutory construction that all statutes are to be construed as having only a prospective construction. . . unless the purpose and intention of the legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used . . .
>
> "But the presumption against the retrospective operation of statutes is only a rule of construction, and if the legislative intent to give a statute a retrospective operation is plain, such intention must be given effect, unless to do so will violate some constitutional provision . . ."

In our opinion there is no clear expressed declaration contained in the Act in question to give it a retrospective effect nor are there any convincing implications in the language used to make the act anything but prospective in its meaning.

> "Barren of such express commands or convincing implications, the limitation can not be deemed to have been intended to be retrospective. It must be construed by the fundamental rule of statutory construction strictly followed by this Court that all statutes will be considered to have prospective operation only, unless the legislative intent to the contrary is clearly expressed or necessarily implied from the language used . . ." *Miller v. Falon*, 134 Me. 145 at 148.

The answer to your first question is "No".

Because of the foregoing, it is not necessary to answer Question #2.

> Question #3. "If this Act applies only to drunken driving convictions occurring after the effective date of the Act (September 12, 1959) insofar as the determination of second offenses are

concerned, is it correct to consider as second offenders only those persons who received a conviction subsequent to September 12th and have a similar previous conviction within 10 years?"

Since in our opinion the law will act prospectively only, it should apply only to those persons convicted after the effective date of the act, and having a similar previous conviction within 10 years.

Very truly yours,

FRANK E. HANCOCK
Attorney General

August 17, 1959

To: Honorable Harvey R. Pease
Clerk of the House
House of Representatives
State House
Augusta, Maine

Dear Harvey:

We have your letter of June 13, 1959, in which you ask for an opinion as to your duties under the provisions of Chapter 10, Section 7, Revised Statutes of 1954, as amended.

As amended by Chapter 252, Public Laws of 1959, Chapter 10, Section 7, Revised Statutes of 1954, reads as follows:

"He shall when the Legislature is not in session be the executive officer of the Legislature, and unless the Legislature otherwise order, have custody of all legislative property and material, arrange for necessary supplies, and equipment *through the State Bureau of Purchases, arrange for necessary service,* make all arrangements for incoming sessions of the Legislature, have general oversight of chambers and rooms occupied by the Legislature, permit state departments to use legislative property, dispose of surplus or obsolete material *through the continuing property record section of the Bureau of Public Improvements* with the approval of the Speaker of the House and President of the Senate and approve accounts for payment. *The clerk shall maintain a perpetual inventory of all legislative property and make an accounting to the Legislature upon request.*"

You specifically ask (1) for a ruling as to how far you are directed to go in controlling chambers and rooms occupied by the Legislature and (2) must the Clerk of the House approve all accounts, bills, etc., payable from the legislative appropriation when the Legislature is not in session.

Answer to Question No. 1 —

The statute clearly states that the Clerk of the House shall be the executive officer of the Legislature when the Legislature is not in session and, unless the Legislature otherwise order, have general oversight over chambers and rooms occupied by the Legislature.

General oversight of chambers and rooms means overall superintendence; general supervision; and management of such chambers and rooms.

The term "Legislature" as used in the section of law under consideration means the legislative body — the House and the Senate, with the result that the general oversight of chambers and rooms refers to chambers and rooms occupied by either or both branches of the Legislature.

The aforementioned duties of the Clerk of the House may be limited by a joint order of the Legislature.

Answer to Question No. 2 —

"Yes".

Very truly yours,

FRANK E. HANCOCK
Attorney General

August 24, 1959

To: Perry D. Hayden, Commissioner of Institutional Services

Re: Leasing of State-Owned Property

I have your request for an opinion regarding the authority of a state officer to lease a state-owned rock crusher to a construction company.

It is my opinion that you cannot lease public property to a private person.

Section 5, Chapter 27, Revised Statutes of Maine of 1954, charges you with the care, management, custody and preservation of the property of all state institutions but I do not believe this would authorize you to lease public property to a private individual. Public property is held by the State in trust for the people.

Subparagraph VI, Section 34, Chapter 15-A, Revised Statutes of 1954, provides that the Bureau of Purchases shall have authority to

> ". . . transfer to or between state departments and agencies, or sell supplies, materials and equipment which are surplus, obsolete or unused. . ."

I am unable to find any authority for you to execute such a lease.

GEORGE A. WATHEN
Assistant Attorney General

August 31, 1959

To: Marion E. Martin, Commissioner of Labor & Industry

Re: Minimum Wage Law

We have your memo of July 16, 1959, in which you ask 11 questions concerning Chapter 30, sections 132-A to 132-J, as enacted by Chapter 362, Public Laws 1959, an Act establishing a minimum wage.

The Act, with certain classes of employees being exempted, prohibits an employer from paying an employee less than $1.00 per hour, excepting employers employing three or less employees.

Question No. 1. "(Sec. 132-B, III C) Does the "major portion" mean more than half? In other words, if a waitress receives $3 a week in wages plus three meals a day, which would be counted as $7.20 a week for a 6-day week, for a total of $10.20 a week, and she received $15 in tips for the week, is she exempt? Under this formula, she would make $25.20 total for the week, whereas, if covered, and working 48 hours, she would make $48.00."

Answer: Yes. A major portion means more than half.

Question No. 2. "(Sec. 132-B, III C) Upon whom lies the burden of proof as to the amount of remuneration received by a service employee in the form of gratuities? Under the authority of the Commissioner to "make and promulgate . . . rules and regulations. . ." (Sec. 132-H II), would it be proper to require a signed statement from the employee before granting an exemption?"

Answer: The tenor of this entire question is such that we feel compelled to discuss the problems involved at some length.

The Act itself does not change the present law of this State relating to criminal prosecutions. The "burden of proof" required to convict an employer of the violation of the Act will rest upon the prosecution — the State will have to prove beyond a reasonable doubt that the employer is in violation.

The last sentence of this question appears to assume that after some administrative action the Commissioner of Labor and Industry will grant an exemption. The exemptions in the law are granted by statute. Once the provisions of 132 G or H are invoked, then the Commissioner will have to determine whether the evidence gathered is such as will compel the Commissioner to mail the notice provided for in section 132-G and perhaps request prosecution by the County Attorney. Since the County Attorney has the burden of instituting criminal actions against employers, it might be well to consult with him when questionable cases arise in his jurisdiction. In the meantime, and until such time as a complaint is filed against a particular employer, it will no doubt be presumed that employers are obeying the law. For the time being, we are excepting from this discussion handicapped workers and apprentices under sections 132-D and 132-E.

Proceeding to that part of your question relating to rules and regulations, it is our opinion that you do not have the authority to promulgate a rule and regulation requiring a signed statement from the employee. Rules and regulations are proper when such rules and regulations are designed to help achieve a statutory direction. A rule and regulation which goes outside the law, or in effect amounts to legislation, or is inconsistent with law, is void and ineffective. *McDonald v. Sheriff*, 148 Me. 365. The Legislature itself cannot by statute authorize a rule and regulation to take precedence over any then existing statute inconsistent therewith. *McKenny v. Farnsworth*, 121 Me. 450.

The duties of the Commissioner of Labor & Industry are directly limited by sections 132-G and H, Chapter 362. The provisions of 132-H permitting the Commissioner to examine, inspect, and

copy the records of the employer in relation to violation or compliance with this Act only upon receipt of a written complaint, clearly negates, in our opinion, any authority on the part of the Commissioner to promulgate a rule and regulation such as is suggested both in this question and in questions 4, 8 and 10.

A rule and regulation properly promulgated has the effect of law. Chapter 362 denies to the Commissioner the right of access to records pertinent to the problem of minimum wages except as outlined in section 132-H. A rule and regulation providing that the Commissioner could require further papers to be supplied would be inconsistent with the intent of the law and, therefore, improper.

Question No. 3. "(Sec. 132-B, III D) Several rehabilitation agencies have made inquiry concerning their patients who are given employment in local business establishments as part of the rehabilitation program. Wages paid in these cases are low, being consistent with the ability of the patient. Would this exemption for nonprofit organizations or programs controlled by educational nonprofit organizations properly cover these persons, or should they be considered under the handicapped workers provisions of Sec. 132-D?"

Answer: Patients placed by rehabilitation agencies in local business establishments cannot be considered as being employed by a "public supported nonprofit organization" or "educational nonprofit organization", but should be considered under the handicapped workers provisions.

Question No. 4. "(Sec. 132-B, III E) Upon whom lies the burden of proof as to whether or not employees are "regularly enrolled in an educational institution, or are on vacation therefrom"? Under the authority of the Commissioner to make rules and regulations (Sec. 132-H II), would it be proper to require a signed statement from the employee before granting an exemption, or would it be better to require a statement from the school itself?

Answer: See answer to No. 2 above.

Question No. 5. "(Sec. 132-B, III I) In view of the fact that students are not covered employees (III E), should they be excluded from the count of employees for the "3 or less employees at any one location" exemption?"

Answer: Students are not considered as "employees" under the provisions of the Act. They should, therefore, be excluded from the count of employees for the "3 or less employees at any one location" exemption.

Question No. 6. "(Sec. 132-B, III I) If persons working under a rehabilitation program are exempt (Question 3), should they be excluded from the count of employees for the "3 or less employees at any one location" exemption?"

Answer: Handicapped persons employed under the provisions of section 132-D are not exempt personnel but should be included in the count of employees.

Question No. 7. "(Sec. 132-B, III I) In a business where several members of a family are employed, should all persons related to and residing with or dependent upon the proprietor of the establishment be excluded from the count of employees for the "3 or less employees" exemp-

tion, whether or not they are on the payroll? Should all other relatives be included?"

Answer: For the purpose of determining whether a business or service establishment has three or less employees, all persons except such as are exempted by statute who are suffered or permitted to work in that particular establishment should be considered. The minimum wage law does not exempt relatives of the proprietor.

Question No. 8. "(Sec. 132-B, III I) Is an employer required to pay the minimum wage whenever and at such times as he employs four persons and permitted to pay less whenever and at such times as he employs three or less? Alternately, would it be proper for the Commissioner, under the authority to make rules and regulations (Sec. 132-H, II), to set the number of weeks an employer might employ four or more persons before payment of the minimum wage would be required?"

Answer: We believe that the safest course to follow is suggested in your question; the statute be considered as establishing an hourly basis for determining the number of employees and the employer be considered as being required to pay the minimum wage if and when he employs four or more persons and permitted to pay less whenever, and at such times, as he employs three or less.

As indicated above, we are of the opinion that rules and regulations as suggested in this question would be improper.

Question No. 9. "(Sec. 132-B, III I) Are all part-time employees counted as employees when determining the number of employees for the "3 or less employees" exemption? For example, if a store employed two clerks on a full-time basis, and two clerks on Friday and Saturday only, would the store be required to pay the minimum wage to all four for all hours worked; or could they pay less than the minimum Monday through Thursday to the two regular clerks and the minimum to all four on Friday and Saturday; or would they not be considered to have four employees at all? (See Question 8)"

Answer: Part-time employees should be counted as employees when determining whether there are three or less employees in a particular business. The remainder of this question is answered in the preceding answer.

Question No. 10. "(Sec. 132-B, V) For the purpose of computing tips and gratuities under this section, would it be proper to require a signed statement from the employee as to the amount received? (See Question 2)"

Answer: See the answer to question No. 2.

Question No. 11. "(Sec. 132-H, I) Under sec. 2, Chap. 30, R. S. 1954, the Commissioner has a duty to "collect . . . statistical details relative to . . . the daily and average wages paid each employee" and to "cause to be enforced . . . all laws regulating the payment of wages. . ." On January 22, Mr. Frost gave us an oral opinion that the Commissioner had authority to inspect payroll records under Sec. 2 whether or not specific authority to do so was included in a minimum wage statute. Do the words later written into the Act, "upon written complaint setting forth the violation of Section 132-C", take away this authority to enter an establishment to

inspect payroll records, or is this an additional authority to do so when a complaint is made?"

Answer: The purpose of the gathering of statistical material provided for by section 2 of Chapter 30, R. S. 1954, is not related to the minimum wage law, and the method of gathering such material and its use are limited by sections 3 and 4 of Chapter 30. For instance, section 4 permits entrance for the purpose of gathering such statistics only upon the property of certain type establishments: "any factory or mill, construction activity, workshop, private works or state institutions which have shops or factories,". Section 3 limits the use of such material, "such information being confidential and not for the purpose of disclosing personal affairs."

It thus appears that the words "upon written complaint setting forth the violation of section 132-C" (not present in the original bill but inserted by House Amendment "G" to S. P. 472, L. D. 1337) clearly limit the authority of the Commissioner to inspect books, payrolls and other records of the employer for the purpose of ascertaining information relating to the minimum wage law, such inspection being authorized only upon receipt of written complaint setting forth the violation of section 132-C.

JAMES GLYNN FROST
Deputy Attorney General

September 8, 1959

To: E. W. Campbell, Dr. P. H., Executive Officer of Plumbers' Examining Board

Re: Installation of Water Pipes to Heating Plant by Licensed Oil Burnerman

This is in response to your memo of August 18, 1959, in which you point out a present situation relating to the action of a licensed oil burnerman for connecting water pipes to an oil-burning boiler installed by the oil burnerman in his course of business.

It appears that a Plumbing Inspector of the Town of Sanford plans to take legal action against the licensed oil burnerman for such action. As a result of the contemplated action you have prepared a memo to the Director of the Oil Burnermen's Licensing Board in which you state, in essence, that such business has been for years a licensed business of a plumber, and that action will be taken against anyone not possessing a plumber's license who performs such work.

You ask the guidance of our office in the matter.

For our information you attached a memo dated March 2, 1944, written by the then Attorney General to the effect that a hot-water storage tank comes within the intent of the definition of fixtures as contained in section 175, Chapter 1, Laws of 1933. You also enclose a departmental notation of an oral opinion of the Attorney General issued in 1939, that the Plumbers' Examining Board could legally grant limited plumbers' licenses per-

mitting persons who are qualified to install water piping only, or water heaters only.

Your problem deals with the enforcement of a law, violation of which is a misdemeanor. Prosecutions for violation can be commenced by any person having knowledge of the violation — and such person need not be one within your jurisdiction.

In the face of such contemplated action, we feel it is not proper to issue an official opinion on a matter where legal action can be started by someone not at all affected by the opinion.

In so far as the laws in question are administered to some degree by employees of State departments, we feel obliged to offer the following observations in the interests of such administration.

Chapter 82-A, section 2, enacted by Chapter 352, Public Laws 1955, reads as follows:

> "Sec. 2. Definitions. The following words and phrases when used in this chapter shall be construed as follows:
> I. "Oil burner installations" shall mean the installation, alteration or repair of oil and automatic coal burning heating equipment, including industrial, commercial and domestic type central heating plants, and domestic type range burners and space heaters and further including all accessory equipment, control systems, whether electric, thermostatic or mechanical, and all electrical wiring in connection therewith to a suitable distribution panel or disconnect switch, but excluding all other electrical equipment or work in the building or structure where the above equipment is installed."

It is our feeling that a central heating plant is designed to supply heat to certain areas in the manner for which the unit was designed. For instance, a central heating plant designed as a hot-water system, would be utterly and completely useless unless the system for supplying and returning the water to the heating device were to be installed. Thus, we feel that the water pipes connected to such heating plant are necessarily an integral part of the heating plant or, in the alternative, at least accessory equipment as accessory is defined:

> "Webster defines "accessory" (noun) as "1. A thing that contributes subordinately to the effecting of a purpose or to an artistic effect; an adjunct or accompaniment. 2. Any article or device that adds to the convenience or effectiveness of something else but is not essential, as a speedometer on an automotive vehicle." As an adjective: "Of things, accompanying as a subordinate; aiding or contributing in a secondary way; connected as an incident or subordinate to a principal; additional."
> See also *Zangerle v. Republic Steel Corporation*, 60 N. E. 2d 170.

That the Legislature did indeed intend to have the work of the oil burnermen encroach in a field where the plumber has historically worked, is evidenced by section 13 of Chapter 82-A which reads as follows:

> "Sec. 13. Exception. The licensing provisions of this chapter shall not apply to the following:

"II. Any plumber duly licensed under the provisions of sections 170 to 194, inclusive, of Chapter 25, in so far as the work covered by said sections is involved;"

In other words, contrary to the assumption contained in your proposed memo that an oil burnerman is doing the work of a plumber, this statute permits a plumber to hook up water pipes to heating equipment without being required to first obtain an oil burnermen's license. The very section quoted pre-supposes that such connection of water pipes is an oil burnerman's job, which a plumber can do without further license.

In conclusion we would point out that custom and usage will not prevail over a legislative act. Chapter 82-A of the Revised Statutes fills a field which, though occupied by virtue of opinion of the Attorney General in 1944, was never contemplated by legislative act until the enactment of said Chapter 82-A in 1955.

The very limited definition of plumbing contained in Chapter 25, section 179, V, certainly is not inconsistent with the above observations: "The art of installing in buildings the pipes, fixtures and other apparatus for bringing in the water supply and removing liquid and water-carried wastes."

JAMES GLYNN FROST
Deputy Attorney General

September 8, 1959

To: Major-General E. W. Heywood, Adjutant General

Re: State Armories — Joint Utilization of

We have your recent request for an opinion as to whether or not armories in this State are subject to joint utilization projects.

While "joint utilization" is not defined in the material you left with us, it appears that it means the use of our armories by members of the armed forces other than National Guard or State organized military forces.

From our examination of the statutes it appears that armories can be built by two sources:

1. By towns (Chapter 14, section 18, R. S. 1954) in cooperation with the State, or,
2. By the military defense commission from the military fund (Chapter 14, section 18, R. S. 1954).

An armory provided by a town is for the exclusive benefit of the National Guard or other authorized State military or naval forces. Chapter 14, section 18, R. S. 1954: "The municipal officers shall provide and maintain for each unit of the national guard, or other state military or naval forces located within the limits of their municipality, armories and other necessary buildings, the suitability of which shall be determined by the state military defense commission."

An armory provided by the military defense commission from the military fund might be subject to joint utilization. Chapter 14, section

17: "The commission is further authorized and directed to cooperate with the federal government or municipalities in establishing and coordinating national defense in this state, especially in the providing of equipment, training, facilities, suitable quarters for troops and supplies, and buildings and lands for military purposes. The commission may acquire real property by right of eminent domain in the manner prescribed by law for the taking of land for highway purposes, and both real and personal property by purchase, gift or otherwise, for the purpose of construction or maintenance of armories . . . and the procuring of equipment and supplies for military purposes."

Military purposes above-mentioned is defined in section 101 of Chapter 14 as follows:

> "Wherever in this chapter the words "military purposes" appear, they shall mean any purposes that will aid in facilitating the preparation for or conduct of war whether for defense or offense or whether on land, sea or in the air."

In summary it appears that unless an armory has been built from the funds of the state military defense commission, joint utilization would be in violation of our statutes which limit the use of such other armories by members of the National Guard or other State organized military or naval forces.

JAMES GLYNN FROST
Deputy Attorney General

September 21, 1959

To: Marion Martin, Commissioner of Labor and Industry

Re: Minimum Wage Law (P. L. of 1959, C. 362)

We have your request for an opinion on the following:

> "We have received another question concerning interpretation of the new Maine Minimum Wage Law on which we should like a ruling.
>
> "Section 132-B III D exempts 'any individual engaged in the activities of a public-supported non-profit organization.' The question is whether this means "ordinary employees" of a non-profit organization, such as the YMCA or whether it is intended to have some different meaning. The questioner notes the use of the word "employed" in the same Section in connection with private nursing homes and hospitals."

It is our opinion that the phrase "engaged in the activities" is synonymous with the word employed. We therefore feel that the personnel governed by such a phrase would be the "ordinary employees" of the YMCA.

JAMES GLYNN FROST
Deputy Attorney General

September 22, 1959

To: Carleton L. Bradbury, Commissioner of Banks and Banking

Re: Bank Records — Minimum Period of Retention

We have examined the proposed rules and regulations drawn pursuant to Chapter 59, section 197-A, Revised Statutes 1954, as enacted by Chapter 87, Public Laws of 1959, by which the Banking Commissioner is authorized to promulgate rules and regulations classifying and prescribing the minimum period for which bank records shall be retained.

We are of the opinion that enabling legislation is adequate authority for the promulgation of the proposed rules and regulations.

Our examination of the schedule does not reveal any periods of retention which do violence to our laws, but it may be that in such a comprehensive schedule of records, dealing with a specialized business, a particular period of retention is in error. Experience gained with the passage of time will correct such errors.

JAMES GLYNN FROST
Deputy Attorney General

September 22, 1959

To: Carleton L. Bradbury, Commissioner of Banks and Banking

Re: Rules and Regulations re Banks and Trust Companies (Form and Procedure)

We have your memo of August 31, 1959, in which you ask for advice concerning section 2-A of Chapter 59, Revised Statutes of 1954 as enacted by section 2 of Chapter 178, Public Laws of 1959. The said section 2-A reads as follows:

> " 'Sec. 2-A. Department regulations. The Bank Commissioner, with the advice and joint consent of the advisory committees of the savings banks and trust companies, as provided for in section 1, may from time to time make and shall enforce rules and regulations relating to said banks and trust companies, subject to the provisions of this chapter.' "

You state you would appreciate advice as to the Maine statutory law or common law relative to the form in which regulations must be published, formal notification to officials such as the Secretary of State, records of meetings wherein regulations are adopted and any other formalities that should be adopted.

Ordinarily, the statute granting rule making power also sets forth a procedure which must be followed in order for the rules to become effective; hearing on the rules, notice of the hearing, publication of the rules, and perhaps a filing with the Secretary of State, but usually no such filing is required.

Occasionally, the enabling act is as brief as the one in your chapter.

Other than the law directly providing for such rules, this state does not have any general law establishing the form of the rules or the procedure to be followed when an administrative agency promulgates a rule.

Davis, on Administrative Law, 6.01, states the following:

"Except in the states whose statutes require hearings for rule making (. . .), and even in some of these states when the hearing requirement does not apply, the usual maximum requirement is what is prescribed by the Model Administrative Procedure Act — notice and opportunity to submit "data or views orally or in writing."

In cases where the statute authorizing the rules are as brief as that contained in the banks and banking law, perhaps the following procedure could be used:

1. Prepare tentative rules, with the advice of the advisory committee.
2. Send such tentative rules to interested parties and ask that comments be submitted.
3. Set a date on which the rules are to become effective, within which time the requested comments are to be studied, or
   Set a date for a hearing at which time comments on the proposed rules may be presented orally, with the rules to become effective at a subsequent date, having in mind the time required to study the views presented.

No particular form for rules is required, but the system of sections, paragraphs, etc. used in the Revised Statutes would be adaptable to rules, and would tend to make their use more convenient.

The final form of the rules should, in your case, indicate that they have been approved and consented to by the advisory committee.

JAMES GLYNN FROST
Deputy Attorney General

September 24, 1959

To: John J. Maloney, Jr., Chairman
Maine State Liquor Commission
Augusta, Maine

Re: Commission Rule and Regulation No. 69

Dear Mr. Maloney:

We have your request for our opinion regarding the authority of the Commission to establish Rule No. 69.

Rule No. 69 read as follows:

"Holders of Certificates of Approval shall notify in writing the Commission and the distributor affected at least 60 days previous to any change made by them either in their distributors or the territories of their distributors in this state.

"Wholesale licensees shall notify in writing the Commission and the Certificate of Approval holder affected at least 60 days previous to any change in either the territory or the distribution of their products.

"However a Holder of a Certificate of Approval or a wholesale licensee within the above provisions may request a hearing before the Commission and for cause the Commission may shorten the waiting period before approving a change in territory or discontinuing of a distributor. By notifying the Commission in writing a Certificate Holder or a wholesale licensee may waive his 60 day rights, and the Commission may immediately approve this change in territory or distributorship.

"Wholesale licensees whose distributorship have been affected under the above provisions, and who have a remaining stock of malt liquor may sell the same to the holder of Certificate of Approval from whom the malt liquor was purchased.

"Nothing in the foregoing provisions shall be held to permit the taking back of a remaining stock of merchandise in the hands of a retail store, restaurant or tavern because of changes in distributorship or territory within the provisions of this rule."

The authority to make rules and regulations must be found in the statute. The powers and duties of the Commission are set out in Section 8 of Chapter 61, Revised Statutes of 1954, which includes the authority to make rules and regulations relating to manufacturing, importing, storing, transporting and sale of all liquors. Section 18, Chapter 61, Revised Statutes of 1954, provides:

"Certificate of approval; reports; fees. — No manufacturer or foreign wholesale of malt liquor shall hold for sale, sell, or offer for sale, in intrastate commerce, any malt liquor or transport or cause the same to be transported into this State for resale unless such manufacturer or foreign wholesaler has obtained from the Commission a certificate of approval. The fee therefor shall be $100 per year, which sum shall accompany the application for such certificate.

"All manufacturers or foreign wholesalers to whom certificates of approval have been granted shall furnish the Commission with a copy of every invoice sent to Maine wholesale licensees, with the licensee's name and purchase number thereon. They shall also furnish a monthly report on or before the 10th day of each calendar month in such form as may be prescribed by the Commission and shall not ship or cause to be transported into this State any malt liquor until the Commission has certified that the excise tax has been paid.

"*The purposes of this section are to regulate the importation, transportation and sale of malt liquor, also in addition thereto, to regulate and control the collection of excise taxes.*

"The certificate of approval shall be subject to the rules and regulations which the Commission has or may make. Any violation of such rules and regulations shall be grounds for suspension or revocation of such certificate at the discretion of the Commission.

"The fees received under the provisions of this section shall be deposited in the general fund of the State." (Emphasis supplied)

Chapter 61, Revised Statutes of 1954, is a statute enacted under the police power for the protection of the general public. *State v. Frederickson*, 101 Me. 37; *Glovsky v. State Liquor Commission*, 146 Me. 38. We have carefully reviewed Chapter 61 to determine if Rule No. 69 could be properly promulgated by the authority therein. It appears that Rule No. 69 is enacted for the sole purpose of controlling the contractual and business relations between certificate of approval holders, wholesale licensees and distributors in addition to the controls set forth in the statutes. The obvious intent of the Rule does not logically involve Section 8 or Section 18, Chapter 61, which provides for rule making powers in regard to malt liquors. It is our opinion that Rule No. 69 does not bear a reasonable relationship between the rule making authority given the Commission and the intent of Rule No. 69.

A state legislature cannot delegate the legislative power vested in them to an administrative officer, but an administrative officer may be vested by the legislature with administrative powers and functions without violation of the delegation of powers principle. 42 Am. Jur. 335, Section 43; *William A. McKenney et als v. Farnsworth et als*, 121 Me. 450; *City of Biddeford v. Frederick Yates*, 104 Me. 506; *Anheuser-Busch, Inc. et al v. Walton et al*, 135 Me. 57.

Legislation is the power to make and repeal laws. Administration is the execution of these laws. As stated in 73 C. J. S. 325, Section 30.

> "An admixture of governmental powers may be conferred on an administrative officer or body, if there is no delegation of actual legislative power or complete surrender of judicial review, and where the legislature sufficiently prescribes a policy, standard, or rule for the guidance of the administrative body, or otherwise confines it within reasonably definite limits, authority may be delegated to the administrative body to carry out the legislative purposes in detail, and to exercise administrative discretion in applying the law."

The legislature may set forth a broad standard provided it can be reasonably applied in relation to the complexity of the subject. The grant of authority to the administrative body to enact rules and regulations having the effect of law must be found in the law declaring a policy or principle with specific standards to guide the administrator. *Darling Apartment Co. v. Springer*, 25 Del. Ch. 98, 15 A. 2d. 670; *Lyons v. Delaware Liquor Commission*, 58 A. 2d. 889, 44 Del. 304; *Anheuser-Busch, Inc. et al v. Walton*, supra.

The legislature has enacted laws relating to specific phases of the liquor traffic, but has never seen fit to legislate regarding this particular contractual or business relationship.

An administrative body must strictly adhere to the standards and guides set forth in the statutes. Accordingly, its rules or regulations must be within the framework of the standards and guides. The limited standards and guides found within Chapter 61 do not in our opinion authorize the promulgation of Rule No. 69.

We are aware of the fact that other State Liquor Boards or Commissions have adopted a rule or regulation similar to Rule No. 69. Of course, we have no authority, nor shall we attempt to pass upon the validity of

those rules or regulations. We must necessarily base our opinion as to the validity of Rule No. 69 on the authority given to your Commission by our own state statutes and the ruling case law. However, for purposes of comparison and as a matter of information, we cite a Delaware statute which seems most nearly to set forth the proper authorization for such a regulation as the one in question.

Delaware Code Annotated, Volume 2, Title 4, Chapter 3, Section 304, Duties and Powers:

"The duties and powers of the Commission shall be to —

. . . .

(2) *Establish* by rules and regulations an *effective control of the business* of manufacture, *sale, dispensation, distribution* and importation of alcoholic liquors within and into the State of Delaware, *including the time, place and manner* in which alcoholic liquors shall be sold and dispensed, not inconsistent with the provisions of this title.

. . . ." (Emphasis supplied)

There is no like authority contained in the Maine law.

We are of the opinion that the adoption of Rule No. 69 is beyond the scope of any authority contained in Chapter 61 and would therefore be invalid.

Very truly yours,

FRANK E. HANCOCK
Attorney General

September 25, 1959

To: Kermit Nickerson, Deputy Commissioner of Education

Re: Payment of Advance Subsidy to School Administrative District #3

I have your request for an opinion concerning whether or not the Commissioner has authority to make an advance payment of the subsidy to School Administrative District #3 in view of the pending litigation.

Referring to Section 242 of Chapter 41, Revised Statutes of 1954, if the Commissioner is satisfied that a financial need exists and with approval of the Treasurer of State, he may pay up to two-thirds of the estimated subsidy provided a sufficient amount is available to meet any obligations to the Maine School Building Authority.

Although there is a petition in the nature of quo warranto pending before the Waldo County Superior Court, questioning the authority of the school directors of School Administrative District #3 to hold their offices and the exercise of the franchise, I am of the opinion that this in itself is not sufficient grounds for withholding subsidies to the district, if the need has been clearly shown and all steps pursuant to Section 242 are in order. At this time no other administrative unit would be entitled to the subsidy payment, nor are any of the towns which make up School Administrative District #3 entitled to any part of the subsidy. In my opinion, payment to the district is proper, provided all the conditions precedent warrant it.

GEORGE A. WATHEN
Assistant Attorney General

September 29, 1959

To: Scott Higgins, Director of Aeronautics Commission

Re: Appointment of Commissioners

We have your memorandum of September 28, 1959 in which you advise that one of the members of the Aeronautics Commission has recently resigned and it becomes necessary for the Governor to appoint a new member.

You ask the following questions with respect to the new appointment:

1. The length of the term of office the new member should be appointed for.
2. Should all members of the present Commission be reappointed under the amended statute, or
3. Should they serve the present term of office and be eligible for reappointment on a three-year basis?

Your question is caused by an amendment to Chapter 24 of the Revised Statutes as effected by Chapter 120 of the Public Laws of 1959. This latest amendment provided that one member was to serve for one year; two to serve for two years; and two to serve for three years; evidently having in mind that experienced people should always be on the Commission.

In answer to your first question, Chapter 120 did not change that provision of Section 4 of Chapter 24 which provides that vacancies shall be filled for the unexpired term. The newly appointed officer would, therefore, be appointed to fill out the unexpired term of the resigned Commissioner.

An appointment made in such a manner would mean that all members of the Commission would have terms expiring in November or December of 1961. We would, therefore, suggest that in 1961 the Governor then start appointments so as to comply with the terms of office set forth in Chapter 120.

JAMES GLYNN FROST
Deputy Attorney General

October 5, 1959

To: George B. Coffin, Field Representative
Small Business Administration
Rooms 11 and 12
335 Water Street
Augusta, Maine

Dear Mr. Coffin:

We acknowledge receipt of your letter of September 23, 1959, in which you state that Arthur P. MacIntyre, Chief of Investment Division, would like a clarification or ruling on the following questions:

"1. Under the present statute, will the State of Maine issue a charter to a domestic corporation licensed by SBA to do business under the Small Business Investment Act of 1958?"

Answer: Yes.

"2. Will the State of Maine qualify a foreign corporation licensed by SBA to do business under the Small Business Investment Act of 1958 to do business in the State of Maine?"

Answer: Yes.

Prior to the amendment of our law, we have refused to accept such corporations because they were plainly in violation of our law which prohibits businesses organized under the general law from lending money for profit.

However, Chapter 178, Public Laws 1959, amended Chapter 53, section 8, as follows:

> "'Nothing in this section shall be construed to prevent the organization of small business investment companies organized to carry out the provisions of the Small Business Investment Act enacted by the 85th Congress of the United States, and acts amendatory thereto and additional thereto and which become such corporations under said Small Business Investment Act of 1958. Such small business investment companies shall not be deemed banking corporations or institutions.'"

As a result of the above-quoted amendment, we have answered your questions in the affirmative.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

October 5, 1959

To: Ronald W. Greeen, Commissioner of Sea & Shore Fisheries

Re: Quahog Tax Law

We have your request for an opinion concerning the proceeds of taxes collected under Sections 294 through 301, both inclusive, of Chapter 16 of the Revised Statutes of 1954. As I understand it, at the present time one of the taxpayers is litigating the question of the constitutionality of this tax law.

Your specific questions are:

"1. Will I be able to spend money received as a result of this tax which may be paid by other dealers?

"2. Should I discontinue this program and refrain from spending money until this question has been finally determined by the courts?

"3. In the event that the court rules in favor of Mr. Laskey, will the State be responsible for refunding all tax money received since this law became effective?"

In reference to your first question, I would answer in the affirmative. You are charged under Section 301 with the expenditure of the funds for certain purposes as you may determine.

The second question should be answered in the negative.

In reference to your last question, it is a fundamental principle that no person may sue its sovereign without its consent.

I presume that the payments made by the other taxpayers have been on a voluntary basis. 51 Am. Jur. 1005, Section 1167 states:

> " . . . Taxes voluntarily paid without compulsion, although levied under the authority of an unconstitutional statute, cannot be refunded or recovered back without the aid of a statutory remedy . . . "

51 Am. Jur. 1012, Section 1179, provides:

> "The recovery of illegally exacted taxes is solely a matter of governmental grace. In the absence of an authoritative statute, taxes voluntarily, although erroneously, paid cannot be voluntarily refunded, although there may be justice in the claim . . ."

The general rule that money voluntarily paid with full knowledge of the facts applies to taxes. See *Smith v. Readfield*, 27 Me. 145: *Abbott v. Inhabitants of Bangor*, 56 Me. 310; *Creamer v. Bremen*, 91 Me. 508. Each of these cases involves property taxes, but the principle enunciated has application here.

I do not believe it necessary to discuss the personal liability of a tax collector nor the right of recovery of a tax paid under duress when in the hands of a tax collector.

The State may by appropriate legislative means refund this tax but this would not, of course, concern you.

GEORGE A. WATHEN
Assistant Attorney General

October 9, 1959

To: Major General E. W. Heywood, Adjutant General

Re: False Alarms — Calling Out of National Guard

You point out in your memo of October 5, 1959, that some unknown individual called WGAN radio and requested that the Maine Army National Guard be alerted; this without authority or knowledge of your office or any National Guard unit.

You inquire if such action is punishable or unlawful.

From our examination of the laws, it appears that only one section would be available under which prosecution could be had for such action. If the individual placing such call asserted or alleged that he was placing the call as a department head or agent, then we would be of the opinion that the following statute would apply:

> Chapter 143, section 10. "Falsely assuming to be or act as a state official. Whoever knowingly and falsely assumes to be the head of any department or commission of the state, or the deputy, or inspector thereof, or the agent thereof, or any state official, and to act as such, or knowingly and falsely assumes to discharge any of the duties of such official, or knowingly and willfully invites or receives any communication, document, record or letter

properly belonging to such state official or relating to the office or official business of said official, or in any way knowingly and willfully obstructs or delays such official in the discharge of any of his official duties, shall be punished by a fine of not more than $5,000, and by imprisonment for not less than 1 year nor more than 5 years."

JAMES GLYNN FROST
Deputy Attorney General

October 9, 1959

To: Edward Langlois, General Manager
Maine Port Authority
Maine State Pier
Portland, Maine

Dear Mr. Langlois:

This letter is in response to your request for this office to outline your responsibility regarding Chapter 125, Private and Special Laws of 1959, which chapter amends Private and Special Laws of 1929, Chapter 114, section 1, subsection (e), and Private and Special Laws of 1957, Chapter 190, section 1, in the following manner:

> "Ferry service for North Haven, Vinalhaven, Islesboro, Swan's Island and Long Island Plantation. It shall be the duty of the Maine Port Authority to operate a ferry line or lines between the mainland and the Towns of North Haven, Vinalhaven, Islesboro and Swan's Island for the purpose of transporting vehicles, freight and passengers to and from said towns, *and the Maine Port Authority may operate such ferry line or lines to and from Long Island Plantation.*" (Emphasis ours to indicate the effect of the 1959 amendment.)

Initially we note that the quoted provision can be divided into two parts — one portion of the law being mandatory in nature; the second being permissive. The Authority "shall" operate a ferry line or lines between the mainland and the Towns of North Haven, Vinalhaven, Islesboro, and Long Island Plantation, but the last clause indicates the Authority *may* operate such line or lines to and from Long Island Plantation.

There clearly appears to be a deliberate legislative intent to use compelling language with respect to the first class of service, and to use permissive language in the new amendment.

We are of the opinion that with respect to service to Long Island Plantation, the Maine Port Authority is to exercise its administrative discretion in determining whether such service shall be operated, giving due regard to all conditions which might affect that service, including the cost of the service in relation to the retirement of bonds, maintenance, repair, and other such factors.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

October 13, 1959

To: Perry D. Hayden, Commissioner of Mental Health & Corrections

Re: Attendance of Public at a Parole Hearing

We have your request for an opinion regarding the right of the public to attend a parole hearing.

These hearings are held at the institution where the prisoner is held. It is my understanding that these hearings are case evaluations based on the material in the case file and for the purpose of determining whether or not a person should be released from a state penal or correctional institution prior to the expiration of his maximum term.

Chapter 242, Public Laws of 1959, which amends Section 1, Chapter 27, provides in part:

> "All orders of commitment, medical and *administrative records* in the department are held to be confidential . . ." (Emphasis supplied)

Chapter 219, Public Laws of 1959, commonly known as the "Right to Know" law provides in Section 38 that:

> "All public proceedings shall be open to the public, and all persons shall be permitted to attend any meetings of these bodies or agencies, and any minutes of such meetings as are required by law shall be promptly recorded and open to public inspection, *except as are otherwise specifically provided by statute.*" (Emphasis supplied)

It is my understanding that the material used by the parole board for the case evaluation are the administrative records, which are confidential. Therefore, if the public were allowed to attend a parole hearing, it would violate the statute requiring these records to be held confidential. Apparently the intent of the act (Chapter 242, P. L. 1959) was to prevent information of a private nature from becoming public knowledge. Certain confidential information, if released, might adversely affect the rehabilitation of a parolee.

GEORGE A. WATHEN
Assistant Attorney General

October 15, 1959

To: Walter Steele, Executive Secretary of Milk Commission

Re: Bulk Tank Increase

I have your request for our opinion regarding various aspects of the Maine Milk Commission meeting held on July 16, 1959.

Section 4, Chapter 33, Revised Statutes of 1954, vests the Commission with authority to establish and change minimum prices paid by dealers to producers for milk received, purchased, stored, manufactured, processed, sold, distributed or otherwise handled within the State. Section 4 further provides that the Commission shall fix and establish wholesale and retail

prices for milk distributed for sale and lists six types of wholesale and retail sales. As a prerequisite to establishing, fixing or changing prices, the Commission must investigate and hold a public hearing.

The last paragraph of Section 4 provides:

> "The minimum prices established for sales of milk by producers to dealers shall, if such sales are made by bulk tank, be increased by such amounts per hundredweight as may be determined by the Maine Milk Commission."

It appears that establishing or changing prices or classifications must be based on a prior investigation and public hearing and this would apply to a bulk tank increase as well as any other change in prices or classification.

Based on the information in my hands, I believe the meeting of July 16, 1959, was properly called and there was proper notice for the dealers' margin increase.

It appears from the information in my possession that an objection was made to the introduction of any testimony concerning the bulk tank increase. It further appears that testimony was offered by both dealers and producers on the matter of the review of dealers' margins.

In viewing the fact situation in regards a waiver by appearance, the facts do not so indicate regarding testimony on the bulk tank premium.

In reference to the action taken on the bulk tank premium, the real question appears to be whether or not there was due notice of the proposed action.

Due notice is such notice as will apprize all interested parties, whose rights may be affected, of the specific matter to be considered at the hearing and the time and place thereof, so that they may appear to offer testimony or other evidence concerning the matter. The statement concerning the term "due notice" in Black's Law Dictionary is that no fixed rule can be established as to what shall constitute due notice. The notice, in my opinion, must be such as will provide all interested parties with an opportunity to be heard and safeguard their constitutional rights of due process. In the present case, I do not believe there was even an indicia of notice of the bulk tank increase in the public notice. The general catch all clause is not adequate notice.

In the *Appeals of Port Murray* (1950) 71 A. 2d. 208, the facts indicate that after a suspension of minimum prices as an experiment, the Director increased the minimum price of milk. Notice was given of a hearing to consider "measures to be taken to stabilize and assure orderly marketing", "proposals to effectuate a more level production of milk in this State" and "prices to be paid to producers for Class I milk and Class II milk and the prices for sales of milk and cream by and between all persons in respect to whom, by law, the price may be regulated". The court stated in its opinion:

> "The notice did not indicate at all the actions contemplated by the Director and so did not give interested parties proposals that they might criticise or support with proofs and argument. But we may assume that the director had no plan in mind when he called the hearing; he looked to the hearing for guidance in meeting the situation caused by the reduction in the retail price of milk. The

notice, did, however, state comprehensively the several subjects on which the director sought enlightenment. In our opinion the notice was sufficient."

This is cited to indicate the type of notice necessary and further to point out the functions of the Commission.

In my opinion, a hearing held three years ago regarding the subject of bulk tank premiums would not contain proper evidence for the Commission to base a decision on at this time. I conclude this for two reasons:

(1) during the interim conditions may have changed and
(2) the Commission felt that the evidence presented at the hearing on June 21, 1956, was not sufficient to establish a premium.

My gratuitous advice to the Commission in considering the bulk tank premium is to investigate and call a public hearing to determine the amount of the increase.

I did not attempt to answer your last two questions since I do not have enough factual information and these questions, in my opinion, have no bearing on the main issue here involved.

GEORGE A. WATHEN
Assistant Attorney General

October 16, 1959

To: Carleton L. Bradbury, Commissioner of Banks and Banking

Re: Ever-Ready-Chek Plan by Small Loan Companies.

We have your memo of September 10, 1959, and the attached material relating to "Every-Ready-Chek Plan" with the request that we examine the "Plan" to determine if such "Plan" violates any provision of the small loan law.

In essence the "Plan" works as follows:

Upon application, the client is extended a line of credit, definite in amount, but not exceeding $2500. This credit is evidenced by undated check or checks issued to the client, in the total amount of the credit extended.

When and if client desires to use the credit, he endorses and cashes the check, or one of the checks, if more than one such check is issued. At that time, as stated on the sample form supplied by the Small Loan Company, a loan is made.

> "The endorsement by me of any such check and its negotiation shall constitute a loan to me in the amount of the check, effective as of the date of such check, and each such loan shall constitute a renewal of this agreement which will include the amount of the aforesaid check and any prior unpaid principal balances outstanding as of the date thereof . . ."

Payment of the loan is made in monthly installments, which payments may vary in amount, from month to month, as checks are cashed.

Monthly billings would be made to the borrower showing debits and credits to his account.

The interest rate on the loan would, of course, vary from time to time as the balance on the loan were increased or decreased. No passbook in which all payments are recorded is furnished. The monthly statement would supplant such passbook.

We are of the opinion that the "Plan" as submitted to you, and as briefly outlined above, violates express provisions of the small loan law.

Under the "Plan" a prospective borrower has not obtained a loan until such time as he endorses and negotiates a check. While his top credit is established in a piece of paper he has in hand, he receives no further word from the loan company until a date some time after he "borrows" a sum of money. Periodically thereafter he receives a statement, but the mailing of statement has no relationship to the time of the loan; many such loans could in practice, be made, after receipt of the first such statement, before the receipt of a monthly statement.

Such "Plan" is in conflict with our small loan law, especially Chapter 59, section 219, Revised Statutes of 1954, which provide that the loan company shall:

> "I. *Deliver to the borrower, at the time a loan is made,* a statement . . . showing in clear and concise terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the rate of interest charged.
>
> "II. Give to the borrower a plain and complete receipt for all payments made on account of any such loan *at the time such payments* are made, . . ."

It is clear that the formula of the "Plan" does not permit compliance with the above-quoted provisions of law, which provisions of law are mandatory upon the licensee small loan company.

JAMES GLYNN FROST
Deputy Attorney General

October 19, 1959

To: Governor Clinton A. Clauson

Re: Sheriff, Removal of

We are herewith returning to you the petitions requesting that the sheriff of be removed from office.

The petitions were presented to this office with the request that we determine if such petitions constitute an adequate complaint under the terms of the constitution.

It is our opinion that the petitions are insufficient to grant to the governor and council the necessary authority to proceed to a hearing.

The petitions are in the following form:

> "Whereas Article IX, sec. 10, of the Constitution of the State of Maine provides ". . . whenever the governor and council, upon complaint, due notice and hearing shall find that a sheriff is not faithfully or efficiently performing any duty imposed upon him by law, the governor may remove such sheriff from office and with the

advice and consent of the council appoint another sheriff in his place for the remainder of the term for which such removed sheriff was elected",

"And whereas a duly constructed Grand Jury has found the sheriff of and his deputies guilty of gross negligence and other sundry offenses against the welfare of the County,

"We, the undersigned citizens of , hereby make complaint against, and request the removal from office of, the said sheriff of , in accordance with the above named Section of the Constitution of the State of Maine."

Then follow the names of the persons subscribing to the petitions.

NATURE OF PROCEEDING

In this proceeding of hearing and adjudging the governor and council are not

"performing an ordinary executive act, but a quasi-judicial one. To hear and adjudge on complaint after due notice is a judicial function." *Opinion of Justices* 125 Me. 529, 533.

While the findings of the governor and council may not be subject to judicial review, it appears that the substance of the complaint, the adequacy of the notice, and perhaps the mode of procedure before the governor and council, are subject to court review.

"They have been constituted a special tribunal as triers of facts. While not a court in the ordinary meaning of the term, or judicial in the sense that its findings are in any manner subject to review by the regularly constituted courts, up to and including the findings are, at least, quasi-judicial in nature." *Opinion of Justices* 125 Me. 529, 533.

COMPLAINT AND NOTICE

The proceedings being judicial in nature, the complaint initiating the process should substantially be of the nature required to start a regular judicial procedure.

As used generally in the field of law, a complaint is a charge or accusation against an offender made by a person to a proper officer charging that the accused has violated a law.

Such complaints must set forth the facts which constitute the violation, in this case the unfaithfulness or inefficiency, in sufficient form to adequately advise the sheriff of the charges made against him, so that he can appear prepared to defend himself.

The broad charge of "gross negligence" is, in our opinion, an insufficient charge. Such a charge does not advise the sheriff of the facts which constitute the offense. Nor do the words "other sundry offenses" forewarn the sheriff of any particular offenses against which he should be given an opportunity to defend himself.

Of course, the complaint and the "due notice" required by the constitution are tied together, hand to hand.

"Due notice" is such notice as will adequately advise an offender of the facts comprising the offense with which he is accused.

The "due process clause" of our constitution requires that the notice called for in a judicial or quasi-judicial case be as indicated above — adequate to advise the accused of the specific offense.

Without a proper complaint the "due notice" cannot be given, for the notice is based upon the allegation in the complaint.

A comparable case can be found in the laws relating to teachers in our public schools.

> "After due notice and investigation they (the superintending school committees) shall dismiss any teacher who proves unfit to teach, or whose services they deem unprofitable to the school, giving to the teacher a certificate of dismissal and of the reasons therefor. . ."

The notice in such case was that the committee was "to act upon the advisability of Lucinia E. Hopkins teaching said school, at which time and place said Lucinia E. Hopkins might present herself and be heard in the matter, if she desired."

The court said in *Hopkins v. Bucksport* 119 Me. 437, 441:

> "As notice to the plaintiff of the object of the meeting, such a statement is wholly insufficient; from it she could not know for what reason her dismissal was sought, whether upon the ground of moral unfitness, temperamental unfitness, or lack of educational qualifications; much less whether it was sought on the ground that her services were deemed to be unprofitable to the school. . . She was entitled to know in advance on what ground her dismissal was sought."

For the above reasons we conclude that the complaint is insufficient.

We would also advise that our files reveal that on three prior occasions the governor and council have acted upon complaints under the same constitutional provision. In each of the instances the complaint was in the usual affidavit form, being sworn to by the complainant.

In the most recent matter in 1951 after a grand jury investigation the foreman of the grand jury was the complaining party to the governor and council. In the present instance after the grand jury investigated they made certain findings and recommendations with intentions of reviewing the situation in the January term, 1960.

FRANK E. HANCOCK
Attorney General

October 19, 1959

To: Asa A. Gordon, Coordinator of Maine School District Commission

Re: Election of School Directors

I have your request for an opinion regarding the manner of electing school directors by a municipality. Chapter 323, Public Laws of 1959, provides as follows:

"For the purpose of nominations, school directors shall be considered municipal officials and shall be nominated in accordance with Chapter 90-A or in accordance with a municipal charter, whichever is applicable."

The directors should be elected in the same manner as other municipal officials. Section 37, Chapter 90-A provides:

". . . the following provisions apply to the election of all town officials required by section 35 to be elected by ballot, . . ."

In subsection I of Section 37, it states:

". . . the town shall determine, by a separate article in the warrant, which other officials are to be elected according to this section, . . ."

School directors are elective officials, not appointive, therefore, it is not necessary to hold a meeting to designate them as officials to be elected by secret ballot, since they are covered by the provisions of Chapter 90-A.

GEORGE A. WATHEN
Assistant Attorney General

November 4, 1959

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Secondary Schools — Admission of Students

I have your request for an opinion regarding the admission of students to secondary schools.

Section 102, Chapter 41, provides that the superintending school committee

". . . shall make such examination of candidates for admission to said school as they consider necessary."

Section 44, Chapter 41, states:

"Subject to the provisions of this section and subject to such *reasonable* regulations as the superintending school committee. . . shall from time to time prescribe, every person between the ages of 5 and 21 shall have the right to attend the public schools in the administrative unit in which his parent or guardian has residence." (Emphasis supplied)

Chapter 41 provides for compulsory education and also sets forth the duties of administrative units for support of free high schools.

The school committee has the authority to make reasonable regulations for admission to secondary schools and to examine those who wish to attend. It would seem to me that the examination and regulations would have to be set up based on the preparatory education offered by the administrative unit. If a child has satisfactorily passed the elementary courses, this is an indicia that he could profit from attendance in a secondary school. The school committee has authority to require further proof, but any tests should be commensurate with the program offered. I do not believe the tests should be a means of molding all students to one type of high school program. It is my understanding that the function of

education is to develop the capabilities of each child to the fullest for the benefit of society in general. I mention this to indicate what I believe is the basis of reasonable rules and tests to determine whether or not a child can profit from attendance at a school as set out in Section 102, Chapter 41.

GEORGE A. WATHEN
Assistant Attorney General

November 5, 1959

To: Perry D. Hayden, Commissioner of Mental Health & Corrections

Re: Sale of Surplus Products from State Institutions

I have your request for information concerning the authority of the Department of Mental Health and Corrections to dispose of surplus farm products produced at State Institutions.

It appears that the Bureau of Purchases has authority to dispose of this surplus property under Section 34, VI, Chapter 15A.

Section 36 provides that the purchasing agent with the approval of the Commissioner may adopt rules and regulations for certain purposes. Subsection VI states one of the purposes for which rules may be promulgated, to wit, providing for the transfer of surplus supplies, materials, and equipment from one department to another and the disposal by private or public sale of supplies, materials and equipment which are obsolete and unusable.

Section 39 provides that competitive bidding may be waived by the purchasing agent when the interest of the State would be best served thereby.

GEORGE A. WATHEN
Assistant Attorney General

November 5, 1959

To: Maine Employment Security Commission

Re: Amount Available for Construction of M.E.S.C. office building

We have your request for an opinion regarding two questions:

1. Should the expenditure of $2,950 for architectural fees be charged against the funds provided under Chapter 150, Private & Special Laws of 1957?
2. How much money is available to the M.E.S.C. to complete the project?

Chapter 150, Private & Special Laws of 1957 provided that the Commission was authorized to requisition $600,000 from the unemployment trust fund for the purpose of constructing an office building and other purposes incident thereto. Section 7 of Chapter 150 provided that the funds could only be used for expenses incurred after the date of enactment of the appropriation, and Section 8 provided that the moneys should be *expended* within a two-year period after the date of the enactment, which date was August 28, 1959.

Chapter 113, Private & Special Laws of 1959, effective April 22, 1959, as emergency legislation, amended Section 8, Chapter 150, Private & Special Laws of 1957, to provide that the moneys must be obligated instead of expended prior to the two-year period. Therefore, all funds not obligated prior to August 28, 1959, were lapsed.

Chapter 153, Private & Special Laws of 1959 was enacted on September 12, 1959, and carries an authorization for the Commission to requisition $600,000 for the purpose of constructing an office building in a like manner as set out in Chapter 150, Private & Special Laws of 1957.

It is my opinion, based on the facts presented, that the $2,950 referred to in the first question should be allocated to the funds provided under Chapter 150, Private & Special Laws of 1957, as amended, since this amount was obligated prior to the date the funds were to lapse. The Council Order of October 2, 1957, indicates this source also. This expenditure could not be paid from the Chapter 153, Private & Special Law appropriation because of the language in Section 7 thereof.

In reference to the second question, Chapter 153, Private & Special Laws, plainly sets out the amount of the appropriation at $600,000, which is the amount now available for the purposes of the act.

GEORGE A. WATHEN
Assistant Attorney General

November 6, 1959

To: George A. Lasselle, Augusta State Hospital

Re: Board and care of patient committed as a result of prosecution for criminal offense

I have your request for information regarding cost of support of a patient committed to the State Hospital as the result of criminal offense and this patient's transfer from a penal institution. A person who is found not guilty by reason of insanity, or when the grand jury omits to find an indictment for that reason, and the party is properly committed to the hospital, the person shall be supported at his own expense if he has sufficient means; otherwise, at the expense of the State. Sections 117 and 121 of Chapter 27, R. S. 1954.

Section 129, Chapter 27, provides for support under the provisions of Section 137 to 139, inclusive, for the commitment of persons who are insane when a motion for sentence is made and proceedings for an insane person at the expiration of term of commitment.

In my opinion, prisoners who are transferred from a penal institution should not be held liable for support since they are still under sentence for a crime. If they recover prior to the expiration of their sentence, Section 125 of Chapter 27 requires they be returned to the penal institution to serve the balance of their sentence. If, on the other hand, they remain in the insane hospital under proper commitment after the expiration of their sentence, they are then liable to pay for support.

GEORGE A. WATHEN
Assistant Attorney General

November 10, 1959

To: Kermit Nickerson, Deputy Commissioner of Education

Re: Construction Aid

I have your request for an opinion concerning the aid to be paid to eligible municipalities and school administrative districts for this year under Section 237-H, Chapter 41, R. S. 1954.

Prior to the effective date of the amended section, all eligible units who reported cash payments, principal and interest payments, and lease payments for capital purposes would receive construction aid in the same percentage that they were entitled to receive that year on operational cost. This section provided a penalty for an administrative unit that failed to complete the project.

Chapter 353, P. L. 1959 amended Section 237-H, effective September 12, 1959, to provide that no financial assistance shall be paid until school construction has been completed and a full report of the cost of said construction and other expenses for capital outlay purposes is made to the Commissioner. After completion and the receipt of a report on November 1, the Commissioner shall apportion the same percentage for capital outlay purposes, except money contributed to defray part of the cost of the project, as the unit would be entitled to receive that year based on Table II of Section 237-E. In regard to money contributed by the administrative unit to defray part of the cost of the project, the Commissioner may pay the State's share in one year or spread it over a period not to exceed five years. The Commissioner may shorten the payment period but not extend it after the original determination.

The question has arisen regarding building aid on projects which were started prior to the effective date of Chapter 353, P. L. of 1959, and to be reported after the effective date thereof.

Laws are not retroactive unless the statute provides so specifically. *Bowman v. Geyer*, 127 Me. 351.

In my opinion the Commissioner should make payments this December on projects begun prior to September 12, 1959, for expenditures made for all capital outlay purposes prior to September 12, 1959, and reported this year as required by statute. In all probability these projects will be completed prior to the next reporting period. These payments should be made both on money contributed to the project by an administrative unit and payment to retire interest and principal on notes or bonds issued for the project.

The amendment to Section 237-H contemplates the possibility that an amount of money will be contributed for capital outlay purposes by various administrative units which might exceed the amount provided by the State for this purpose. In such an event, the Commissioner may spread the payments.

GEORGE A. WATHEN
Assistant Attorney General

November 18, 1959

To: P. W. Bowman, M. D.
Superintendent
Pineland Hospital & Training Center
Pownal, Maine

ATTENTION: Doris Sidwell-Thompson, M. D.

Re: Transfer of Patients from Pineland

Dear Dr. Thompson:

We have your memo of October 8, 1959 referring to a June 1, 1959 memo from the undersigned to Commissioner Perry Hayden concerning "Transfer of Inmates Between State Institutions" and an excerpt from the Attorney General's Report of 1945-46, dated April 9, 1945, on the same subject.

It was the essence of the two aforementioned opinions that transfers from the Augusta State Hospital to Pineland Training Center related only to transfer of persons who were serving a sentence, and as a result patients from Pineland should not be transferred to either of the State Hospitals.

Your problem relates both to transfer of patients from State Hospitals to Pineland, and transfer of patients from Pineland to State Hospitals.

We have given your question considerable study and believe that at this time we should revise the opinion of April 9, 1945 and the memo of June 1, 1959, which latter memo was based upon the earlier opinion.

The pertinent portions of Section 13, Chapter 27, Revised Statutes of 1954, relating to the immediate problem reads as follows:

> "Sec. 13. Transfer of inmate to other institution; original sentence to continue. — Any person who is committed to a state penal, charitable or correctional institution and is under the control of the department, who becomes insane, or who is found to be insane by the examination authorized by the preceding section, shall be transferred to either of the state hospitals, and any person who is committed to a state penal, correctional or charitable institution and is under the control of the department, who in the opinion of the head thereof is in such condition that he or she is a fit subject for the Pownal state school, shall be transferred to the Pownal state school whenever, in the judgment of the commissioner, the welfare of the patients and inmates, or of either institution, or of the person will be promoted thereby. . .
>
> "Such patient shall be there detained in custody in the same manner as if he or she had been committed thereto originally. The transfers authorized in this and the preceding section shall have no effect on the original sentences which shall continue to run, and if the original sentence has not expired when the patient has been declared ready for discharge or release, the patient shall be returned to the institution to which he or she was originally committed. . . ."

We are of the opinion that section 13 is severable; that on the one hand State penal and correctional institutions are dealt with, in which

case the second paragraph of section 13 relating to the effect such transfers would have on a sentence would be applied; and on the other hand, State charitable institutions are also dealt with. In the latter case, that portion of section 13 relating to sentences would apply only if that person in the charitable institution was serving a sentence.

The State charitable institutions referred to in section 13, in our opinion, include the Pineland Training Center and the Augusta and Bangor State Hospitals. State charitable institutions being so construed, we are of the further opinion that transfers of patients may be made between those institutions by administrative action in the manner indicated in section 13.

It is, therefore, our conclusion that patients may be transferred between the State Hospitals and Pineland, and Pineland and the State Hospitals, under the provisions of section 13, Chapter 27, Revised Statutes of 1954.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

November 19, 1959

To: Earle R. Hayes, Executive Secretary of Maine State Retirement System

Re: Maine Maritime Academy — Participation in Old Age and Survivor's Insurance Program

We have your memo of October 13, 1959, relating to the Maine Maritime Academy and that Academy's participation in the Old Age and Survivor's Insurance Program.

In an opinion dated April 9, 1958, we indicated to you that the Academy did not conform to the definition of political subdivision as set forth in Chapter 65, section 2, Revised Statutes of 1954 (Social Security Act) so long at the State of Maine continued to pay those expenses of the Academy that normally would be paid by the Academy if it were a political subdivision of the State and participating as such in our Maine State Retirement System.

You presently ask if the Academy would be entitled under our law to participate in the Social Security Program if the Academy were in the Maine Retirement System, paying its own cost in that program as a local participating district.

The answer to your question is, Yes.

Chapter 288, Public Laws 1957, as we indicated in our memo of April 9, 1958, placed the Academy in the position of being able to participate in the Social Security Program "on the same and equal footing with the other State instrumentalities mentioned in the Social Security law." Chapter 288 reads as follows:

> "The provisions of this chapter shall also apply to employees of the University of Maine and Maine Maritime Academy who are members of an existing retirement or pension system."

(This Chapter amended our Social Security law, Chapter 65, section 1, Revised Statutes of 1954.) In our opinion that meant that the Academy must, as did other such instrumentalities, have such a separateness of identity as would bring it within the definition of "political subdivision" as set out in Chapter 65, section 2, Revised Statutes, 1954.

The assumption by the Academy of the costs of participation in the Maine Retirement System achieves a separateness required by the Social Security Act, and we are of the opinion that under such circumstances the Academy is qualified to participate in the Social Security program.

JAMES GLYNN FROST
Deputy Attorney General

December 7, 1959

To: Carleton L. Bradbury, Commissioner of Banks and Banking

Re: Conversion of a State chartered savings and loan association to Federal charter

In my opinion, the language of Section 169, Chapter 59, is not sufficiently broad to allow a state chartered savings and loan association to convert to a Federal charter.

There is no specific authority given under the Maine Banking Laws relating to loan and building associations for such conversion to a Federally chartered association, such as is the case with trust companies (Section 145 through 149, Chapter 59).

Therefore, it would appear there is no present method of conversion of a Maine loan and building association to a Federal charter. If the Department of Banks and Banking has no objection to this principle, it might properly be a subject for amending legislation.

STANLEY R. TUPPER
Assistant Attorney General

December 10, 1959

To: Perry D. Hayden, Commissioner of Mental Health and Corrections

Re: Chapter 242, Public Laws 1959

I have your request for an opinion regarding whether or not the following are confidential under Chapter 242, Public Laws 1959:

(a) decisions of the parole board in respect to the parole of a prisoner
(b) date of parole eligibility of prisoners
(c) the time and place of parole release

A further request has been received concerning your authority to provide the State Police with the name and place of persons on parole.

It is my opinion that the decisions of the parole board which include the date of eligibility for parole of prisoners, information used by the

parole board to make the determination, and the time and place of parole release are "administrative records" as used in Chapter 242, P. L. 1959, and, therefore, are held to be confidential.

In reference to your second request, I believe such notification is proper as an administrative act to insure cooperation between the law enforcement agencies. It does not seem that Chapter 242 was designed nor has the effect of impeding the exchange of information between the various law enforcement agencies when such information is requested or given to aid the enforcement agency in the performance of a duty.

GEORGE A. WATHEN
Assistant Attorney General

December 10, 1959

To: Allan L. Robbins, Warden, Maine State Prison

Re: Inmate Funds

We have your memo of December 4, 1959, in which you ask for our decision on whether you are legally permitted to put inmate funds (running between $10,000 and $25,000) in a savings bank, or other interest paying establishment, and placing the paid interest in the inmate's benefit fund or a created prison educational or recreational fund.

It is our opinion that you would not be legally permitted to mingle funds of the prisoners, place them in a savings bank and apply the interest to an inmate's benefit fund or a prison educational or recreational fund.

Section 48 of Chapter 27, Revised Statutes of 1954, as amended by Chapter 65, Public Laws of 1959, is the statute regulating the handling of prisoners' funds. In its present form this section reads as follows:

> "The warden shall receive and take care of any property that a convict has with him at the time of his entering the prison, keep an account thereof, and pay the same to him on his discharge."

If interest were to be taken in the manner described above and applied to a fund such as is mentioned, we believe such would be the taking of private property without due process and would be an unconstitutional administration of an otherwise constitutional statute.

JAMES GLYNN FROST
Deputy Attorney General

December 15, 1959

To: Walter B. Steele, Jr., Executive Secretary of Maine Milk Commission

Re: Chapter 219, Public Laws of 1959

Reference is made to your memo of November 3, 1959, addressed to George A. Wathen, Assistant Attorney General.

Reports of private individuals to government officials pursuant to statutes do not constitute "public records." (See *People ex. rel. Stenstrom v. Harnatt*, 226 N.Y.S. 338, 341).

It was not the intent of the Maine Legislature that private books and records which happened to be in the hands of a public agency for inspection should be open to the public. If, otherwise, it would be manifestly unfair to private citizens cooperating with that agency.

STANLEY R. TUPPER
Assistant Attorney General

December 16, 1959

To: Marion Martin, Commissioner of Labor and Industry

Re: Taxi Drivers under the Minimum Wage Law

I have your request for an opinion regarding whether taxicab owners are required to pay their cab drivers the minimum wages under Chapter 362, Public Laws 1959.

Section 132-A, Chapter 30, as enacted by Chapter 362, Public Laws 1959, sets forth the declaration of policy which is to provide wages sufficient to employees to provide adequate maintenance, to protect their health and to be commensurate with the value of the services rendered. Section 132-C states that $1.00 per hour is such a rate as will provide the requisites as set out in the declaration of policy.

Section 132-B, subsection III defines the term "employee" and provides exclusions thereto. In looking at the exclusions, I do not feel that A through H apply to taxicab drivers. Subsection III I provides an exclusion for "Any individual employed in a business or service establishment which has 3 or less employees at any one location."

In my opinion, this clearly exempts individuals who are so employed and does not exempt the industry or company employing more than three in a location.

The fact situation indicates that not all taxicabs operate in the same manner; that is, some drivers work from a central office or dispatch office, while others operate from rented stands; others cruise and use free stands. It appears that in each of these methods that orders are relayed to them by phone or radio. It is my understanding that drivers who are on a stand do not necessarily return to that stand. Salaries of the drivers are paid on a commission basis plus tips. The commission paid drivers range from 35% to 40% of the gross receipts. From information available it is not possible to get an accurate statement of the amount of tips received by the drivers. Therefore, I must assume that none of the drivers would be exempted from the definition of employee by reason of subsection III C which excludes "any individual employed as a . . . service employee who receives the major portion of his remuneration in the form of gratuities;"

I am basing this assumption on the fact that taxi drivers do not receive the major portion of their salary from tips, without the necessity of determining whether the cab drivers are "service employees" as defined by subsection III C.

It is my opinion that taxicab drivers are not exempt from the term "employee" and therefore must be paid the minimum wage of $1.00 per hour as determined under subsection V, section 132-B. There are distinguishing aspects between driving busses and trucks, and the job of a cab driver. The cab owner has complete control of the operation of his cabs. The municipality generally regulates where cabs may park and discharge passengers. I do not believe a taxi or a taxicab stand is a business or service establishment as set out in subsection III - I. An establishment is defined by Webster as "The place where one is permanently fixed for residence or business; residence including grounds, furniture equipage, retinue, etc., with which one is fitted out; also, an institution or place of business, with its fixtures and organized staff, . . ."

The term "business" has been defined by our courts as that which occupies the time, attention, and labor of men for the purposes of livelihood or profit. *State v. Brown* 135 Me. 39. The statute uses the term *business or service establishment* which has a different meaning than "using a place for business purposes" or "place of business."

In conclusion, I believe the statute must be changed in order to exempt taxicab drivers from the effect of the minimum wage law.

GEORGE A. WATHEN
Assistant Attorney General

December 29, 1959

To: S. F. Dorrance, Assistant Chief Division Animal Industry, Agriculture

Re: Damage to poultry

I have your request concerning the poultry damage which was claimed to have been done by fox.

Section 18 of Chapter 100 provides a procedure for making such claim and also authorizes the Commissioner of Agriculture or his agents to investigate and adjust the claim. Based on the information you have given me, I agree that there is not sufficient legal evidence to determine that these birds were killed by wild animals.

Section 18, Chapter 100 provides that the investigator must have evidence legally establishing the liability of the State. Therefore, I believe this evidence would have to be such that would satisfy your department in paying such a claim. It is difficult to give an opinion since this must be factual determination in which I will not attempt to interpose my thoughts regarding the facts. The facts must establish legal liability of the state, however.

GEORGE A. WATHEN
Assistant Attorney General

December 31, 1959

Honorable James P. Archibald
Justice, Superior Court
Aroostook County Court House
Houlton, Maine

Re: Grant to the United States of Easement on Public Lot in Township D. Range 2, W.E.L.S., Aroostook

Dear Judge Archibald:

I am sorry that this letter has not been written to you sooner but I wanted to get the consensus of the office before it was sent.

I have examined the above deed and related papers for the purpose of determining the necessity or propriety of including in that deed a clause which might recognize the rights of other people, particularly the owners of the timber and grass rights on such lot, to use the easement therein conveyed in common with the United States Government.

The deed has been recorded in the land office and sent to the United States Government on November 5, 1959. It is our understanding that in order for the Federal Government to deed the property back to us, in order that a correction would be made, would take an act of Congress. At any rate, the instrument is now in the hands of the United States and it would take quite a process to have it returned.

Despite the above, we feel that the present deed safeguards the rights of any person desiring to use that road.

Under the reservation clause of the deed, the Grantor State reserves

> "to the Grantor, its employees, servants, agents, permittees, lessees, successors and assigns, the right to use said access road in common with the United States and its assigns."

While no person is particularly named as having such right, we think the clause is sufficient for the State to permit anyone to use the road in common with the United States.

Mr. Leonard Pierce had suggested the following language to take care of the situation:

> "Provided, however, that the owners of any timberland, the growth on which when cut might conveniently be conveyed to the railroad or elsewhere over the above described strip of land and any road now or hereafter constructed thereon shall have the right to utilize said strip of land as an easement in common with the United States of America for any purpose normally incident to lumbering or pulpwood operations on such timberland."

It is our thought that such language would grant to persons a right which was not heretofore theirs, and would be in conflict with section 12 of Chapter 36, Revised Statutes of 1954.

> "Sec. 12. Granting rights to cut timber; leasing camp sites and mill privileges; preference to Maine people. The Commissioner, under the direction of the Governor and Council, shall sell at public or private sale and grant rights to cut timber and grass belonging to the State, and may lease camp sites, mill privileges,

dam sites, flowage rights, the right to set poles and maintain utility service lines and the right to construct and maintain roads, on lands belonging to the State, on such terms as they direct; also the right to cut timber and grass and lease camp sites, mill privileges, dam sites, flowage rights, the right to set poles and maintain utility service lines and the right to construct and maintain roads, on public reserved lots in any township or tract of land until the same is incorporated, on such terms as they direct. Preference in such sales or leases shall be given to persons, firms or corporations of this State."

Chapter 51, Resolves of 1959, authorizing the Forest Commissioner to make the initial grant "under such terms and conditions as can be mutually agreed upon by the State and the United States" does not, in our opinion, amend section 12 to the extent that by the deed the Commissioner could grant wholesale licenses to many unnamed people. That would be the effect of Leonard Pierce's suggested amendment.

To get to your immediate question, we are advised by the Forestry Department that Mr. Pierce has never been granted any rights with respect to the road. It appears that accompanying Mr. Pierce's right to timber and grass is the right to use a small bulldozer — in other words, to remove the timber via the "Twitch" road with which we are familiar. His request that he, or he and others similarly situated, be granted rights in this deed, appears to be outside the intent or authority of the Act authorizing the transfer, and in conflict with section 12. A statement in the deed that such persons already had rights, subject to which the Government would use the road, would be erroneous, according to the facts that have been revealed to me.

I have this suggestion — we would be happy, by an appropriate Council Order, to grant a permit to Mr. Pierce to use that road. In such a case we believe Mr. Pierce would have a right equal to that of the State to use the road in question. Please let me know, and I'll see that the order is prepared.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

December 31, 1959

To: Fred L. Kenney, Director of Administrative Services, Education

Re: Tuition of

I have your request for an opinion regarding the liability for the Town of China for tuition of . Based on the facts presented, the court has awarded custody of the child to Mr. and Mrs. of China.

Section 44, Chapter 41, Revised Statutes of 1954, provides that residence for school purposes "shall be the administrative unit where the person having custody of the child maintains his or her home".

It is my opinion that China is liable for the tuition of this child.

Section 108, Chapter 41, contemplates one administrative unit sending pupils to another unit, an academy, or institute and not when there is a dispute as to the residence of a child. When two units are in dispute as to the factual determination of the residence of a pupil, the proper recourse is to the courts and not substitute the opinion of this office for a court determination.

GEORGE A. WATHEN
Assistant Attorney General

January 4, 1960

To: Perry D. Hayden, Commissioner of Mental Health and Corrections

Re: Escapes

We have your memorandum of December 23, 1959, in which you ask:

> "When an inmate escapes from the Reformatory for Men and upon apprehension is tried for escape on complaint of the Superintendent of the Reformatory for Men, and is then committed to the Maine State Prison for escape, what becomes of the initial sentence he was serving at the time he made his escape?"

There are several statutes relating to escape from penal institutions. However, there is one which relates directly to escapes from the Reformatory for Men — Chapter 27, Section 73, Revised Statutes of 1954. We interpret Section 73 to mean that upon the escape of an individual from the Men's Reformatory, alternative action may be taken against him: 1. Transfer upon recommendation of the Commissioner to the State Prison where he shall serve the remainder of the term for which he might otherwise be held at the Reformatory or 2. At the discretion of the Court he may be punished by imprisonment at the State Prison for any term of years. If the latter alternative is taken, it appears to us that the original sentence to the Reformatory for Men is no longer considered. In all probability the Court would, in considering the sentence to be imposed for the escape, take into consideration the time left to be served at the Reformatory and include it in the sentence to the prison.

JAMES GLYNN FROST
Deputy Attorney General

January 5, 1960

To: Kermit Nickerson, Deputy Commissioner of Education

Re: Vocational Rehabilitation

I have your request for an opinion regarding an alleged conflict between Section 195-A, Chapter 41, and Section 195-E, Chapter 41, as enacted by Chapter 286, Public Laws of 1959.

Section 195-A states:

> ". . . Subject to the approval of the State Board of Education, the executive officer of the state board shall make such rules and regu-

lations as he finds necessary or appropriate to efficient administration of a program of vocational rehabilitation, shall enter into agreements with local state and federal agencies providing services relating to vocational rehabilitation, . . ."

The executive officer of the board refers to the Commissioner of Education, Section 5, Chapter 41, Revised Statutes of 1954.

Section 195-E sets out the powers and duties of the Vocational Rehabilitation Division with the proviso that such powers and duties are subject to the approval of the state board. Subsection I, Section 195-E, states that the director may prescribe regulations (1) governing the protection of records and confidential information; (2) the manner of filing applications; (3) eligibility and other working or administrative procedures.

It appears from reading the two sections that there is no conflict in the laws but a division of the authority to make rules and regulations. It seems that the language in Section 195-A contains a broad grant of rule making power to the Commissioner subject to the approval of the board and many of the steps he is authorized to take in this field are necessarily antecedent to any valid rule or regulation being promulgated by the director. The director's rule making power is limited to those areas specifically set out in Section 195-E and subject to the approval of the state board. It is my opinion that if the Commissioner promulgated a rule or regulation covering any area that the director has authority to regulate, the general regulation by the Commissioner would preempt the director from promulgating a regulation in this area.

However, based on the departmental organization, it would be presumed that most of the rules and regulations would be a cooperative venture with complete agreement between the commissioner and the director. In any event, the Board of Education must approve all rules and regulations before they become valid.

GEORGE A. WATHEN
Assistant Attorney General

January 5, 1960

To: Frederick N. Allen, Chairman of Public Utilities Commission

Re: Casco Bay Lines

I have your memorandum of December 22, 1959, in which you request an opinion relating to the Commission's jurisdiction over Casco Bay Lines.

Section 10, Chapter 495, of the Private & Special Laws of 1885 (Incorporation of People's Ferry Company) was amended by Chapter 116 of Private & Special Laws of 1953, part of which reads as follows:

"Sec. 10. . . The People's Ferry and Casco Bay Lines shall maintain safe daily service to the islands of Casco Bay under regulations promulgated by the public utilities commission as to rates, schedules and safety."

Obviously the legislature intended that jurisdiction over this utility be placed in the Public Utilities Commission. It is my understanding that the Commission has acted in the field of rates and schedules although

to this point has never promulgated rules as to safety. In my opinion the broad term "safety" would apply to all places of the ferry's operations; ferries, landings and all facilities connected with the service.

You have received complaints of unsafe conditions by petitions of citizens of the islands. In my opinion you should proceed to hold hearings and investigate as provided by Section 55 of Chapter 44, Revised Statutes of 1954.

Should additional funds be necessary to conduct a proper investigation of the safety conditions of the operations of Casco Bay Lines then you would have authority to request them from the proper source.

The answer, therefore, to both your questions is "yes".

FRANK E. HANCOCK
Attorney General

January 8, 1960

To: The Honorable E. J. Briggs
20 Pioneer Avenue
Caribou, Maine

Dear Senator Briggs:

You inquire if, in the event the opportunity should be presented, you would be eligible to be appointed as commissioner of Inland Fisheries and Game.

It is my opinion that you would not be eligible to accept appointment to that position.

Article IV, Part Third, Section 10, Constitution of Maine reads 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."

The prohibition above expressed has, by our court, been interpreted to remain during the entire two-year period for which a senator or representative is elected. This means that one could not even resign from the legislature and accept such appointment. With respect to the instant office, we note that the commissioner's salary was increased from $9,000 to $10,000 by the 99th Legislature, and that increase was received as of September 12, 1959, retroactive to the week ending August 22, 1959. We would note, too, that that office has all the indicia of being an office of profit.

For the above reasons it is my opinion that you would be ineligible to be appointed to that office.

Sincerely yours,

JAMES GLYNN FROST
Deputy Attorney General

January 13, 1960

To: Francis G. Buzzell, Chief of Division of Animal Industry, Agriculture

Re: Maine State Fair — Lewiston — Capital Improvement Fund

I have your request for the answer to the following three questions concerning disbursements under Chapter 32, R. S. 1954.

1. Would any money which might be due the Maine State Fair Association continue, even though the fair is operated by a different organization?
2. If future improvements were made which would qualify, would reimbursement have to be made to the Maine State Fair Association, or to a new organization running the fair?
3. Would the Maine State Fair lose any credits it might have if the property were leased to another group?

In reference to your first question, the money which is now due the Maine State Fair Association would be paid to them or to the new organization depending upon the agreement set forth between them. This would be true unless the new organization could not qualify for the stipend by its own right, in which case they would not be entitled to the money.

If future improvements were made which qualified, the payment would run to the organization operating the fair if they qualified for the stipend.

The answer to number 3 is contingent upon the agreement referred to in the answer to number 1. In general, the Maine State Fair Association would not lose any credits. An agreement might serve as an assignment of these credits to another qualified group.

GEORGE A. WATHEN
Assistant Attorney General

January 19, 1960

To: The Honorable Joseph T. Edgar
Speaker of the House
State House
Augusta, Maine

Dear Mr. Edgar:

This letter is in response to your oral request for an explanation of State benefits with respect to the salary of a superintendent of a school union.

It appears that several unions, each with a superintendent, joined into one union with a single superintendent. While before such latest grouping each superintendent was paid a benefit by the State, now a benefit for only one superintendent is being paid.

Question: You ask if such payment of benefits on the basis of the employment of one superintendent only is in violation of the law which provides that there will be no loss of support because of a reorganization of unions.

Answer: It is our opinion that payment of State benefits to the single superintendent under the circumstances above related would not be in violation of the statutes.

We believe you are referring to section 77, subsection III, and section 80 of Chapter 41, Revised Statutes 1954 as amended.

Section 77, subsection III, reads as follows:

> "On presentation of a written plan of organization which has been approved by the superintending school committees of the towns involved, the Commissioner and the State Board of Education are authorized to combine 2 or more school unions, or parts thereof, into a larger supervisory unit administered by a superintendent of schools and staff assistants, who may be employed by the joint committee as provided in section 79, and the Commissioner shall have authority to adjust disbursements for supervision so that there will be no loss in state support because of the reorganization."

Section 80, Chapter 44, after providing for a certificate from the district to the Commissioner annually, and whenever a superintendent is chosen, further provides, "upon approval of said certificate the superintendent so employed shall, on presentation of proper vouchers, receive monthly out of the sum appropriated for superintendence of towns comprising school unions, a sum equal to the aggregate sum paid by the towns comprising the union. The amount so paid to any superintendent of schools shall not exceed $1,350 in one year nor shall any superintendent of schools receive less than $1,150 per year . . ."

Both section 77, subsection III and section 80, deal in part with the same matter — the appropriation of funds and their expenditure for superintendence.

As a principle of statutory construction, all sections relating to the same subject matter should be read together, and if possible in such a manner as to give effect to each such section.

It appears to us, reading section 77, subsection III and section 80 together, that a superintendent shall receive from the appropriation for superintendence not more than $1,350 nor less than $1,150 each year, and that upon a regrouping of unions no superintendent will suffer a loss of payments under section 80 because of such regrouping. Any benefits contained in section 77, subsection III, or section 80, would of necessity be available to a superintendent only during the period of his contractual agreement with the union, as hereafter indicated.

As an example of a situation where section 70, subsection III would be applicable, we suggest the following:

Conceivably, parts of a union or parts of two or more unions could be grouped into another union which would result in the employment of an additional superintendent. The statute in question, section 77, subsection III, would maintain the sum received by the superintendent from whose union parts were taken, without regard to the size of the diminished union, or to a diminished salary. Such has been the interpretation

over the years. Never has the section been used to either pay one superintendent more than the maximum amount authorized by statute, or to grant such sum to any body or person other than a superintendent. Of course, the amounts established in section 80 are now ancient and the variance between the figures, not less than $1,150 nor more than $1,350, is no longer realistic. Each and every superintendent in the State, we are advised, now makes sufficient money in his basic salary to entitle him to the greater amount of $1,350.

Thus, if it appears that each of the superintendents associated with the union receives $1,350 from the appropriation for superintendence, then the statute would be complied with.

It would seem that out of long custom no superintendent should be in a position to complain. The Revised Statutes of 1954, Chapter 41, section 77, provided that "regrouping shall be made only upon the expiration of the current contract of the superintendent or under conditions which will safeguard the provisions of such contract." Subsequently this provision was repealed. However, in an opinion from this office dated December 10, 1957, it was said:

> "While the provision that "regrouping shall be made only upon the expiration of the current contract of the superintendent or under conditions which shall safeguard the provisions of such contract" contained in the Revised Statutes of 1954 was eliminated in the new law, still, such provision should still be complied with. It is a general principle, without legislation, that the State shall not pass any law impairing the obligation of the contract. It is also imperative that State officers take no action under a law that would have the effect of impairing the obligation of the contract. Thus the contract of the superintendent must be handled in a manner that contemplates the new town in a union, or the adjusting of the units should await the termination of the superintendent's current contract."

We have been advised by the Department of Education that the one superintendent who may have been concerned with these statutes has left the State and that such regrouping was finally accomplished at the expiration of that superintendent's contract.

For the above reasons we conclude that there has been no violation of the law in respect to the manner of payment of benefits under section 80, chapter 41.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

January 20, 1960

To: Frank S. Carpenter, State Treasurer

Re: Executive Council — Pay during Legislative Sessions

In answer to your oral request as to the amount to be paid to members of the Executive Council during this Special Session, it is our opinion

that the Executive Council is now in session at the call of the Governor and not simply because the Legislature has convened in Special Session. Therefore, they should receive twenty dollars ($20.00) per day and actual expenses as stated in Section 3 of Chapter 11, Revised Statutes of 1954.

There is no statute or constitutional provision stating that they shall be in session while the Legislature is in Special Session.

FRANK E. HANCOCK
Attorney General

January 21, 1960

To: Mr. Charles E. Crossland
Vice President for Administration
University of Maine
Orono, Maine

Dear Mr. Crossland:

Reference is made to your letter of January 4, 1960, addressed to the Attorney General, questioning whether students of Indian parents are entitled to attend the University tuition free.

I find no specific authority under the laws of this state or in treaties with the Passamaquoddy or Penobscot Indian Tribes entitling Indians to free admission to the University.

As you know, at one time all residents of Maine were entitled to free admission to the university and the law would now appear to be that the Trustees of the University are directed to charge all students a reasonable tuition, determined from time to time, but that "they may abate said tuition to such worthy pupils resident in the State as may be financially unable to pay the same, and to students pursuing the courses in Agriculture and in Home Economics." (See Private and Special Laws of Maine 1913, Chapter 128).

If the trustees feel that an Indian or any other citizen qualifies in respect to the above provisions, they may abate the tuition.

Very truly yours,

STANLEY R. TUPPER
Assistant Attorney General

January 22, 1960

To: Committee on Judiciary

Re: Water System — Authority to receive Legacy for

Attention: George Weeks

We have your request for our thoughts concerning L. D. 1433, an act authorizing the Town of Franklin to receive a legacy for a water system.

There does not appear to be any authority in Chapter 90-A, Revised Statutes of 1954, for a town to maintain a water system without legisla-

tive sanction. L. D. 1433, if interpreted as limiting the Town of Franklin to accept the moneys and not authorize the construction of said water system, would be an authorization to receive money for a purpose for which they have no authority to expend the funds.

It would appear in reading the document that the town is authorized to accept the legacy and to construct and maintain said system. Therefore, I believe the document does contain authority to construct a water system for the Town of Franklin. It does not authorize the establishment of a water district, nor does it authorize them to acquire land by condemnation.

GEORGE A. WATHEN
Assistant Attorney General

January 25, 1960

Memo to: Judiciary Committee at request of Representative Knight

Re: Extent of Coverage under the Act Relating to the Licensing and Safety Operation of Boats

Chapter 36-A as enacted by Chapter 349, Public Laws of 1959, provides for the licensing and operation of boats. Section 2, Chapter 36-A provides in the definition of a motorboat an exclusion for "a vessel which has a valid marine document issued by the Bureau of Customs of the United States Government or any federal agency successor thereto."

Section 3, Chapter 36-A prohibits the operation of unnumbered motorboats on the waters of this state propelled by machinery of more than 10 horsepower, the exception of those numbered under applicable federal law, or in accordance with the numbering system of another state. "Waters of this state" as used in this section are defined in Section 2 of the act to mean "any inland body of water, wholly or partly within the territorial limits of this State, and all rivers and streams above tidewater."

Section 6, Chapter 36-A is the exemption section which sets forth seven exemptions which are clear in their import. It appears that boats operated on coastal waters are not included in this act.

GEORGE A. WATHEN
Assistant Attorney General

February 2, 1960

To: Colonel Robert Marx, Chief of State Police

Re: Application of pension laws to the Chief and Deputy Chief

We have your memo of December 4, 1959, in which you ask for our opinion concerning the effect of Chapter 15, section 22, Revised Statutes of 1954, on the Chief and Deputy Chief of the Maine State Police.

Chapter 15, section 22, R. S. 1954, deals generally with retirement of State police officers, and provides that upon being placed upon the pension

roll an officer shall "receive thereafter ½ of the pay per year that is paid to a member of his grade at the time of his retirement." (This section applies only to persons who were members of the State police on July 9, 1943.)

This same section relates to the retirement of the Chief of the State police.

> "The provisions of this section shall apply to a member who may become chief of the state police. Such chief shall be credited with the number of years which he served as a member to be added to the number of years served as chief. Upon his request for retirement, made in writing to the governor and council, he shall receive thereafter ½ of the pay per year that is paid to him as chief at the time of his retirement, provided he has served at least 4 years as chief; otherwise he shall receive thereafter ½ of the pay per year that was paid to him as a member at the time he was appointed chief."

With an exception not here pertinent, the law with respect to retirement of members other than the chief was substantially the same in 1944. Chapter 13, section 21, R. S. 1944.

The law relating to the chief was first enacted by Chapter 255, section 2, P. L. 1945, and is identical to the law today.

By private and special act (Chapter 214, P. & S. 1951) it was provided that —

> "Pensions continued. The retired members of the state police shall receive, in addition to their present retirement pay, such additional amounts as will equal ½ of the pay per year that is now paid to a member of their respective grades at the time of retirement.
>
> "Such moneys shall be appropriated from funds of the state police.
>
> "The provisions of this act shall become effective July 1, 1951, and continue in effect until June 30, 1953."

This act, at the time of its enactment, could have resulted, and as we recall, did result, in increases to members in retirement, because the effect of the act was to give to a retired member not ½ the pay he received at the time of retirement, but ½ the pay that would be paid to a member of the same grade if he were to retire during the period which Chapter 214 would be in effect.

Chapter 214 amended by implication the provisions of Chapter 15, section 22, R. S. 1954.

In 1953, by P. & S. 166, the effectiveness of Chapter 214, P. L. 1951, was prolonged by the following amendment to said Chapter 214, amending the last paragraph of Chapter 214:

> "The provision of this act shall become effective July 1, 1953."

You ask the following questions with respect to the above statutes:

What is the effect of Chapter 214, P. & S. 1951, and Chapter 166 P. & S. 1953, upon

1. A member of the Department who retires as Deputy Chief
2. A member of the Department who retires as Chief

1. Chapter 214, P. & S. 1951, as amended by Chapter 166, P. & S. 1953, applies as to a Deputy Chief in the same manner as it applies to members otherwise eligible to participate in the benefits of the statute.

2. The said chapter also applies to Chiefs who have been selected from the membership of the Maine State Police. In the case of both the chief and a member, these particular sections apply only when such chief or member were members on July 9, 1943.

You also ask: "In the event that you are of the opinion that these laws are applicable to the retirement pay of either or both members above, it is requested that you advise me if you believe that approval of the Governor and Council of such increase would be required before the payment of the increased benefits."

We do not believe action by the Governor and Council is necessary. While the salaries of both the Deputy and the Chief are set by the Governor and Council, the retirement benefits are set by statute. For that reason it is unnecessary to obtain Governor and Council approval of the retirement pay for these officers.

With respect to answers 1 and 2 above, it appears that Chapter 214, P. & S. laws of 1951 as amended by Chapter 166, P. & S. 1953, amends by implication section 22 of Chapter 15, Revised Statutes 1954. The provisions of section 22 apply to the Chief (who was once a member), as well as to members. See the second paragraph of section 22 as quoted on the first page of this memo. Thus, Chapter 214 in amending section 22 of the Revised Statutes of 1954, of necessity amended the whole section so as to have application to the Chief as well as to members.

The Deputy Chief is, of course, a "member", and is selected by the Chief to "act as Deputy." Chapter 15, section 1, VI, Revised Statutes 1954. As a "member", the Deputy receives the benefits of Chapter 214, P. & S. 1951 as amended.

JAMES GLYNN FROST
Deputy Attorney General

February 9, 1960

To: Paul A. MacDonald, Deputy Secretary of State

Re: Conviction — Absence of Defendant and Counsel

We have your request for an opinion as to whether the following facts constitute a conviction:

A driver of a motor vehicle, exceeding the speed limit of 70 m.p.h. on the Maine Turnpike by 10 m.p.h., is stopped by a State Police officer. The driver is given a summons to appear at court on the 14th of August, taken to a bail commissioner, where he pays $25 to the bail commissioner to be recognized to appear before the court on the 14th of August. The driver then endorses the following upon the reverse side of the summons:

"I wish to plead guilty to the within offense. Please apply the bail towards payment of the fine."

Signed: (With name of driver)

Driver then proceeded to his home in another State, and never, by himself or attorney, appeared in court. The court did use the plea on the summons and applied the bail money to the fine.

The above facts are conceded to be true. It is our opinion that the above facts do not constitute a conviction.

A conviction exists, for the purpose of imposing punishment, when the guilt of the defendant is legally and finally determined and adjudicated. *State v. DeBery,* 150 Me. 28. A conviction may also exist as a point of progress in a trial; that is, the stage at which the respondent is found guilty or pleads guilty or nolo contendere. *Donnell v. Board of Registration,* 128 Me. 523. Thus, punishment can be imposed upon the verdict of a jury, or upon a plea of guilty, or of nolo contendere. *State v. Cross,* 34 Me. 594. But no such conviction can be obtained in the absence of *both* respondent and attorney.

Anciently, the personal presence of the accused was considered an indispensable necessity in all stages of a trial until the final result. *State v. Hersom,* 90 Me. 273.

At common law, personal presence of respondent was usually required in cases where punishment might be imprisonment, but the court had discretion to allow one indicted for a misdemeanor to plead and defend, in his absence, by an attorney. Neither the respondent nor his attorney appeared in the present case.

This common law requirement has been softened by statute. Chapter 148, section 14, Revised Statutes 1954:

"Respondent present at trial for felony; not otherwise. — No person indicted for felony shall be tried unless present during the trial; but persons indicted for less offenses, at their own request and by leave of court, may be tried in their absence if represented by their attorney."

That this section applies also to cases initiated by complaint, and for statements as to the common law requirement of presence of respondent at trial see *State v. Garland,* 67 Me. 423. And see Chapter 149, section 1, Revised Statutes 1954:

"No person shall be punished for an offense until convicted *in a court having jurisdiction of the person* and case."

Under the facts above described the court had no jurisdiction of the person of the respondent — he had left the State.

By reason of the circumstances of this case there was no conviction either of the nature upon which punishment may be imposed, *State v. DeBery* supra, or of a nature to determine the stage of trial reached when respondent pleads guilty or is found guilty. *State v. Morrill,* 105 Me. 207.

FRANK E. HANCOCK
Attorney General

By: JAMES GLYNN FROST
Deputy Attorney General

February 12, 1960

To: Rod O'Connor, Manager of Maine Industrial Building Authority

Re: Proposed Change in the Lease Agreement

As I understand the problem, it has been requested that Article IV C of the lease agreement be omitted or an insertion placed therein that would allow the lessee to use an industrial project for *any* purpose the tenant desires although the purpose at present is for the manufacture of shoes.

The issue raised is whether the Maine Industrial Building Authority has authority to insure mortgage loans on a project that was originally eligible for mortgage insurance, but subsequently is used for a purpose not included in the definition of an industrial project.

If Article IV C were omitted and the Authority found that the building was used as an industrial project as defined by Section 5, subsection III, Chapter 38-B, there is authority under Section 9, Chapter 38-B, to insure the mortgage loan. However, if the project were subsequently used for a purpose outside the scope of an industrial project, I am of the opinion that the MIBA is without authority to continue insuring the mortgage loan.

The MIBA operates on a grant of powers from the Legislature and has only those powers expressly granted. Section 2, Chapter 38-B, sets forth the purpose of the Act, which is to further *industrial* expansion. Section 9, Chapter 38-B, grants the MIBA authority to insure mortgage payments on the first mortgage of any *industrial project* which is defined by Section 5, subsection III, as buildings and real estate improvement used for the "manufacturing, processing or assembling of raw materials or manufactured products".

Sections 7 and 9 of Chapter 38-B authorize the MIBA to lease or rent the project and to allow the local development corporation to lease or rent the project for temporary use other than specified in Section 5, subsection III. The underlying purpose in each instance is to safeguard the mortgage insurance fund.

In reviewing the MIBA forms, I find that the Authority makes the factual finding that the project qualifies as an industrial project. Form #10, the mortgage insurance agreement, reiterates this finding.

For the above reasons, I feel that the project must be and remain in use as an industrial project while insured by the MIBA to conform with the letter and spirit of the law. I see no objection to insertion of the language that the tenant may use the project for manufacturing, processing, and assembling of raw materials or manufactured products in Article IV C of the lease.

In respect to the provision that the tenant be allowed to sublease the project without requiring any approval, I am not in accord. My reason is solely that an undesirable tenant may come to an area in this manner. Your present mode is to work closely with the community where the project is located to determine their wishes for an industrial project and the type of manufacturing carried on therein.

May I point out that the reason for requiring rental insurance was based on the following:

§ 10, Ch. 122, Revised Statutes of 1954, provides in part:

". . . No agreement contained in a lease of any building, buildings or part of a building or in any written instrument shall be valid and binding upon the lessee, his legal representatives or assigns to pay the rental stipulated in said lease or agreement during a period when the building, buildings or part of a building described therein shall have been destroyed or damaged by fire or other unavoidable casualty so that the same shall be rendered unfit for use and habitation."

The local development corporation must pay the lender on the mortgage whether the building is fit for occupancy or not. Since the local development corporation presumably has no funds except those received from the lease rental payments on the project, the provision for lease rental insurance was to protect them and prevent a default. It was felt at the time that use and occupancy insurance would inure to the benefit of the tenant and not to the local development corporation. It would be well to check the policy to determine if adequate protection is provided.

GEORGE A. WATHEN
Assistant Attorney General

February 23, 1960

To: Roland H. Cobb, Commissioner of Inland Fisheries & Game

Re: Shooting Muskrats at Brownfield Game Management Area

I have your request for an opinion regarding the trapping and shooting of muskrats in the Brownfield Game Management area.

Section 17, Chapter 37, provides that the Commissioner is authorized to regulate hunting, fishing, and trapping on game management areas. The second paragraph provides that the authority given to the Commissioner in the first paragraph of Section 17 "shall also apply to lakes, ponds, marshes and sections of streams lying within the boundaries of any such game management area."

Your memo states that all game management areas are open to hunting subject to applicable state and federal laws. Therefore, subject to said laws, hunting of muskrats is proper in this area. A regulation issued pursuant to the authority granted in the first paragraph of Section 37 would be proper in such an area. I believe that the Saco River is a "stream" within the meaning of the statute, since the word stream is the general name of any flowing body of water and includes rivers and brooks.

GEORGE A. WATHEN
Assistant Attorney General

February 24, 1960

To: Honorable Roswell P. Bates
72 Main Street
Orono, Maine

Dear Dr. Bates:

In reply to your inquiry relative to the interpretation of Article IV, Part First, Section 2, of the Constitution relating to the term of office of legislators, I do not believe that it was the intention of the framers of the constitution to leave a void in time from one Legislature to the next. I believe the term "two years" is considered actually from one first Wednesday to the next first Wednesday.

Using the 99th Session, 1959, and the 100th Session, 1961, as an example and following your reasoning, the 1959 session would begin on January 7th and the 1961 Session would begin on January 4th; therefore, there would be two legislatures sitting at the same time for two or three days. This is not the intent of the constitutional provision. Should a special session have to be called during the period of time used in your example, the Legislature previously elected would be called and properly so in my interpretation because they would sit until the incoming Legislature convenes.

Sincerely yours,

FRANK E. HANCOCK
Attorney General

February 25, 1960

To: Marion E. Martin, Commissioner of Labor and Industry

Re: Agricultural Employment under the Minimum Wage Law

I have your request for an opinion regarding section 132-B, Chapter 30, as amended by Chapter 362, Public Laws 1959. Subsection III-B of section 132-B exempts "Any individual employed in agriculture, not to include commercial greenhouse employees;" from the definition of employees under Chapter 362, Public Laws of 1959.

The term agriculture is defined by Webster's International Dictionary as "The art or science of cultivating the ground, and raising and harvesting crops, often including also feeding, breeding and management of livestock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use and their disposal by marketing or otherwise."

In regards the hypothetical questions you have raised concerning the various degrees of milk production and distribution, I believe the exemption is applicable in operation number 1, and not applicable in operation number 3. In number 2, I believe the answer would depend on the amount

produced by the operator, that is, does he run a dairy farm and supplement his business with outside purchases, or is he primarily engaged in distribution or processing and as a minor adjunct to this business keep some cows. The operation of the business may be such that the employees who are engaged in processing have no duties in the production aspect of the business.

It is difficult to set forth a general rule on the meaning of "individuals employed in agriculture", since each case should be reviewed on its own fact situation, but as a guide, I would suggest that those operations in which the production of agricultural products is the primary purpose, and in which packing and transporting is an adjunct thereto, that the employees are exempt. I am referring here to operations where the same employees perform some of each of the duties in the chain from the farm to market.

In the operation of a processing plant, the employees should not be considered exempt. Office help in connection with agricultural operations are not normally considered agricultural labor. The term used in our act is broader than the term farm labor.

When a specific fact situation arises, it should be reviewed in the light of the various decisions of the courts on this subject.

GEORGE A. WATHEN
Assistant Attorney General

March 16, 1960

To: Dr. Warren G. Hill, Commissioner of Education

Re: State Subsidies for Transportation

I have your request for an opinion regarding the state subsidy for transportation. Section 237-D, Chapter 41, provides that pupil transportation shall be computed in determining the foundation program allowance for each administrative unit. *Squires, et al. v. The Inhabitants of the City of Augusta, et al.*, 155 Me. 151, held that municipalities may not use contingent funds or school funds to transport pupils to parochial schools.

I have searched the statutes for the duties of the Commissioner when monies have been improperly expended by a municipality for transportation.

Section 28, Chapter 41, provides that:

> "All moneys provided by towns or other administrative units or apportioned by the State for the support of public schools shall be expended for the maintenance of public schools established and controlled by the administrative units by which said moneys are provided or to which such moneys are apportioned."

This directive of the legislature is clear and unambiguous. Section 237-A, Chapter 41, reads in part:

> "After providing an opportunity for a hearing, the State Board of Education, on recommendation of the Commissioner, may adjust the state subsidy to an administrative unit when, in

the opinion of the Board, the expenditures for education in such unit show evidence of manipulation to gain an unfair advantage or are adjudged excessive."

Section 31, Chapter 41, provides that funds may be withheld by order of the Governor and Council from administrative units that have failed to expend school money received from the state or in any way failed to comply with the law governing the duties of administrative units.

One of your duties as Commissioner of Education is to apportion subsidies to administrative units. Section 237-D, Chapter 41, sets forth the elements to be used in determining the foundation program allowance. One of these elements is pupil transportation. Before you can properly execute your statutory duty of computing the foundation program allowance, you must know the amount of money the administrative unit has allocated and expended for public pupil transportation. If you have information that any of the figures supplied are in error, I believe you may require substantiating information to enable you to properly perform the duties required of you. In addition to this, you may recommend an adjustment pursuant to the procedure set forth in Section 237-A, Chapter 41.

Your basic query is how an adjustment shall be made to conform to the law. There is no statutory provision for an adjustment of monies expended by an administrative unit for an unauthorized purpose. Such monies cannot be included in your computation for the foundation program allowance. Your concern is limited to money expended for public school transportation. If sufficient evidence cannot be presented to you of the amounts spent for this purpose, you cannot include these monies in your computations for subsidy.

GEORGE A. WATHEN
Assistant Attorney General

March 18, 1960

To: Honorable Dwight A. Brown
68 Main Street
Ellsworth, Maine

Dear Mr. Brown:

I have your question regarding your desire to run for the unexpired term of senator in your county while serving in the House of Representatives.

It is my understanding that your question is whether or not you can, if elected, continue your duties as a representative until you qualify for the senatorial seat.

There are certain basic rules concerning incompatibility of offices which I feel would apply to this situation. The two offices are incompatible and both cannot be retained as pointed out in *Stubbs v. Lee*, 64 Me. 195, when one accepts an office incompatible with the first, he, therefore, relinquishes the former. *Howard v. Harrington*, 114 Me. 443.

One may run for election to an office incompatible with one which he holds if there is no statutory or constitutional prohibition. I was unable to find such prohibition in this case. If one accepts the second incompatible office, it will constitute an abandonment of the other. I note that in Chapter 4, Sections 52-54 of the Revised Statutes of 1954, a candidate must accept the nomination in writing and agree not to withdraw before the date of election. He also agrees, if elected, to qualify as to such office. This is a statement of intent and is an indication to his constituents of what he will do in the future.

If a man is elected to an office which is incompatible with the one which he holds, he must choose the office he wishes to hold. In *Lesieur v. Lausier*, 148 Me. 500, the court enunciated the rule that when one serves in his first incompatible office beyond the time that he should have qualified for the second office, he impliedly waives his right to the second office. Therefore, applying these rules to your situation, I believe you may run for the unexpired term and continue to exercise your powers and duties as a representative unless a special session of the 99th Legislature is called. In the event of a special session, you would be required to choose the office of Senator or that of Representative. It would seem that there would be no question of the choice, but at that time your choice would be final. It is interesting to note that the same fact situation occurred in 1951 in which a representative was elected to serve the unexpired term of a senator and continued acting on House Committees after being elected Senator but prior to qualification as such.

If there are any more questions concerning this, I would be happy to attempt to give you an answer to them.

Very truly yours,

GEORGE A. WATHEN
Assistant Attorney General

March 18, 1960

To: Robert S. Linnell, Esquire
192 Middle Street
Portland, Maine

Dear Bob:

I have your letter of March 4, 1960 in which you ask if the committee established under the provisions of Chapter 149, Private and Special Laws of 1959, has the authority to proceed so far as to execute an option for the purchase of land.

For the reasons hereinafter set forth we believe the committee had the authority to execute an option.

The Act referred to, after creating the committee, outlines the duties of the committee as follows:

"Sec. 2. Duties. The committee shall:

. . .

"V. Determine the best site for relocation of the State School for Boys in terms of purpose, program and physical plant needs; and

"VI. Employ an architect or architects to translate into plans, specifications and cost estimates the thinking of the committee;

. . .

"The committee shall report to the 100th Legislature with plans, specifications and cost estimates of construction and relocation of the State School for Boys. *Such plans, specifications and cost estimates shall be complete to the extent that if the 100th Legislature* or any future Legislature *should appropriate the necessary funds, such school could be constructed on the basis of such plans and estimates* and with plans, specifications and cost estimates of the relocation of the State School for Boys at Fort McKinley."

In brief, the committee must present to the 100th Legislature such complete plans, specifications and cost estimates as would permit the Legislature to appropriate funds for the construction based upon such plans and estimates.

A site plan could not be prepared unless authority were granted to the State to permit entrance upon the property in question, with permission to make surveys, site investigation, sub-surface borings, and to have a definite plot on which to prepare their design and make estimates in order to carry out the intent of the Legislature that the committee make a realistic report. A report to the Legislature, so indefinite as to cost of land, nature of subsoil (ledge, sand, etc.), necessity of excavation and the like, that cost would depend upon unknown factors, would be useless.

The Act in question could not be construed as granting authority for the committee to enter upon private land, so such authority must be obtained in some manner — lease, license, options, etc. In order to comply with the legislative request that the committee determine the best site and return to the Legislature with the other information desired, the committee decided an option was necessary. This option will not only permit the committee to do its necessary survey work, but will hold that site for the consideration of the Legislature.

The required work could not be accomplished without the necessary authority to enter upon land, and plans and specifications along with cost estimates based upon a site certain would be useless to the Legislature if the site in question was no longer available.

For the above reasons we think that the committee had authority to execute an option.

From our experience with the Maine School Building Authority we point out to you an analagous situation. In order for the Maine School Building Authority to enter into negotiations with a town, site plans and

specifications must be prepared, and a title examination made. Occasionally, a person says that upon approval of a project by Maine School Building Authority, he will donate land to the municipality involved. However, the necessity of having a site plan and other material prohibits the Authority from giving its approval until a definite piece of land is either conveyed, or an option given, so that the Maine School Building Authority knows it is dealing with a known quantity; title searched, etc.

In reference generally to the authority of a State agency to execute options, we are of the opinion that either express authority, or, as in the instant case, compelling implied authority, should be present in a statute before land can be purchased or an option executed.

We hope the above fully answers your question.

Very truly yours,

FRANK E. HANCOCK
Attorney General

March 25, 1960

To: Roland H. Cobb, Commissioner of Inland Fisheries & Game

Re: Flowage of State Lands

We have your letter of February 23, 1960, in which you ask if a public utility company has the right to flow state-owned land. Your inquiry deals specifically with the possibility of a dam being built on the Saco River, between Hiram and East Brownfield, and the possible resulting flowage of over 3,000 acres of land owned by the State. Such land is to be developed for duck marshes.

We assume that your question relates to such flowage under "Mill Acts" Chapter 180, Revised Statutes of 1954, as is authorized to certain persons who erect mills and dams to raise water for working it.

It is our opinion that the public utility company does not have the right to flow lands owned by the State and in the control of your department for the purposes of development for duck marshes.

The ordinary method authorized by the legislature by which land, or the use of land, may be taken, is eminent domain. Private property may be taken for a public use upon payment of compensation, and when public exigencies require it. Article I, section 21, Maine Constitution. The procedure known as eminent domain has as its authority the above-mentioned constitutional provision.

Our court, in its early years, justified the Mill Acts as being based on the power of eminent domain. *Ingram v. Maine Water Co.*, 98 Me. 566. In later years our court has said the Mill Acts are not based on the principle of eminent domain, but such acts are an adjustment and regulation to assure development of reasonable use of such lands among riparian owners. *Bean and Land Co. v. Power Co.*, 133 Me. 9, 27-28.

As stated in *Brown v. deNormandie*, 123 Me. 535, 541 —

> "It is too late now to challenge the constitutionality of the Mill Act. Whether its validity rests upon its great antiquity and long

acquiescence; . . . or upon the principles of eminent domain. . . or upon the adjustment and regulation of riparian rights on the same stream, so as to best serve the public welfare, having due regard to the interests of all and to the public good . . . the fact of its validity is settled."

So, whatever its justification now, certainly in the beginning the Mill Acts were based upon the principles of eminent domain. And eminent domain is a process whereby *private* lands are taken. The treatises and cases appear to be in accord that lands in the public domain are not subject to condemnation or appropriation in the absence of a statute authorizing it. 18 Am. Jur. 713, § 83.

We would draw to your attention, with respect to flowage under the Mill Acts, existing statutes which clearly indicate that the Legislature believed the same exclusion of public lands applies to the Mill Acts as well as to eminent domain:

Chapter 36, section 39, Revised Statutes of 1954:

"Real estate subject to flowage. — All real estate acquired under the provisions of sections 33 to 39, inclusive, shall be and remain subject to flowage under the provisions of the Mill Act, so called, or under any special charter heretofore or hereafter granted by this state, notwithstanding title thereto may be in the state."

Chapter 36, section 12, Revised Statutes of 1954:

"Granting rights to cut timber; leasing camp sites and mill privileges; preference to Maine people. — The commissioner, under the direction of the governor and council, shall sell at public or private sale and grant rights to cut timber and grass belonging to the state, and may lease camp sites, mill privileges, dam sites, flowage rights, the right to set poles and maintain utility service lines and the right to construct and maintain roads, on lands belonging to the state, on such terms as they direct; also the right to cut timber and grass and lease camp sites, mill privileges, dam sites, flowage rights, the right to set poles and maintain utility service lines and the right to construct and maintain roads, on public reserved lots in any township or tract of land until the same is incorporated, on such terms as they direct. Preference in such sales or leases shall be given to persons, firms or corporations of this state."

If it were assumed that a public utility had the right to take land belonging to the State under any theory, eminent domain or otherwise, then it must be assumed that the utility's right is superior to that of the State. This cannot be. The eminent domain power of a State, like certain of its other principal powers required to carry on its sovereign function, is inalienable. *West River Bridge Co. v. Dix*, 6 How. 507 (1848).

We are of the opinion, based upon the above discussion, that public lands are not subject to flowage under the Mill Act in the absence of statutory authority for the particular flowage, or in the absence of compliance with existing statutes relating to flowage.

JAMES GLYNN FROST
Deputy Attorney General

April 5, 1960

To: E. L. Newdick, Commissioner of Agriculture

Re: Statutory Officers — Election when over 70 years of age.

We have your oral request for our opinion on the following question:

"Is the incumbent Commissioner of Agriculture, being over 70 years of age, and a member of the Maine State Retirement System, eligible to run for re-election to that office?"

Answer: Yes.

Under the provisions of section 1, Chapter 32, Revised Statutes of 1954, the Commissioner of Agriculture shall be elected by the Legislature by joint ballot of the senators and representatives in convention, and shall hold his office for the term of four years and until his successor is elected and qualified.

Another statute bearing directly upon your question is Chapter 63 A, section 6, sub-paragraph 1 B.

"Any member specified in paragraph A of this subsection who attains age 70 shall be retired forthwith on a service retirement allowance on the 1st day of the next calendar month; except that any member who is an elected official of the State or an official appointed for a term of years may remain in service until the end of the term of his office for which he was elected or appointed. Notwithstanding the foregoing, on the request of the Governor with the approval of the Council, the Board of Trustees may permit the continuation for periods of 1 year, as the result of each such request, of the service of any member who has attained the age of 70 and who desires to remain in service. Requests for extension of service for employees in participating local districts shall be filed directly with the Board of Trustees by the proper municipal officers and such requests shall not be referred to the Governor and Council."

With respect to this section and other similar laws, it was said in an opinion dated November 9, 1951, that there "appears to be a distinct trend in legislative policy to refrain from retaining in the public service persons who have arrived at the age of seventy years."

It appears quite clear that classified employees, who are members of the Maine State Retirement System as a condition of employment, (Chapter 63A, section 3, subsection 1) must retire upon reaching age 70, unless their continued employment is approved in the manner set forth in section 6.

How then does said section 6 affect appointive or elective officers?

Since the enactment of this law (Chapter 328, section 227-E (1) (b) Public Laws of 1941), and without benefit of opinion from this office, a consistent line of administrative decisions of the Board of Trustees of the Maine State Retirement System has held that the prohibitions outlined in section 6 do not prohibit a person over 70 years of age from running for and holding an elective office. We are inclined to believe that this administrative decision is a proper one.

Firstly, may we point out that the necessity for obtaining approval of the Governor and Council for continuing in employment after attainment of age 70 does not apply to appointed or elected officials. The average employee must retire at age 70 unless he is permitted to continue employment for periods of 1 year. An elected or appointed officer, however, under the provision of this section, continues until the end of his term without any such approval being required. Thus, the approval for continuation applies only to those persons not elected or appointed to office.

Secondly, we examine the officials who are elected or appointed.

OFFICERS NOT MEMBERS OF THE SYSTEM

Section 6 applies only to members of the Maine State Retirement System. Under the provisions of section 3, I, membership in the system is optional with elected or appointed officials. Thus, any such officer who chooses not to become a member would be unaffected by section 6.

The result here would mean that any person over 70 years of age, not a member of the system, could not only run for elected office, or be appointed to office, but continue in office if elected or appointed and section 6 could not be applied to him. The result would also amount to discrimination against one belonging to the Retirement System.

CONSTITUTIONAL OFFICERS

(a) Elected by the Legislature

In an opinion dated December 23, 1954, our office said with respect to application of this same law to constitutional officers:

> "Further and more compelling reason for holding that the law quoted above does not apply to constitutional officers can be seen in the *Opinion of the Justices*, 137 Maine, pages 352, 353. Therein the Court stated that, with respect to the office of Treasurer of State, whose election, tenure of office, etc., are substantially the same as those of the office in question, the constitutional provision is a complete inhibition against the enactment of legislation filling the office by any method of selection not prescribed by the Constitution."

We interpret the above case to mean that the election of such officers is within the Legislature, giving due regard to such qualifications as are implicit in the constitution, and unimpeded by further statutory qualifications or disqualifications. Thus, the constitutional right of the legislature to elect such officers cannot be limited by the necessity of subsequent approval of those elected officials by the Governor and Council, whether or not that officer is over 70 years of age, or whether or not such person is a member of the Retirement System.

In this class of officers are the Attorney General, the Secretary of State, and the Treasurer of State.

(b) Elected by the people.

Another class of officers, having a constitutional origin, but who are elected by the people, must also be considered: Registers of Probate, and perhaps Judges of Probate and judges of municipal courts. Any of these persons can be members of the Retirement System by virtue of membership in participating local districts.

As constitutional officers, further legislative qualifications would be subject to the same objection noted in paragraph (a).

STATUTORY OFFICERS

A further class of officers are those statutory officers elected by the Legislature but whose tenure and other qualifications are governed by statute. This class includes the Commissioner of Agriculture and the State Auditor.

While there appears to be no constitutional barrier against the imposition of statutory qualifications for such officers, we again note the possibility of discrimination if a person who is a member of the Retirement System is considered ineligible to run for such offices because of hs age, while one who has never been a member is eligible despite his age.

For the above reasons, possible lack of uniformity in administration of the law, possible discrimination without, in our opinion, any reasonable relationship to the effect to be desired, (we presume that membership in the Retirement System neither adds to nor detracts from the basic qualifications or abilities of a person to do a particular job), we conclude that the section in question does no more than spell out a policy with respect to the age of public officers. The legislature may, if it so desires, disregard that policy and elect to office a person over 70 years of age, and such person is eligible to run for office.

JAMES GLYNN FROST
Deputy Attorney General

April 7, 1960

To: Harold I. Goss, Secretary of State

Re: Pardon Petition — Before Sentence

We have your memo of March 28, 1960, in which you ask if a certain pardon petition is in order to go before the Governor and Council for hearing.

It appears from the letter accompanying the petition that the petitioner was charged with the offense of operating a motor vehicle while under the influence of intoxicating liquor; that a bill of exception was filed and allowed to the jury verdict of guilty. The case has been continued from day to day for sentence. Thus, the case is pending before the Law Court, according to the record before us.

In a letter dated March 25, 1960, you advised counsel for petitioner that petitioner's case could not be assigned for hearing before the Governor and Council since there had been "no conviction handed down for operating a motor vehicle while under influence, from the Law Court."

Counsel for petitioner urges that the term "conviction," as used in the constitutional provision relating to pardons, refers to that stage of the trial where a respondent is convicted, either by his plea of guilty or nolo contendere, or is found guilty, and before sentence or punishment is imposed. He believes that the term "conviction" is not such conviction as is the basis of imposing punishment when the guilt of the defendant is

legally and finally determined. In furtherance of his position, counsel referred you to 39 Am. Jur. 542, and *Com. v. Lockwood,* 109 Mass. 323 (1872).

Question: From the above facts we gather the question can be stated in the following manner:

> "May the Governor, with the advice and consent of the Council, grant a pardon of an offense after verdict of guilty and before sentence and while exceptions allowed by the judge who presided at the trial are pending in the Law Court for argument?"

Answer: No.

Both uses of the term "conviction" referred to above are recognized by our courts. For a case where a "conviction" exists for the purpose of imposing punishment when the guilt of the defendant is legally and finally determined and adjudicated, see *State v. DeBery,* 150 Me. 28. A conviction may also exist as indicating a point of progress in a trial; that is, the stage at which the respondent is found guilty or pleads guilty or nolo contendere. *Donnell vs. Board of Registration,* 128 Me. 523.

The citation to American Jurisprudence referred to above points out that pardons may be granted only after conviction, but that the use of that term varies from jurisdiction to jurisdiction, the rule in most cases being that "conviction" is that point where a person is convicted either by his plea or by the verdict of a jury.

An exception to that rule applies, however, in cases where the constitutional provision relating to pardons requires the Governor to communicate to the legislature each case of pardon granted "stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of the reprieve, remission, commutation or pardon. . ."

Article V, Part First, section 11, of our Constitution reads as follows:

> "He shall have power, with the advice and consent of the council, to remit, after conviction, all forfeitures and penalties, and to grant reprieves, commutations and pardons, except in cases of impeachment, upon such conditions, and with such restrictions and limitations as may be deemed proper, subject to such regulations as may be provided by law, relative to the manner of applying for pardons. And he shall communicate to the legislature, at each session thereof, each case of reprieve, remission of penalty, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of the reprieve, remission, commutation, or pardon, and the conditions, if any, upon which the same was granted."

In *State v. Alexander,* 76 N.C. 231, 22 Am. Rep. 675, it is stated:

> "Inasmuch as the Constitution, in the same section in which it authorizes the Governor to pardon "after conviction," requires him to report to the General Assembly not only the conviction but the sentence, is it not intended that there shall be a sentence to report, else how can he report it?"

In *Campion v. Gillan,* 79 Neb. 364, 112 H W 585, the court examined a provision similar to ours, where pardon had been granted after verdict of guilty, but after a motion for new trial was filed and while the same was pending. The court said, in holding the pardon to be improper:

> "The Governor can pardon only after conviction . . . In this

case no final verdict had been rendered. The defendant had asked the court to set aside the verdict because of intervening errors, as he claimed, rendering it ineffectual. Nothing but the plainest language excluding any other meaning could justify the construction of the Constitution contended for. But the language employed in the Constitution precludes such a construction. The Governor is required to communicate to the Legislature each case of pardon granted, "stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the reprieve, commutation, or pardon." This he could not do if there had been no judgment and sentence."

The cases we have examined, including *Com. v. Lockwood,* 109 Mass. 323, cited by petitioner, which hold that a pardon may be granted after verdict but before sentence, do not contain a constitutional provision similar to ours. In those states having provision such as ours, it has been held that sentence must be imposed, or else pardon is not proper.

In the instant case, petitioner has never been sentenced, and for that reason we are of the opinion that a pardon could not be granted on the present petition.

JAMES GLYNN FROST
Deputy Attorney General

April 7, 1960

To: R. W. MacDonald, Chief Engineer, Water Improvement Commission

Re: Houlton Water Company

We have your recent request for an opinion as to whether the Water Improvement Commission can grant funds to the Houlton Water Company for a survey of the company sewer system. This grant would be made under the terms of Section 7B, Chapter 79, Revised Statutes of 1954, as amended.

Under the terms of the above Section 7B, the Commission is authorized to make payments to municipalities and quasi-municipal corporations for approved sewage surveys. The question involved here is whether or not the Houlton Water Company is a quasi-municipal corporation so as to be eligible for such a payment.

The question of the status of the Houlton Water Company has been adjudicated by the Supreme Judicial Court of this State. In the case of *Greaves v. Houlton Water Company,* 140 Me. 158, the question was whether this company was a quasi-municipal corporation with respect to its property devoted to the service of surrounding towns. This issue arose because of the fact that the Houlton Water Company furnishes electricity for a large area surrounding the Town of Houlton. The court differentiated between activities carried on for the comfort and convenience of the people of Houlton and those services furnished the residents of other towns.

"We, therefore, conclude that, by legislative action and intendment, the corporate entity of the Houlton Water Company has been continued and maintained separate and distinct from the town of

Houlton; that the corporation has been endowed with authority to act in a dual capacity, one as a public municipal corporation so far as the town of Houlton and its inhabitants are concerned, and the other as a private enterprise in furnishing electric current to a dozen other towns and their inhabitants, . . ."

Greaves v. Houlton Water Company, 140 Me. 158, 165

In its capacity as a sewerage company, the Houlton Water Company is, by the terms of the above decision, a municipal corporation. This is because the authority of the Houlton Water Company to maintain the municipal sewer system does not extend into other towns. This authority was originally vested in a private corporation known as the Houlton Sewerage Company, which company was later bought by the water company. The authority of the sewerage company was limited to the Town of Houlton and would appear never to have been extended. It was organized

". . . for the purpose of providing in the town and village of Houlton, a system of public sewers and drainage, for the comfort, convenience and health of the people of said Houlton. . ." Private & Special Laws of Maine, 1887, c. 145, § 1.

The following conclusions can be drawn:

1. The Houlton Water Company is a municipal corporation with respect to its activities carried on for the benefit of the inhabitants of Houlton.
2. The Houlton sewerage system exists solely for the benefit of the inhabitants of Houlton.
3. The Houlton Water Company is a municipal corporation with regard to its function as a sewerage company.
4. The Water Improvement Commission has the authority to grant funds to a municipal corporation to aid in an approved survey of the municipal sewerage system.

It is our opinion, therefore, that the Water Improvement Commission has the authority to grant funds to aid the Houlton Water Company in an approved survey of the sewer system serving the Town of Houlton.

THOMAS W. TAVENNER
Assistant Attorney General

April 20, 1960

To: R. W. MacDonald, Chief Engineer, Water Improvement Commission

Re: Greater Portland Regional Planning Commission

We have your recent request for an opinion as to whether the Water Improvement Commission can grant funds to the Greater Portland Regional Planning Commission for sewerage planning. This grant would be made under the terms of Section 7B, Chapter 79, Revised Statutes of 1954, as amended.

Under the terms of the above section 7B, the Commission is authorized to make payments to municipalities and quasi-municipal corporations for approved sewage surveys. The question involved here is whether or not

the Greater Portland Regional Planning Commission is a quasi-municipal corporation so as to be eligible for such a payment.

The first question involved here is, what is a municipal or quasi-municipal corporation? A quasi-municipal corporation has been defined to be

> ". . . a corporation created or authorized by the legislature which is merely a public agency endowed with such of the attributes of a municipality as may be necessary in the performance of its limited objective. In other words, a quasi-municipal corporation is a public agency created or authorized by the legislature to aid the state in, or to take charge of, some public or state work, other than community government, for the general welfare."
>
> I McQuillin, *Municipal Corporations* 467

This same general line of reasoning was followed in the case of *Augusta v. Water District*, 101 Me. 148. Here the term "quasi-municipal corporation" was defined to mean a body formed for the sole purpose of performing one or more municipal functions.

> "A body politic and corporate, created for the sole purpose of performing one or more municipal functions, is a quasi-municipal corporation, and as we have said, in common interpretation, is deemed a municipal corporation."
>
> *August v. Water District*, 101 Me. 148, 151

It should also be noted that, according to the above decision, there is little, if any, difference between a municipal and a quasi-municipal corporation.

The next problem is the definition of the phrase "body politic and corporate". A body corporate is an early legal term for a corporation. 1 *Bouvier's Law Dictionary* 374. A body politic also refers to a corporation. 1 *Bouvier's Law Dictionary* 374. A corporation is a body, "consisting of one or more natural persons, established by law, usually for some specific purpose, and continued by a succession of members." 1 *Bouvier's Law Dictionary* 682.

It seems, then, that there are several requirements which must be met before an organization can qualify as a municipal or quasi-municipal corporation.

1. It must be a corporation.
2. It must be created solely to serve the public.
3. It must be an arm of the state in a given geographical territory.

Membership in the Greater Portland Regional Planning Commission is by representation. This is clearly stated in Article IV of the by-laws.

> "Representation on the Commission shall be by Commissioners and Representatives."

Commissioners and Representatives must be from the various towns of the greater Portland area. Thus the Commission is really an association of communities for a common purpose rather than an association of individuals. Municipal Corporations set up by the State Legislature are given charters, which charters constitute the legal basis of the corporation. The legal basis of the Greater Portland Regional Planning Commission is stated to be Chapter 42 of the Public Laws of 1955 (superseded by Chapter 90-A of the Revised Statutes of 1954). In the typical charter granted directly

to a municipal corporation by the Legislature there is a clause which, in specific terms, creates a corporation. Such a clause can be found in the charter of the Augusta Water Company.

". . . (various named individuals) are hereby made a corporation by the name of the Augusta Water Company, . . ." Laws of 1870, Chapter 463 (Words in parentheses supplied.)

and again in the charter of the Brunswick School District:

". . . the inhabitants and territory within the town of Brunswick are hereby created a body politic and corporate under the name of Brunswick School District. . ." Private and Special Laws of 1935, Chapter 70.

There is no statutory provision making the Planning Commission a corporation. Such a provision cannot be inferred into the enabling statute. *Sweeney v. Dahl*, 140 Me. 140. Because the state legislature has not seen fit to grant to the Greater Portland Regional Planning Commission the status of a corporation, we feel that the Commission cannot be considered a corporation for any purpose.

It is our opinion, therefore, that the Greater Portland Regional Planning Commission is not a corporation and that the Water Improvement Commission has no authority to grant funds to the Commission under Section 7B, Chapter 79, Revised Statutes of 1954, as amended.

It should also be noted that the Commission's legal basis, as set forth in its by-laws, is Chapter 42 of the Public Laws of 1955. This chapter has been repealed and superseded by Chapter 90-A. The Commission has not, however, altered its by-law to reflect this change. This matter has been brought to the attention of Graham Phinney, Planning Director of the City of Portland, who has assured this office that the necessary change will be made at the next meeting of the Commission.

THOMAS W. TAVENNER
Assistant Attorney General

April 26, 1960

To: Roderic O'Connor, Manager of Maine Industrial Building Authority

Re: Industrial Buildings — Old

I have your request for an opinion regarding whether or not the Maine Industrial Building Authority has authority to insure mortgage payments on a building that has been constructed in the past and which a new industry wishes to use, repair or expand for its purposes.

I have reviewed the minutes of the meeting of December 16, 1958, at which time this problem was discussed by the Authority without arriving at any solution.

Section 14A, Article IX of the Constitution of Maine, is written with a broad scope in view limited to the proper enactment by the legislature; therefore, we need not look beyond the legislative act itself.

Section 2, Chapter 38B, sets forth the purposes of the Maine Industrial Building Authority Act. This section declares the need of new industrial buildings to preserve and better the economy of the state and further de-

clares the need to stimulate a flow of private investment to satisfy the need for housing industrial expansion. It is the primary purpose of the Maine Industrial Building Authority to further industrial expansion in the state through the medium of insuring mortgage loans on new buildings. This section permeates the entire act and must be kept in mind when construing any other section of the Act.

In reviewing Section 5, Chapter 38B, "Definitions," you will note the distinction between new buildings, industrial project and cost of project. The definition of "industrial project" clearly presupposes new construction, which is buttressed by the definition of "cost of project." An "industrial project" is defined as "any building or other real estate improvement and, if a part thereof, the land upon which they *may be located,* and all real properties deemed necessary to their use by any industry. . ." (Emphasis supplied) The use of the words "may be located" indicates a future act rather than an accomplished fact.

An "industrial project" may include several buildings, some of which are old and others which are new. The term "new building" is self-explanatory.

Subsections V-A and VII, Section 6, again support the contention that the Authority deals with only new buildings.

Arguendo, Section 9-A provides that the issuance of a contract of insurance is conclusive evidence of the eligibility of the mortgage for insurance, but this section contemplates the action of the Authority to have been taken with statutory authority.

The dicta in *Martin v. Maine Savings Bank, et al,* 153 Me. 259, 272, recognizes the construction of new buildings.

It is my opinion that the Maine Industrial Building Authority must insure mortgage payments on new industrial buildings with an industrial project and is without authority to insure the mortgage payments on old buildings.

GEORGE A. WATHEN
Assistant Attorney General

May 3, 1960

Dr. Francis H. Sleeper, Superintendent
Augusta State Hospital
Augusta, Maine

Re: Persons suffering from opiates — disposition

Dear Dr. Sleeper:

I have your request for an opinion regarding the disposition of persons suffering from opiates and whether or not they can be accepted by the state hospital for the mentally ill.

Section 167, Chapter 25, provides that a person alleged to be suffering from the effects of the use of opiates, drugs or narcotics may be committed to the care of any hospital or qualified physician, and further provides that the person may be restrained for a period of not more than 90 days. Section 168 provides that such restraint must be by voluntary agree-

ment of the person, witnessed by the spouse or parent or municipal officers where the person resides and approved by a judge of the Superior Court or Probate Court.

Section 169 relates to investigation of progress of the patient and release.

The heading of Section 167 reads "Persons suffering from the use of opiates committed to general hospital." Although the bold print heading is no part of the law, it would appear to be a criteria for ascertaining the intent of the legislature.

Sections 95-102, Chapter 27, relate to the establishment and operation of the state hospitals for the mentally ill. The powers and duties of the superintendent are set forth therein. The statute also prescribes the patients to be admitted thereto. There is nothing in the sections heretofore mentioned that authorize the admission of persons suffering from the use of drugs unless such person is also mentally ill. Section 95, Chapter 27, provides that these hospitals are maintained for the mentally ill. It is not a hospital in the popular concept of the word — much less a general hospital.

It is, therefore, my opinion that you have no authority to admit persons suffering from opiates to the State mental hospital unless they are otherwise committed under the provisions of Chapter 27.

Very truly yours,

GEORGE A. WATHEN
Assistant Attorney General

May 17, 1960

Allan L. Robbins, Warden
Maine State Prison
Thomaston, Maine

Dear Allan:

We have your letter of May 11, 1960 in which you state that , who was committed to your institution for life on November 3, 1959, requests permission to marry his common-law wife, and in which you ask our ruling with respect to request.

Now that the statutes which declare the person civilly dead upon being sentenced to life imprisonment have been repealed, we are of the opinion that position is no different than that of other prisoners with respect to his right to enter into a contract. We would, therefore, refer you to our opinion dated August 7, 1956, which opinion stated that with the approval of the warden such marriage ceremony could be performed within the confines of the prison.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

May 17, 1960

Allan L. Robbins, Warden
Maine State Prison
Thomaston, Maine

Dear Allan:

We have your letter of May 11, 1960 in which you ask the Attorney General if it is proper that prisoners of the Maine State Prison be used to furnish labor toward fixing up the town park of the Town of Thomaston. The following law relates directly to your question:

Chapter 27, section 3-A, as enacted by Chapter 242, section 2, Public Laws of 1959 —

> "Employment of prisoners and inmates on public works; use for other purposes; escape from such employment or use. The department may authorize the employment of able-bodied prisoners in the State Prison or inmates of the Reformatory for Men in the construction and improvement of highways or other public works within the State under such arrangements as may be made with the State Highway Commission or other department or commission of the State having such public works in charge, and said department may prescribe such rules and conditions as it deems expedient to insure the proper care and treatment of the prisoners or inmates while so employed and their safekeeping and return. The department may further authorize the training and use of able-bodied prisoners in the State Prison or inmates in the Reformatory for Men by the State Forestry Department or the Department of Civil Defense and Public Safety to fight fires or provide assistance during or after any civilian disaster. Any prisoner or inmate who escapes from any assignments described in this section, or any other assignment beyond the walls of the State Prison or off the grounds of the Reformatory for Men shall be guilty of escape under this chapter or chapter 135, section 28."

In reading the above law, it appears clear that the use of able-bodied prisoners of the Maine State Prison can be used only in conjunction with work carried on by a department or commission of the State of Maine having such public works in charge. Such statute would appear to not permit the use of prisoners as contemplated in your request.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

May 17, 1960

To: Ralph L. Langille, Chief Inspector of Elevators, Labor and Industry

Re: Sec. 117, Ch. 30, R. S. 1954, Authority of the Board of Elevator Rules and Regulations

We have your memo of May 2, 1960, in which you ask for a ruling as to the authority of the Board of Elevator Rules and Regulations to promulgate rules and regulations for "idle elevators." You state that by idle elevators you mean elevators which are said to be out of use and, therefore, are not required to be inspected in accordance with the provisions of section 122, Chapter 30, R. S. 1954, and for which the certificate of inspection required under section 123, Chapter 30, R. S. 1954 for their lawful operation has expired, or, in the case of a few elevators, has never been issued because the elevator has not been in use since the "Elevator Law" became effective in 1950.

Your memo continues as follows:

"Sec. 117, Ch. 30, R. S. 1954 states in part that "The Board shall formulate reasonable rules and regulations for the safe and proper construction, installation, alteration, repair, use, operation and inspection of elevators in the State." Can the powers granted in Sec. 117 be construed to include authority for the Board to adopt rules that will reasonably assure that "idle elevators", as designated above, will not be operated and will be reasonably safe during their idleness?

"There has been at least one instance where an individual was severely injured in an accident involving an elevator that had been out of use and idle for several years. Also, some elevators have been temporarily or indefinitely, taken out of use by the owner or user to avoid meeting the requirements of the elevator rules and regulations. In many cases such elevators can be reactivated simply by throwing in the power switch or by replacing fuses in their circuits. Hoistways in some cases may not be properly enclosed or hoistway landing entrances may be inadequately protected, also, elevator cars and counterweights suspended by cables represent a hazard, particularly after years of disuse. These hazards can be minimized by suitable precautions.

"In order to minimize unsafe conditions and prevent the unauthorized operation of "idle elevators" the Board of Elevator Rules and Regulations, subject to confirmation of their authority to do so by the Department of the Attorney General, has adopted the following requirements:

> *"Idle Elevators*: All elevators which are not inspected as required by these rules and regulations and for which the certificate of inspection has expired or has not been issued, and which have been permanently or indefinitely discontinued from use, shall have:
>
> (a) The power leads to the driving machine motor disconnected in a manner that they may not be readily reconnected, and
>
> (b) All hoistway landing doors or gates which guard the full height and width of the landing openings shall be locked in the closed position from the hoistway side, except that such doors or gates at bottom landings may be locked from the landing side. When doors or gates which do not guard the full height and width of the hoistway landing openings are provided, the landing openings shall be suitably protected up to a height of not less than the hoistway enclosure at each floor.

"If it is found that the Board of Elevator Rules and Regulations does not have authority to formulate rules for "idle elevators", the Board proposes to adopt the requirements stated in (a) and (b) above and the requirements given in (c) and (d) below as nonmandatory recommendations:

(c) The car should be landed on suitable supports at the bottom landing or in the pit, with the hoist cables, if any, unhitched from the car.

(d) The counterweights, if any, should be landed on suitable supports in the pit with the counterweight cables unhitched from the counterweights or from the cable drum.

"It is recognized that the adoption of mandatory requirements as stated in (a) and (b) above will present an administrative problem, since no penalties can be invoked, except the penalties for the operation of an elevator without a valid certificate of inspection displayed thereon, as is now provided for in Sec. 123, Ch. 30, R. S. 1954."

Answer:

It is our opinion that the statutes relating to elevators do not authorize the Board of Elevator Rules and Regulations to promulgate such rule as you refer to in your memo. There could be no objection, however, to the issuance of non-mandatory rules regarding idle elevators.

Proper rules and regulations must have as their basis a statute authorizing the promulgation of such rule and regulation. Without such statute the rule and regulation is void.

A rule and regulation, which becomes a law when duly promulgated, is a step authorized to achieve an end desired by the Legislature. Our examination of the statutes leads us to the conclusion that those rules and regulations to be enacted by the Board should all relate to elevators in use — not to an elevator the use of which has been discontinued, and need no longer be registered.

Thus, section 123 of Chapter 30, R. S. 1954, provides a penalty for the use of an elevator without a valid inspection certificate — the issuance of the certificate being bottomed upon the conformity of the elevator to the rules of the Board. Yet section 122 of Chapter 30, R. S. 1954, provides that —

> "Each elevator *proposed to be used within this state* shall be thoroughly inspected . . . and if found to conform to the rules of the board, upon payment of the inspection fee where required and a registration fee of $2 per year by the owner or user of such elevator to the inspector, the latter shall issue to such owner or user an inspection certificate."

We cannot find any provision imposing a penalty for violation of a rule and regulation other than the penalty of non-user of the elevator. Thus, if the elevator is not in conformity with rules of the Board it receives no certificate, or the certificate is revoked, or the elevator condemned. A penalty may be invoked for operation without a certificate, or after condemnation, but not merely for nonconformity to the rules of the Board.

These facts being so, it follows that the rules and regulations were not intended to govern "idle elevators" as you define them.

JAMES GLYNN FROST
Deputy Attorney General

May 27, 1960

To: Maine State Retirement System

Attention: Edward L. Walter

Re: Retirement Fund

Upon your advice the son of the late , Maine, requested this office to give an opinion re the retirement fund accumulated by his father.

It appears that his father ceased working for the Town of , a local participating district in the Maine State Retirement System, on September 26, 1959. Under date of October 1, 1959, Mr. made application for retirement, effective October 1, 1959. On November 3, Mr. died, leaving $2,288.96 in the retirement fund.

The Board issued a check in the amount of $117.39 to the estate of the deceased, and advised that the remainder of the $2,288.96 was not available, benefit-wise, under the law, to any other person.

The son claims that under the provision of Section 9, II of Chapter 63-A, Revised Statutes of 1954 as amended, he should be entitled to some benefit:

"Sec. 9.

. . .

"II. Should a member die any time after attaining eligibility for retirement under any of the provisions of this chapter but before any election in accordance with the provisions of section 12 becomes effective, the following benefits shall be payable: . . ."

The Board answers by saying that the father died *after* the time within which he could have elected an option under the provision of section 12. Because the said section provides that retirement allowances shall be paid in equal monthly installments, the Board has determined that a period of 30 days is the time within which, after application for retirement, that an election can be made, and at the end of which time payment becomes normally due.

"Sec. 12. Payment of retirement allowances. All retirement allowances shall be payable for life in equal monthly installments including any fraction of a month up to the date of death. Upon attainment of eligibility for retirement and *until the first payment on account of a retirement allowance becomes normally due,* any member may elect to convert the retirement allowance otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of one of the optional forms named below; provided, however, that an election of an optional benefit

shall become effective on the date on which the first payment normally becomes due."

An additional factor to be considered, and which you drew to our attention, is the matter of dates on Mr. application for retirement.

While the application was apparently dated by Mr. on October 1, 1959, the jurat was dated October 19, 1959, by , Treasurer of the Town of , and the application itself was received by the System on October 21, 1959.

The System counted thirty days commencing with October 1, 1959, and Mr. died three days after such thirty-day period.

If counting had started from the day the application had been received, then death would have been within the thirty-day period.

The question here can be resolved by determining the time from which date the counting of the thirty-day period should commence.

We are of the opinion that the thirty-day period did not begin to run until receipt by the System of the application; and that in the present case the disposition of the retirement fund should be made under the provisions of Section 9, II.

The first step in the normal procedure of one desiring to be retired is his filing of a written application to the Board of Trustees.

"Sec. 6. Service retirement.

I.

A. Any member who at the attainment of age 60 is in service may retire at any time then or thereafter on a service retirement allowance upon written application to the Board of Trustees setting forth at what time he desires to be retired. . ."

As a general rule, where it is required that an application must be made to a particular body before an act can be accomplished, that body is presumed not to be aware of such application until it has been received or filed. To our knowledge there is no section in the Retirement law which appears to except the instant application from the general rule. We, therefore, are of the opinion that the filing of the application with the Board is a condition precedent to retirement. It must follow that the time when "the first payment on account of a retirement allowance becomes normally due", as provided by section 12, must be a period of time commencing with the date of receipt of the application for retirement.

JAMES GLYNN FROST
Deputy Attorney General

June 7, 1960

To: Sulo J. Tani, Director, Research & Planning of Economic Development

Re: Federal Funds Re Urban Renewal

This opinion is submitted to you in connection with an application being submitted to the Urban Renewal Administration of the Housing and

Home Finance Agency for federal funds to be used for state planning work leading to a state comprehensive plan.

The Department of Economic Development is empowered through its Commissioner to accept for the State any federal funds approached under the provisions of federal law relating to urban planning and public works and continue such acts as are necessary in carrying out the provisions of such federal law. Section 2, Chapter 38-A, Revised Statutes of 1954, as amended.

Section 4, subsection VIII, provides that the Division of Research and Planning, a division of the Department of Economic Development, is empowered to assist in planning and executing any public or private project involving federal grants for loans, and is responsible for the preparation of a master plan for the physical development of the state. Section 4, subsection VI.

It is our opinion that the Department of Economic Development is a legal entity having the power to (1) accept federal funds through the Commissioner, and, (2) execute planning work leading to a state comprehensive plan pursuant to Section 4, Chapter 38-A.

GEORGE A. WATHEN
Assistant Attorney General

June 29, 1960

To: Harold A. Labbe, Chairman of Real Estate Commission

Re: Minimum Age Requirement of Brokers or Salesmen

We have your request for our opinion with regard to the minimum age required of any applicant for a Maine real estate broker or salesman's license.

After a review of the applicable statutes, it is our opinion that every person desiring to become a licensed broker or salesman must be at least 21 years of age at the time his or her application is made.

THOMAS W. TAVENNER
Assistant Attorney General

July 5, 1960

To: Doris M. St. Pierre, Secretary of Real Estate Commission

Re: Renewal Application for Salesman's License

We have your request for an opinion as to whether or not the Real Estate Commission can approve Mr. renewal application for a salesman's license. After an examination of the relevant provisions of the Maine Real Estate law, it is our opinion that the Commission can grant Mr. a non-resident salesman's license, but should not grant him a resident salesman's license.

The real estate license law, R. S. 1954, c. 84, section 10, permits the Commission to issue licenses to non-resident salesmen who comply with the requirements for resident salesmen. Nowhere in the law is there any

provision limiting licenses to applicants who operate in the State of Maine. For this reason, it is our opinion that a qualified salesman selling Maine real estate is entitled to a license even though his activities are carried on in another State.

THOMAS W. TAVENNER
Assistant Attorney General

July 6, 1960

To: Steven D. Shaw, Administrative Assistant, Executive Department

Re: Maine Port Authority Re Annual Report

I have your request concerning whether or not an annual report is required to be made by the Maine Port Authority.

Section 1 B of Chapter 114 of the Private and Special Laws of 1929 provides in part — ". . . it shall keep account of its income and expenditures, property and liabilities, in manner approved by the State Auditor, who shall audit its books of accounts at least once a year, and it shall make an annual report of the condition of its property and finances to the Governor and Council . . ."

The same language was reiterated in Chapter 5 of the Private and Special Laws of 1941, and Chapter 99 of the Private and Special Laws of 1947. The latest amendment, Chapter 79 of the Private and Special Laws of 1959, left the language requiring the annual report intact. Therefore, an annual report should have been made to the Governor and Council as required by statute.

GEORGE A. WATHEN
Assistant Attorney General

July 12, 1960

Dean Mark R. Shibles
Chairman, Maine School
District Commission

University of Maine
Orono, Maine

Dear Dean Shibles:

I have your request for an opinion regarding the validity of the formation of School Administrative District No. 15, composed of the towns of Gray and New Gloucester. I have checked the organizational reports and orders in the commission files relating to the formation of this district and find them to be in order. The Certificate of Organization has been issued pursuant to the statutes and all steps in the formation of the district are in order.

In my opinion this district is properly formed pursuant to the Sections 111-A to 111-U, of Chapter 41 of the R. S. of 1954. I am also of the opinion

that the so-called Sinclair Act is constitutional in its present form. Therefore, it is my opinion that this district is a legal entity capable of exercising all of the rights, powers and duties granted under the statute provided therefor.

Very truly yours,

GEORGE A. WATHEN
Assistant Attorney General

July 12, 1960

To: Motor Vehicle Dealer Registration Board

Re: Transit Plates

In reply to your oral request for an opinion concerning the authority of the Board to issue transit plates to the Company, I have found the following facts: The Company requested transit plates for the purpose of moving their motor vehicles to garages in Greenville and Ashland for repairs. These vehicles are used for non-highway purposes and are not registered under Sections 13-20, Chapter 22 of the Revised Statutes of 1954. The Company also uses these plates for transporting these vehicles over public highways when being traded with local dealers for new vehicles. Filling stations for company vehicles are maintained and the Company made application as a filling station or garage.

It would appear that the transit plates were not issued on a temporary basis for the purpose of moving new motor vehicles from the point of manufacture or delivery outside the State to points within the State.

I do not believe that the Board has authority to issue transit plates for the purposes requested by the Company. Subsection I, D, Section 16, Chapter 22, provides for movement of certain vehicles for limited purposes on a so-called "transporter permit." It is possible that facts may warrant the issuance of a transit plate to a service vehicle under Section 29, I, Chapter 22, but we are not presently concerned with that matter.

GEORGE A. WATHEN
Assistant Attorney General

July 19, 1960

To: George Davis, Chairman of Maine Automobile Dealers Registration Board

Re: Transit Registration Plates

I have your request for an opinion from this office regarding the issuance and use of transit registration plates. Your questions are divided into categories consistent with the types of business involved, and I shall attempt to answer in the same manner. It might be well to digress and establish certain basic principles which will be common to all the matters

being dealt with herein. A "motor vehicle" is defined in Section 1, Chapter 22, Revised Statutes of 1954, as

". . . any self-propelled vehicle not operated exclusively on tracks, including motorcycles;"

The term "vehicle" is also defined in the same section as

". . . all kinds of conveyances on ways for persons and for property, except those propelled or drawn by human power or used exclusively on tracks;"

The transit registration plate appears to be an extension of the issuance of dealer plates. The theory and basic purpose of the legislation was to facilitate the movement over the highways of motor vehicles being sold and traded. It was not designed to exempt a particular business from registering vehicles used in connection with the business, except as it relates to aiding them in the movement of vehicles being sold or traded as an incident to the business and for demonstration, service and emergency purposes.

Section 26-A, Chapter 22, is a broad authorization for certain enumerated businesses and others of the same class to make application for transit registration plates for the purposes set forth therein, with the limitation that transit and dealer plates shall not be used in lieu of registration under Sections 13-20, Chapter 22. This section further empowers the Board to place reasonable limitations on the use of the transit plate. Section 29, Subsection I, Chapter 22, provides that no motor truck, tractor or trailer registered under sections 21 to 29 (dealer plates and transit plates) shall be used for other than demonstration, service or emergency purposes. This subsection further defines the limits of service as the transportation of articles and materials directly connected with the service or maintenance of motor vehicles and the maintenance of the properties connected and used with such business.

I note that the legislation creating what is now Section 26-A has been added piecemeal in different sessions. It should also be noted that I must assume certain facts which are only hypothetical in my answers.

HEAVY EQUIPMENT DEALERS:

(1) The first query is (a) whether or not a heavy equipment dealer may use a transit plate on a truck with which he transports items sold or taken in trade? and (b) whether such items are self-propelled or not?

Answer: Pursuant to Section 29 the plates can be used on a truck for the purposes of demonstration, service or emergency purposes and for service purposes limited to the transportation of articles connected with the service or maintenance of motor vehicles and property connected or used with such business. These plates cannot be used to deliver air compressors or articles of like nature. Assuming the self-propelled equipment is a motor vehicle, the transit plate may be used for this purpose.

(2) The second query is whether or not heavy equipment dealers have the right to use transit plates on their own trucks used exclusively for servicing equipment which has been sold by him whether self-propelled or not.

Answer: Transit plates may be used on a service truck which is connected with the service or maintenance of *motor vehicles* and the property used or connected with such business. (Subsection I, Section 29, Chapter 22)

(3) The third query is whether or not a heavy equipment dealer may use a transit plate on a service truck for servicing equipment not sold by him.

Answer: Yes, provided it is for the servicing of a motor vehicle.

(4) The fourth query regards the use of transit plates on passenger vehicles owned by a heavy equipment dealer broken into three classes:

(a) exclusively in connection with the business of the dealer?

(b) principally in connection with the business and partially for private use?

(c) by salesmen permitted to use vehicles for private use part time?

Answer: No, there appears to be no authorization for transit plates to be used on automobiles except as provided in Section 26-A, Chapter 22.

FARM MACHINERY DEALERS:

(1) The first query is in regard to the use of transit plates for delivering self-propelled farm machinery.

Answer: Transit plates can be used on self-propelled machinery which fits the definition of a vehicle.

(2) Whether or not a farm machinery dealer can use a truck or a trailer to deliver implements of husbandry which are not self-propelled?

Answer: No, since the use of these plates is designed to aid the dealer in moving vehicles and not as an aid to his general business not related thereto.

(3) Can a farm machinery dealer use a transit plate for delivering home appliances?

Answer: No, for the same reason as stated in answer to question number 2 above.

(4) Can the transit plate issued to a farm machinery dealer be legally used on a service truck, used for servicing farm machinery and implements of husbandry sold by the dealer or repaired by him?

Answer: No, unless it is used for servicing a motor vehicle. (Section 29, I)

(5) The fifth query is in regard to the use of transit plates on passenger automobiles and is the same type of question as referred to in the heavy equipment dealer opinion and the answer would be the same.

DEALERS IN MOBILE HOMES:

The questions regarding the use of transit plates by mobile home dealers will be dealt with in a separate memorandum.

It should be noted that these answers are to general propositions and are intended as guides in this area not as an answer to any factual situation.

In regard to your last two questions concerning (1) whether or not the board has authority to limit the use of transit plates, there appears to be two limitations within the statute itself, Section 26-A provides that the various listed businesses for the purpose of movement on highways of such vehicles owned or controlled by them may be granted a transit plate. The last sentence of paragraph 1 of Chapter 26-A provides that the qualification that in such businesses the movement of motor vehicles is an ordinary and usual incident to the operation of such business. It further states in Section 26-A in no event shall any plates issued under this section

be used in lieu of registration plates issued under sections 13-20. Section 29 limits and defines the use of dealer or transit registration plates. Section 26-A provides that the Board has authority to prescribe reasonable limitations to the use of transit plates. It would appear that this authority must be within the framework of the law in that the Board has no authority to grant greater rights than those set forth under the statute, but may limit them in particular circumstances.

(2) The last query is whether or not the Board can limit the use of transit plates to passenger vehicles and trucks used in connection with the transit holder's business.

Answer: The answer to this question appears to be stated in Section 26-A as follows:

". . . provided that the movement of motor vehicles is an ordinary and usual incident to the operation of such business."

This section further states that the transit plates cannot be used in lieu of regular registration which has been previously set forth. It is my opinion that the authority to issue transit plates is limited in nature—not to a particular enumerated business, but for the free movement of motor vehicles as set forth in the answers.

GEORGE A. WATHEN
Assistant Attorney General

July 22, 1960

To: Colonel Robert Marx, Chief of Maine State Police

Re: "Penny Pitch"

We have been asked to give you an opinion as to whether or not the game "Penny Pitch" as carried on at the fairs sponsored by local P.T.A. organizations, is lawful.

Penny Pitch can be described as a game whereby children pitch or toss pennies onto a board covered with squares the approximate size of a penny. If the penny finally comes to rest completely in the square, then the thrower receives a prize; otherwise, he loses his penny.

If the prizes given at such game can be won with what is described as by the skill of the pitcher rather than by chance, the game is probably not gambling. The rule appears to be that if a game predominantly is one of chance, then it is gambling, and if it is predominantly one of skill, then it is not gambling. Whether or not a game consists predominantly of skill or predominantly of chance is a question of fact which would have to be decided by the officer observing the game. If he believes, giving due regard to all facets of the problem, the size of the square, the distance which the penny is pitched, etc., that chance predominates, then he would be justified in having the court finally determine if such game is gambling.

JAMES GLYNN FROST
Deputy Attorney General

August 2, 1960

To: Roderic C. O'Connor, Manager of Industrial Building Authority

Re: Cost of Special Purpose Buildings

I have your request for an opinion regarding the inclusion of certain features in buildings which the Maine Industrial Building Authority will insure. You have requested a rule of thumb to guide you in determining the cost of the project when dealing with special purpose buildings.

Subsection III, Section 5, Chapter 38-B states:

> " "Industrial project" shall mean any building or other real estate improvement and, if a part thereof, the land upon which they may be located, and all real properties deemed necessary to their use by any industry for the manufacturing, processing or assembling of raw materials or manufactured products."

As a general rule those parts of a building which are an integral part for the use and enjoyment thereof and which are annexed are considered real property. Insulation is a part of the real estate as opposed to freezers which may or may not be a part of the realty. Built in features such as waste disposal systems, water and storage tanks and pumps, and built in freezers would be a part of the realty.

In regard to fixtures, our court has enunciated the following rule: A chattel is not emerged in the realty unless (1) Physically annexed at least by juxtaposition, to the realty or some appurtenance thereof, (2) adapted to and usable with that part of the realty to which it is annexed, (3) so annexed with the intention, on the part of the person making the annexation, to make it a permanent accession to the realty.

It should be kept in mind that the rights of parties regarding realty and personalty can be governed by agreement.

In regard to railroad tracks, the general rule is where the superstructure of a railroad is placed upon the land of another under an easement, license, or lease, the railroad company cannot be said to have intended to attach the rails and other appliances to the land so as to make them a part thereof and they are therefore treated as trade fixtures. By agreement of parties, the railroad may become a fixture and part of the realty.

In general one must apply the test set forth herein and determine if there are any agreements between the parties. Machinery, even though affixed, should be treated as personalty.

GEORGE A. WATHEN
Assistant Attorney General

August 2, 1960

To: Roderic C. O'Connor, Manager of Industrial Building Authority

Re: Tenants acting as Guarantors — Mortgage Insurance Fund

You state that tenants have been required by the Authority to act as guarantor of mortgage payments and as security for the guarantee to

give chattel mortgages to the mortgagee on personal property used in the operation.

You have requested our opinion regarding your right to purchase these chattel mortgages in case of default of the tenant under the terms of the lease.

One must assume by your query that the mortgage is in default and the Authority is called upon to make payments pursuant to the mortgage insurance.

It is my opinion that Section 10-A, Chapter 38-B of the Revised Statutes of 1954, gives authority to take an assignment of a chattel mortgage for the purpose of safeguarding the mortgage insurance fund.

GEORGE A. WATHEN
Assistant Attorney General

August 10, 1960

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

Re: Great Ponds — Bulldozing in

We have your letter of July 28, 1960 and the attached copy of a letter from R. M. Hussey, Secretary, Assoc. Sportsmen's Clubs of York County, Inc. addressed to you.

It appears from Mr. Hussey's letter that he desires to know the legal aspects concerned with one's bulldozing a long, narrow, 20-foot high hogback extending into a lake, so that after bulldozing, the hogback is 5 feet high, can accommodate a road and camps, where theretofore it could not, and resulted in the deposit of substantial spoil into the lake.

It is our opinion that the waters of a great pond (a lake over ten acres in size) and the land under those waters, belong to the State in trust for the people. Activities on the pond which deny to the State and its people their rightful use of the lake must be authorized by the legislature.

No department, to our knowledge, has funds for enforcing this law. It has been customary, however, in cases where such a trust is violated, and where a group of people feel sufficiently aggrieved at such violation that they care to bring suit, for the Attorney General to lend his name in a proper proceeding where such use of his name is necessary in order that the court can exercise its jurisdiction. The cost of such proceeding is borne by the complaining parties.

We hope the above information will be helpful to you.

JAMES GLYNN FROST
Deputy Attorney General

August 10, 1960

To: Carleton L. Bradbury, Commissioner of Banks and Banking

Re: Authorized Expenditures for Training Personnel

We have your memo of August 2, 1960 in which you inquire as to the propriety of expending funds for a training program for your department employees.

You make the following statement concerning such program:

"With respect to the evaluation of the capabilities and potential of individual employees, however, it appears that specific authority is included in amendments to Section 2 of Chapter 59 made at the last Legislature wherein the sentence "The Commissioner may train his employees or have them trained in such manner as he deems desirable, at the expense of the Department" was added to this Section. Under this Section of the law we have put into effect a training program which, among other things, utilizes outside training facilities to provide guidance, advice and instruction to selected examiners in order that they may become more expert in their specific fields. An integral part of this training program is the selection of the right man for the right training. The work of these consultants is limited to the evaluation of individual employees for this specific purpose. It is not in the nature of a general administrative survey and evaluation such as has been authorized for several departments in past years and accompanied by appropriations to cover the cost of the same. Use of independent consultants for this purpose seems to be tied directly to this authorization now contained in Section 2."

The amendment to Section 2 of Chapter 59 referred to in the above quote was enacted by Chapter 178, Section 3, Public Laws of 1959.

You then ask: "Would you please advise me if you consider the Legislative reference in Section 2 with respect to expenditures for training purposes sufficiently specific to continue our training program."

Answer: Yes.

JAMES GLYNN FROST
Deputy Attorney General

August 15, 1960

To: Governor John H. Reed

Re: Maine Central Railroad Co. Passenger Service

Relative to your meeting this afternoon on the above matter, the following is offered.

Upon a petition filed by the Maine Central Railroad Co. with the Public Utilities Commission on July 8, 1959 seeking authority to discontinue all passenger train service, the Commission on January 14, 1960 granted discontinuance of service via Lewiston-Auburn, but ordered the Railroad to continue operating, for a period of not less than one year, four trains furnishing service; one from Portland via Augusta to Bangor; one from Portland via Augusta and Bangor to Vanceboro, and similar return trains.

On appeal taken by the Railroad Co. to the Maine Supreme Court, the Court upheld the contentions of the Railroad that continued passenger service would be an oppressive financial burden and ordered the Public Utilities Commission to issue a decree authorizing discontinuance of all passenger service.

Immediately after the Supreme Court decision was rendered, the Public Utilities Commission and its lawyers discussed the possibility and

feasibility of appealing the case to the United States Supreme Court without determining whether or not the suit was of the nature that made it eligible for review by that Court. It was concluded that the merits of the case were such that the chance of reversing the decision of our Maine Court was so remote as to be practically nonexistent. For that reason, the Public Utilities Commission issued its decree in conformity with the Court decision.

With respect to the *right* of the Public Utilities Commission to appeal the case to the United States Supreme Court, there is at this time some question. Appeals or certiorari to the Supreme Court of the United States are generally provided for when the aggrieved party has been deprived of some substantial right accorded to him by a provision of the United States Constitution or by a treaty or by Federal statute. Thus, it is usually said that "there must be a substantial Constitutional question" before review of a State Court decision will be made by the United States Supreme Court.

At this point no such Federal Constitutional question by which the State has been deprived of a legal right, title, or interest by virtue of the decision of our Maine Court, can be seen. The Maine Court decision was a broad one avowedly giving full consideration to "the public interest" in having passenger service maintained, and found, as against the damage that would be done to the Railroad by requiring such continued service, that the public interest would be better served if the passenger service were discontinued.

Frank E. Hancock, the Attorney General, is familiar with the contents of this memo and you are advised that if you believe further study of the problem is desirable, we will be happy to cooperate. At the present time, however, we could not recommend pursuing the case further.

We are enclosing a mimeographed copy of our Court's decision for your file.

JAMES GLYNN FROST
Deputy Attorney General

August 26, 1960

To: Ober C. Vaughn, Director of Personnel

Re: Military Leave of Absence — State Personnel

We have your request for a determination of the status of a Highway Department employee who entered military service in 1948 and who, without break, has remained in the service since. It appears that such person entered service as an officer and has continued such service without further re-enlistment.

Your question is as to whether such person is still on leave of absence under the provisions of Chapter 63, section 28, Revised Statutes of 1954.

In our opinion, such person is still on a leave of absence. The pertinent portions of section 28, above cited, read as follows:

> "Whenever any employee, regularly employed for a period of at least 6 months by the state or by any department, bureau, com-

mission or office thereof, or by any county, municipality, township or school district within the state, and who has attained permanent status in such employment, shall in time of war, contemplated war, emergency or limited emergency enlist, enroll, be called or ordered, or be drafted in the military or naval service of the United States or any branch or unit thereof, or shall be regularly drafted under federal manpower regulations, he shall not be deemed or held to have thereby resigned from or abandoned his said employment, nor shall he be removable therefrom during the period of his service, but the duties of his said employment shall, if there is no other person authorized by law to perform the powers and duties of such employee during said period, be performed by a substitute who shall be appointed for the interim by the same authority who appointed such employee if such authority shall deem the employment of such substitute necessary."

. . . . . .

"The provisions of this section shall apply to any such employee entering the armed forces of the United States under the provisions of Public Law 759, 80th Congress (Selective Service Act of 1948) or while said Public Law 759, or any amendment thereto or extension thereof shall be in effect."

"No credits toward retirement under the State Retirement System, nor vacation or sick leave accumulation shall be allowed beyond the period of first enlistment or induction in said armed forces of the United States unless the individual involved is required to remain in or return to military service beyond the first period of service under some mandatory provision."

According to the records of your department, Mr. was granted a leave of absence on February 4, 1942 on account of military duty. Mr. returned to his duties in the Highway Department on August 18, 1947.

After having received several subsequent leaves for short periods to perform military duties, Mr. entered the military service in 1948 and, as above indicated, still remains in that service with the Selective Service.

The last paragraph of section 28, above quoted, was enacted by Chapter 25, Public Laws of 1957. The counterpart of this law in the Retirement Chapter was similarly amended by Chapter 26, Public Laws of 1957.

While it is clear that Mr. is not entitled to any retirement, vacation, or sick leave credit, under the recent amendments referred to as the result of his present tour of duty, it being subsequent to his first period of service (and absent a law which *compelled* him to re-enter military service and which *compelled* him to remain—if there is such a law Mr. has the burden of drawing same to our attention), we believe he is still on a leave of absence and therefore entitled to whatever benefits might be available under our laws to such a person, other than those specifically denied him under the 1957 law.

Mr. will continue, under our present law, to be on leave of absence as long as the Selective Service Act of 1948 (now known as

Universal Military Training and Service Act) continues in effect; the exclusion in the 1957 law not having included leaves of absence.

JAMES GLYNN FROST
Deputy Attorney General

August 26, 1960

Peter Bowman, M. D.
Superintendent
Pineland Hospital and Training Center
Pownal, Maine

Dear Dr. Bowman:

We have your memo in which you ask if the word "may" as it appears in Chapter 152-A, Section 6, of the Revised Statutes of 1954 as enacted by Chapter 342, Public Laws of 1959, is permissive or mandatory, your basic question being whether you should accept for commitment a juvenile sent to you by a juvenile court when the papers accompanying the juvenile do not reveal that he has been examined by a qualified psychiatrist.

The said Section 6 of Chapter 152-A reads as follows:

> "Mentally retarded and mentally ill juveniles. If, in any proceeding before a juvenile court, the court has cause to believe that the juvenile is mentally retarded, or mentally ill, the court may require such juvenile to be examined by any qualified psychiatrist and the result of said examination shall be reported to the court for its guidance.
>
> "The expenses of any examination authorized by this section shall be paid by the county in which the juvenile court ordering such examination is sitting."

Another section that should be read in conjunction with Section 6 is Section 17, subsection IV, paragraph G of Chapter 152-A, which section deals with the power of a juvenile court to dispose of juvenile cases. Among several specifically enumerated kinds of disposition of juvenile cases, the juvenile court may:

> "Commit, in its discretion, to an appropriate treatment center provided that the court has received a report, as provided in section 6, that the juvenile is mentally retarded or mentally ill;"

Thus, while it is discretionary in the court to initially require examination of the juvenile by a qualified psychiatrist, it is our opinion that such court is powerless to commit the juvenile to the Pineland Hospital and Training Center *unless* the juvenile was so examined by a psychiatrist. The examination is jurisdictional and must be complied with before a juvenile court has jurisdiction to commit to a treatment center.

The commitment papers should indicate that such examination was made.

Your question, however, as revealed by conversation with Dr. Sidwell, actually concerns commitment papers which conform to the use under a law now repealed, which provided that a municipal court could commit

certain juveniles to Pineland upon the certificate of " . . . 2 physicians who are graduates of some legally organized medical college and have practiced 3 years in this state, that such juvenile is mentally defective and that his or her mental age is not greater than ¾ of subject's life age nor under 3 years. . ." Chapter 146, section 6, R. S. 1954, repealed by Public Laws of 1959, Chapter 342, section 17.

While the present law, of course, would be clearly satisfied if the commitment papers were to contain a statement to the effect that examination had been made by a qualified psychiatrist and which papers indicate who that psychiatrist was; still, on the other hand, if the papers indicate that the juvenile had been examined by duly qualified physicians, then we think the law has still been complied with.

We think it is within the competence of a court to determine whether or not a physician is qualified to act as a psychiatrist. A court having sought the services of a physician in order to fulfill the conditions of the law relating to commitment of juveniles to a treatment center and having indicated in its papers of commitment that the subject was examined by a physician, has, in our opinion, complied with that portion of the law requiring such examination. We think that the court has, in effect, found that such examining physician or physicians are qualified psychiatrists and its findings should be given recognition.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

September 13, 1960

Dr. Francis H. Sleeper
Superintendent
Augusta State Hospital
Augusta, Maine

Dear Dr. Sleeper:

I have your request for an opinion regarding Section 118, Chapter 27, Revised Statutes of 1954 as it relates to the power of municipal court justices to order an adult sent to the State Hospital for observation as result of the notice of a plea of insanity in a criminal action. (The word "adult" is purposely stated since a juvenile court has the authority to be examined by a qualified psychiatrist and the findings reported to the court and to commit to a treatment center those mentally retarded or mentally ill. Sections 6 and 17, subsection G.)

In the case of an adult offender the municipal court has no authority to order a person committed for observation. Section 118 is clear and authorizes the superior court to do so on certain conditions, but gives a municipal court no such authority.

Very truly yours,

GEORGE A. WATHEN
Assistant Attorney General

September 15, 1960

To: Paul A. MacDonald, Deputy Secretary of State

Re: Reading of Constitution by Recently Naturalized Citizens Re Voting Registration

We have your memo of September 8, 1960 in which you ask three questions relating to the requirement that, to be eligible to vote, a citizen must be able to read the Constitution in the English language, as that requirement applies to naturalized citizens.

You ask these questions because the City Solicitor of a certain city has advised the election officials of that city that as the ability to read the United States Constitution is a requirement for naturalization, if a man qualifies for naturalization as a United States citizen, then he is qualified as a voter in the State of Maine with respect to the literacy test.

(1) Does the phrase "able to read the Constitution in the English language" refer to the Constitution of the State of Maine or the United States Constitution?

Answer: The phrase refers to the Constitution of the State of Maine.

(2) Is it incumbent upon a Maine board of registration to be satisfied that every applicant for registration as a voter be able to read from the Maine Constitution or the United States Constitution in the English language?

Answer: It is incumbent upon a Maine Board of Registration to be satisfied that every applicant for registration as a voter be able to read from the Maine Constitution.

(3) If a board of registration of voters is convinced that a recently naturalized applicant for registration cannot read from either Constitution in the English language, could they waive this requirement, relying upon the assumption that the applicant must have been able to read from the United States Constitution in order to qualify for naturalization?

Answer: No.

While United States citizenship insures to such citizen certain rights *(Slaughter House cases*, 16 Wall, 36) such citizenship does not confer upon a person rights which are peculiar to citizenship of a State.

Our Maine Constitution provides that

". . . .

"No person shall have the right to vote or be eligible to office under the constitution of *this state*, who shall not be able to read the constitution in the English language, and write his name; provided, however, that this shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who had the right to vote on the fourth day of January in the year one thousand eight hundred and ninety-three. (Emphasis ours)

". . . . "

Constitution of Maine, Article II, Section 1.

It is obvious that, in the above context, the word "constitution" refers to the constitution under which one holds office or votes — the Maine Constitution.

The legislature so believed when it enacted Section 2 of Chapter 3, Revised Statutes of 1954, and said:

> "Every citizen who . . . is able to read the constitution *of the state* in the English language in such manner as to show that he is neither prompted nor reciting from memory . . . shall have the right to vote . . ." (Emphasis ours)

Section 20 of said Chapter 3 reiterates the reading requirement in the following manner:

> "Applicant for registration must be able to read in the English language. Every applicant for registration shall be required, unless prevented by physical disability from so doing, or unless he had the right to vote on the 4th day of January, 1893, to read in the English language, other than the title, from an official edition of the constitution of the state in such manner as to show that he is neither prompted nor reciting from memory, so much as may be necessary to demonstrate his ability to read the constitution, and to write his name in a book or on cards provided for that purpose. The name of the applicant, if admitted to registration, shall be announced in a clear, audible and distinct voice before entering it on the register."

The statutory provision is clear as to which constitution is concerned. We think also that a reading of the constitutional provision reveals a meaning just as clear. The provisions of the statutes are compatible with the provisions of the constitution.

It will be noticed that both our constitution and our statutes exempt a person from the requirement of reading from the constitution if he is unable to do so because of a physical disability, or if he had the right to vote on the 4th day of January, 1893.

We would point out that, in practice, a requirement for naturalization is that a person be able to speak and write simple English, but that such requirement is waived in cases where a person is over a certain age and has lived in this country a certain number of years. The waiver, however, comes at an age less than our State exemption.

Thus, in theory, if a naturalized person against whom the requirement of reading had been waived did not have to comply with our State requirement, he would now have and would have had for some years, an advantage over a citizen of the State of Maine not contemplated by the privileges and immunity clauses of the Federal Constitution.

We are of the opinion, for the above reasons, that the reading requirement for registration as a voter is that the applicant be able to read from the Maine Constitution.

FRANK E. HANCOCK

Attorney General

September 21, 1960

To: Governor John H. Reed, Executive

Re: Maine Central Railroad Case

This memo deals with the recent decision of our Law Court which authorized the Maine Central Railroad to discontinue all passenger service on its lines.

You have asked this office to determine if our court considered, in making its decision, a provision of the charter of the Kennebec and Portland Railroad Company (which railroad was later consolidated with the Maine Central Railroad), which reads as follows:

P. & S. 1836, c. 227:

> "Sect. 6. Be it further enacted, That it shall be the duty of said Company to provide and maintain on their Rail Road suitable and convenient cars for the transportation of persons and freight of every description to be transported thereon; . . ."

The question was presented on the basis that such charter provision is a part of a contract between the State and the Railroad corporation and impresses a positive duty upon the railroad to maintain a passenger service, which duty could not be waived by the Public Utilities Commission or the Court, but could only be dispensed with by an act of the Legislature.

The charter provision cited is not expressly mentioned in the Court's decision, however we *do* know that the principles of law involved where such a charter provision is in existence were discussed and argued in brief of both parties and in oral argument before the court.

We must take issue with some of the statements made in the memorandum of law recently submitted to you which raises the question.

The memorandum states that the above-cited section of the 1836 Charter of the Kennebec & Portland R. R. Co. imposes a *mandatory* duty upon the Maine Central Railroad to provide passenger service since the legislature has done nothing to abrogate this command; that that provision has continued in force and must be deemed to be continuing legislation.

A look at the history of the Kennebec & Portland Railroad Co. seems in order.

The Kennebec & Portland Railroad Co. was incorporated April 1, 1836 (Laws of 1836, Chapter 227); it was afterwards organized and proceeded to construct a railroad from Augusta to Portland; by legislative authority it issued its bonds secured by a mortgage of its railroad and franchise; by the Laws of 1857, Chapter 106 entitled "an act additional to an act to incorporate the Kennebec & Portland Railroad Co." the legislature said in Section 3 —

> "Said railroad company is hereby made subject to *all the general laws of the state relating to railroads*, . . ." (Emphasis supplied)

In 1859 proceedings were commenced under Revised Statutes of 1857, Chapter 51 (Public laws relating to railroads) to foreclose its mortgage and on May 18, 1862 the foreclosure was perfected. On May 20, 1862, a new corporation was formed by holders of the bonds secured by said mortgage. The new corporation was formed under the Railroad law of 1857 under the name of the Portland & Kennebec Railroad Co. The Maine court said

in *State v. Maine Central*, 66 Me. 488, referring to this specific incident, that the Kennebec & Portland Railroad Co. by its own act (see 1857, Chapter 106, *Sec. 3 above*) —

> "became subject to the provisions of R. S. Chap. 46, section 17 by which the state reserves the right to alter, amend or repeal charters granted by its authority, a reservation which applies to all corporations whatsoever, railroads as well as others."

In 1864 the following law was enacted, Chapter 238 — "an act additional to 'an act to secure the safety and convenience of travellers on railroads, passed in the year one thousand eight hundred and fifty-eight.'" which reads at section 4:

> "Every railroad that shall be formed by the foreclosure of a mortgage of any railroad heretofore or hereafter made, *shall be subject to such laws as the legislature have enacted or shall hereafter enact concerning railroads, anything in the original charter to the contrary notwithstanding.*" (Emphasis supplied)

The Maine Central Railroad Co. was organized in 1862 under R. S. 1857, Chapter 51, the act relating to railroads. In February of 1873 the Portland & Kennebec Railroad Co., which was under lease to the Maine Central, was consolidated with the Maine Central. (P. & S. Laws 1873, Chapter 383.)

Chapter 51 of R. S. 1871, the same railroad act, reads as follows at section 68:

> "The trustees of bondholders or other parties under contract with them operating a railroad, and all the corporations formed in the modes hereinbefore provided, shall have the same rights, powers and obligations as the old corporation had by its charter, and the general laws; *and shall be subject to be amended, altered or repealed by the legislature and to all the general laws concerning railroads, notwithstanding anything to the contrary in the original charter.*" (Emphasis supplied)

The Public Utilities Commission was eventually created by the legislature. With reference to regulation and control of public utilities, there appears a provision relating to abandonment or discontinuance of service by public utilities (See R. S. 1954, Chapter 44, section 48.) The legislature therefore has amended by general law any prior inconsistent charter provisions.

It is clear that the legislature has the authority by general legislation to amend, alter or repeal charters of corporations.

R. S. Chapter 53, Section 2:

> "Act of Incorporation passed since March 17, 1831, may be amended, altered or repealed by the legislature, as if express provision therefor were made in them unless they contain an express limitation; . . . "

Constitution of Maine, Article IV, Part Third, Section 14:

> "Corporations shall be formed under general laws, and shall not be created by special acts of the legislature, except for municipal purposes, and in cases where the objects of the corporation cannot otherwise be attained; and, however formed, they shall forever be subject to the general laws of the state."

Section 6 of the 1836 Charter contained no *express limitation.* Whatever obligation might by such charter provision have been imposed for the benefit of the public has been modified by the legislature in its express grant of power to the Public Utilities Commission to approve discontinuance of service.

Therefore, we conclude that the charter provision of 1836 is not a mandatory duty upon the Maine Central Railroad Co. The legislature has acted with regard to such a charter and has abrogated that command and it can no longer be considered to be in force.

We also conclude that the charter provision of 1836 is not new evidence, and further conclude that by various subsequent enactments to the general law affecting railroads the effect of that provision has been nullified.

FRANK E. HANCOCK
Attorney General

October 17, 1960

Honorable David J. Kennedy
State Representative
Milbridge, Maine

Dear Mr. Kennedy:

This letter is in response to your oral request for an opinion relating to the reciprocity provisions of section 6 of Chapter 68, Revised Statutes of 1954, as amended. The provisions in question read as follows:

> " . . . The board may, in its discretion, grant certificates of registration to such persons as shall furnish with their application satisfactory proof that they have been registered in some other state, provided that such other state shall require a degree of competency equal to that required of applicants of this state. Persons of good character who have become registered as pharmacists by examination in other states prior to July 3, 1931 shall be required to satisfy only the requirements which existed in this state at the time when they became registered in such other states; and provided also that the state in which such person is registered shall, under like conditions, grant reciprocal registration as a pharmacist, without examination, to pharmacists duly registered by examination in this state. . . ."

With respect to the above-quoted provision, you inquire if a person registered in the State of Massachusetts in 1937 is eligible to receive a certificate when such person was not a graduate of a school or college of pharmacy or a department of pharmacy of a university.

> Answer: No, such person is not eligible for registration under our reciprocity statute.

Since the person in question was registered as a pharmacist in Massachusetts in 1937, the first sentence of the above-quoted law, not the last sentence would be applicable:

> "The board may, in its discretion, grant certificates of registration to such persons as shall furnish with their application satis-

factory proof that they have been registered in some other state, *provided that such other state shall require a degree of competency equal to that required of applicants of this state.*" (Emphasis ours)

A decision in this case rests upon the definition of the term "competency"—and there are two views that can be taken with respect to the use of that term:

Firstly, it might be said that it matters not what educational or practical experience background may have been required of an individual in order to become registered in Massachusetts in 1937—if in fact Massachusetts laws *now* require for registration a degree of competency equal to that required of applicants of this State, then the 1937 registrant is eligible for reciprocal registration in Maine.

It appears to us that this argument is fallacious.

The degree of "competency" of an individual already admitted to a licensed practice doesn't improve, or increase, as the laws of that licensing state are tightened to require further educational requirements of later applicants.

The test is "competency" as determined by whether the applicant was registered at a time when the requirements of the registering state were equivalent to Maine's requirements *today*. And we believe the prerequisites to registration such as educational and experience background are embraced in the term "competency."

Thus, if an applicant can show that he was registered in another state at a time when the requirements for applicants in that state were equivalent to those presently required for registration of residents of this state, then he may, in the discretion of the Board, be issued a certificate of registration.

As the problem was presented to us, the applicant was never graduated from a school or college of pharmacy. Our law now requires that a resident applicant for a certificate to practice pharmacy must be a graduate of a school or college of pharmacy or a department of pharmacy of a university, accredited by the American council on pharmaceutical education.

Not being a graduate of such a school or college, we are of the opinion that the applicant in question cannot comply with the requirement of our Maine law.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

October 17, 1960

To: Harold S. Brooks, Department of Economic Development

Re: "Residence" in State of Maine — Qualification to Vote

I have your oral inquiry regarding residence in the State of Maine. The terms "residence" and "domicile" are frequently used synonymously but do not have identical meanings. "Residence" means living in a par-

ticular locality; "domicile" is residence coupled with an intent to make it a fixed and permanent home.

In regard to the qualification to vote, Article II, Section 1, of the Constitution of Maine provides:

". . . Every citizen of the United States of the age of twenty-one years and upwards . . . having his or her residence established in this state for a 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 . . ."

Section 2, Chapter 3, Revised Statutes of 1954, restates this constitutional proviso. Former opinions from this office have pointed up the fact that "residence" as used in the Constitution is domicile or legal residence.

Evidence of intent to make a permanent abode could be auto registration, operator's license, payment of taxes and church affiliation. Actual physical presence coupled with intent is the test prescribed.

Chapter 3, Revised Statutes of 1954, places the duty of determining the qualification in the hands of the municipal officers, subject to a right of appeal to the court.

I trust this will be of some aid to you, and if there are any more questions regarding this matter, please feel free to contact me.

GEORGE A. WATHEN
Assistant Attorney General

October 26, 1960

To: Robert G. Doyle, State Geologist

Re: Mining Licenses

I have your request for our opinion on the following queries:

1. Should the Mining Bureau file and accept staking of an area on the state lands or great ponds which a party has previously staked, recorded and been issued a license to mine by the bureau?

Answer: Section 2, Chapter 39-B, provides a person may enter on state lands to prospect for minerals after having been issued a prospector's permit. Section 3 provides for location of claims and the right to possession thereto and Section 4 provides for recording the claim on state lands and great ponds. Section 4 provides a right to possession of a claim after proper recordation and further requires certain work to be done by the claimant in order to avoid a forfeiture to the claim. In your question, I presume the steps prerequisite to the issuance of a license to mine have been properly taken. Section 5 authorizes the Maine Mining Bureau to issue a license to mine to a claim holder upon receipt of an application therefor accompanied by a survey, report of the proposed mining operations and the required license fee plus a land use ruling.

Section 5 further sets forth the royalty and rental payments to be paid by the licensee. It is my opinion at this point that if the Mining Bureau accepted another claim on the same land, it would be promoting breaches of the peace between a locator and one who has a prior claim which has been recognized by the act of the Mining Bureau in issuing a license to mine, which gives additional rights beyond those of the locator.

2. May the Maine Mining Bureau issue a license to mine with conditions and subsequently void the conditions, prior to issuing a renewal of the license?

Answer: Section 5, Chapter 39-B, provides that a license to mine shall be granted after the prerequisites have been met on such terms and conditions as the bureau may require and further states that such license shall be renewed on expiration providing the licensee satisfies the bureau that he has complied with the terms and conditions imposed by the bureau in his license. It is my opinion that the answer to the query is found in Section 5, in that the Bureau must determine factually whether or not there has been compliance with the terms and conditions and whether these terms and conditions are reasonable.

GEORGE A. WATHEN
Assistant Attorney General

October 26, 1960

To: Perry D. Hayden, Commissioner of Mental Health & Corrections

Re: Admission of Children to State Hospitals

I have your request for an opinion regarding the admission of children under the age of 16 years to the state hospitals on and after September 1, 1960.

Section 143-A, B and C, C. 27, R. S. 1954, provide that Pineland Hospital and Training Center shall be maintained for the care and education of children between the ages of 6 and 16 years who are deemed by the superintendent of the hospital to be suffering from psychoses, neuroses, psychoneuroses, behavior disorders or other mental disabilities. Therefore, children between these ages should be properly sent to the Pineland Hospital and Training Center and not to state hospitals.

GEORGE A. WATHEN
Assistant Attorney General

October 27, 1960

To: Warren G. Hill, Commissioner of Education

Re: Required courses in Public Schools — Physiology & Hygiene

I have your request for my opinion regarding the propriety of excusing certain students from instruction in the field of physiology and hygiene.

It seems clear that the State has the power to control the curriculum and studies in public schools as long as it does not conflict with a constitutional provision. See *Donahoe v. Richards*, 38 Me. 376, 392 et. seq.

Subsection VII, Section 11, Chapter 41, Revised Statutes of 1954, prescribes the duties of the Commissioner of Education:

"To prescribe the studies to be taught in the public schools. . ."

This legislative mandate is subject to certain statutory mandates contained therein and is also subject to the statutory duties of the superintending school committee. Subsection III, Section 54, Chapter 41, Revised Statutes of 1954 provides that the superintending school committee

". . . shall make provisions for the instruction of all pupils in schools supported by public money or under state control in physiology and hygiene, with special reference to the effects of alcoholic drinks, stimulants and narcotics upon the human system."

It is my opinion that the legislature has acted in this area and the agencies charged with administration of the law are without authority to exempt any student from those courses required by statute.

GEORGE A. WATHEN
Assistant Attorney General

November 1, 1960

To: Carleton L. Bradbury, Commissioner of Banks and Banking

Re: Retirement Board authority to appoint committees

We have your memo of October 7, 1960 in which you ask if it is within the authority of the Board of Trustees of the Maine State Retirement System to appoint committees composed of members of the Board, which committees would give attention to specific areas of the Board's activities and to advise the Board or perform specific functions designated by the Board.

You are particularly interested in the Board's authority to appoint an Investment Committee with the duty to supervise investment operations. As background to your request you state:

"In connection with the latter subject, it would seem appropriate to bear in mind that investment mediums available to the Board are prescribed by statute. Within this general framework the Board has established after recommendation by investment counsel, a specific investment program which remains in force until altered by the Board. Day to day investment activity to implement this policy, to be effective, must be conducted on a day to day basis. Decisions with respect to specific securities cannot be deferred until monthly Board meetings. The authority of the Investment Committee to make these decisions, however, is limited, first, by statutory investment limitations and, secondly, by the investment program established by the Board and currently in effect."

Answer: It is our opinion that the Board of Trustees does not have authority to appoint such an investment committee.

The trust impressed upon the members of the Board of Trustees is a solemn one. As you point out, Revised Statutes of 1954, Chapter 63-A, section 13-I, states that "The general administration and responsibility for the proper operation of the retirement system and for making effective the provision of this Chapter are vested in a Board of seven trustees."

In order that there would be effective administration of the laws, the legislature granted to the Board specific powers: Appoint an executive secretary, a medical board, an actuary, employ investment counsel, etc. Chapter 63-A, section 13, R. S. 1954.

The legislature also authorized the Board, in one instance, to appoint a Finance Committee empowered to withdraw or deposit securities from or with such custodian as the Board contracted with, and the custodial care and servicing of the negotiable securities belonging to any fund of the Retirement System.

It appears to us that the responsibility of any such Investment Committee would be much greater than that of the Finance Committee above mentioned. The fact that the legislature felt compelled to enact a law authorizing the Board of Trustees to appoint a Finance Committee compels us to the opinion that the legislature should consider the wisdom of authorizing appointment of an Investment Committee.

While a great body of law exists with respect to the Board of Directors of a corporation working through committees, we point out that general business corporations organized in Maine are expressly authorized by statute to function through committees.

Chapter 53, section 32, provides that: " . . . Directors of corporations may act through committees whose powers shall be defined in the by-laws."

We do not believe that the power of the trustees set forth in section 14-I of Chapter 60-A "subject to like terms, conditions, limitations and restrictions, (as to savings bank) said trustees shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments . . . as well as the proceeds of such investments"—extends to the right of the Board to appoint an Investment Committee, a power extended to savings banks. This section deals not with the composition of the Board, but rather the kinds, quantities, etc. of investments.

JAMES GLYNN FROST
Deputy Attorney General

November 1, 1960

To: Michael A. Napolitano, State Auditor

Re: Disposition of Forfeited Cash Bail

We have your memo of September 15, 1960 in which you state that "During our audits of the courts it has been noted that forfeited cash bail on cases pertaining to Inland Fish and Game as well as Sea and Shore Fisheries violations has been remitted to the county treasurer, however, said forfeitures are being retained by the county."

You inquire if such forfeited cash bail should not be remitted to the State.

All forfeited cash bail monies collected for violations of the Inland Fish and Game laws shall be paid by the County Treasurer to the Treasurer of State and credited to the Department of Inland Fisheries and Game.

Revised Statutes of 1954, as amended, Chapter 37, section 129, reads as follows:

> "Collection and disposition of money received under this chapter. All fines, penalties, officers' costs and all other moneys recovered by the court under any provision of this chapter shall accrue to the Treasurer of State and shall be paid into the treasury of the county where the offense is prosecuted. All officers' fees taxed against a respondent, if any, under any provision of this chapter, which are not paid or recovered from the respondent shall not be assumed or paid by the county where the offense was committed. All fees, fines and penalties recovered and money received or collected, and including moneys received from sale, lease or rental of department owned property shall be paid to the Treasurer of State and credited to the department for the operation of fish hatcheries and feeding stations for fish, for the protection of fish, game and birds, information and education on conservation and for printing the report of said commissioner and other expenses incident to the administration of said department, and shall be expended by the said commissioner for the purposes for which said department is created."

We also draw to your attention the last paragraph of section 132 of said Chapter 37:

> "All money forfeited shall be immediately forwarded to the Commissioner."

The controlling law with respect to forfeitures of cash bail in cases of violation of Sea and Shore Fisheries laws is Revised Statutes of 1954, Chapter 37-A as enacted by Chapter 331, Public Laws of 1959, section 94. The first paragraph of section 94 reads as follows:

> "Recovery of fines, fees and forfeitures; disposition. This section applies to all fines, fees, forfeitures and penalties authorized by this chapter, except those authorized for municipal ordinances."

With respect to disposition of fines, fees, and forfeitures, section 94, subsection II provides that:

> "All of them, except where otherwise expressly provided in this chapter, accrue to the commissioner and he shall pay them to the Treasurer of State."

In view of such law, we are of the opinion that forfeited cash bail recovered as a result of the violation of the Sea and Shore Fisheries laws, shall, unless otherwise specifically provided, be paid to the Commissioner of Sea and Shore Fisheries and by him paid to the Treasurer of State.

JAMES GLYNN FROST
Deputy Attorney General

November 4, 1960

To: Carleton L. Bradbury, Commissioner of Banks and Banking

Re: Qualification of director—Section 109 of Chapter 59

We have your memo of October 10, 1960 in which you inquire as to a plan proposed by the Eastern Trust and Banking Company, which company owns a majority of stock of the Guilford Trust Company, whereby the Eastern Trust and Banking Company contemplates placing ten shares of stock of the Guilford Trust Company in trust in the name of an officer of the Eastern Trust and Banking Company, such transfer being for the purpose of making that officer eligible as a director of the Guilford Trust Company, and to authorize him to vote the stock at the meetings of the stockholders of the Guilford Trust Company.

Question: You ask us to advise you as to whether or not in our opinion, the officer of the Eastern Trust and Banking Company, receiving stock in the manner above proposed, would be eligible to the position of a director of the Guilford Trust Company.

Answer: In our opinion this person would not, under the proposed plan, be eligible to the position of a director of the Guilford Trust Company.

Attached to your request for an opinion is the memo of law submitted to you by the Eastern Trust and Banking Company setting forth the principles that it is not necessary for a person to have the equitable or beneficial interest in the stock in order to render him eligible as an officer; that a stockholder to whom stock has been transferred in trust for the express purpose of qualifying him to be an officer of the corporation, is eligible; that a person who holds the legal title to stock on the books of the company is qualified to hold such position.

Until September 12, 1959 our statutes required, with respect to business corporations organized under the general law, that:

> "Directors must be and remain stockholders, except that a member of another corporation, who owns stock and has a right to vote thereon, may be a director." Revised Statutes 1954 C. 53, sec. 32.

Effective September 12, 1959 this law was amended to read as follows:

> "Directors need not be stockholders if the charter or by-laws of the corporation so provide." Chapter 129, Public Laws of 1959.

With respect to the above-quoted statutes we believe it may be possible for one holding stock in a corporation organized under the general law to be eligible to the position of director, although the stock is held by him in trust for another.

Kardo Co. v. Adams, 231 Fed. 950; *In re St. Lawrence Steamboat Co.,* 44 N.J.L. 529; *In re Leslie,* 58 N.J.L. 609, 33 Atl. 954; *State v. Leete,* 16 Nev. 242; *Casper v. Kalt-Zimmers* Mfg. Co., 159 Wis. 517, 149 N.W. 754, 150 N.W. 1101. See also *Schmidt vs. Mitchell,* 101 Ky. 570, 41 S.W. 929, 72 Am. St. Rep. 427; *Louisville Gas Co. v. Kaufman,* 105 Ky. 131, 48 S.W. 434; *Richards v. Merrimack,* etc. R. Co. 44 N.H. 127.

But this answer cannot apply to the banking law. Revised Statutes Chapter 59, section 109, reads as follows:

> "Qualification of director.—No person shall be eligible to the position of a director of any trust company who is not the actual owner of stock amounting to $1,000 par value, free from encumbrance."

No one of the cases above cited, all of which are contained in the memo of law in support of the proposition that a person holding stock in trust is eligible to be a director of a bank, dealt with a statute such as is present in the banking law.

However, one of the cases cited in the memo of law noted the distinction between a law requiring one merely to be a stockholder and a law requiring both legal and equitable title to be a stockholder.

Thus, in *State of Nevada v. Leete,* (1881) 16 Nev. 242, the court considered two statutes. The first statute provided that:

> "The corporate powers of the corporation shall be exercised by a board of not less than three trustees, who shall be stockholders in the company."

The second statute read as follows:

> "No person shall be a director, unless he shall be a stockholder owning stock absolute in his own right, and qualified to vote for directors at the election at which he may be chosen, . . ."

The court said, page 247, in comparing the second statute relating to railroads, and the first statute relating to business corporations:

> "The fact that in the railroad law the legislature *ex industria,* made absolute ownership the test of eligibility, is strong evidence that in the general law, where that test was excluded, the same rigor was not intended."

The expressly set forth requirement in our banking law that to be a director of a trust company a person must be *actual* owner, *free from encumbrance,* of stock, is a statute of altogether different tenor and effect than that appearing in the general law governing business corporations.

With respect to a banking law statute like ours, Morse on Banks and Banking, 6th Edition, Volume 1, section 138 says:

> "A method frequently resorted to for securing the fidelity of directors in the exercise of their duties is to require them to own in their own right and unencumbered a certain number of the shares of the corporation . . . "

With respect to such a statute the court said in *Molnar v. South Chicago Savings Bank,* (1943) 138 F (2d), 201, 202:

> "It would seem that Mr. Morse has correctly stated the only reason for such requirement. The director's fidelity if he desired to remain a director, would require him to continue to own and retain the legal and equitable title of his stock which he had deposited with the bank."

The statute considered by the court in the Molnar case provided that:

> "Every director of any bank . . . must own in his own right, free of any lien or encumbrance, shares of the capital stock of the bank . . . of which he is a director, the aggregate share value of which shall not be less than One Thousand Dollars ($1,000.00) and

stock certificates evidencing . . . (such shares) issued in his name, shall be filed unendorsed and unassigned by him with the cashier of such bank . . . during his term as director."

The State of New York had a similar statute which was considered in *Tooker v. Inter-County Title Guaranty Co.* (1946) 295 N.Y. 386, 68 N.E. (2d) 179.

That court said (295 N.Y. 386, 389, 390; 68 N.E. (2d) 179, 180.)

"The plan that underlies this text of section 116 — and every other provision of the banking law — has long been known. "The prime object is to protect the public, including depositors, and after that to enable the stockholders to secure a fair return from their investment. Banking institutions are not created for the benefit of the directors." To that end section 116 requires every director of a banking institution to share its business risks to the undiluted ownership of the prescribed amount of its stock."

See generally, Michie Banks and Banking, Chapter 3, section 4.

For the above reasons we are of the opinion that a person holding stock of a trust company in trust for another does not have actual ownership of such stock free from encumbrance, and is not, therefore, eligible to the position of director of a trust company.

JAMES GLYNN FROST
Deputy Attorney General

November 18, 1960

To: Peter W. Bowman, M.D., Superintendent of Pineland Hospital and Training Center

Re: Surgical and/or Medical Treatment Form

We have your request of October 26, 1960 for an opinion as to the duration of the effectiveness of an executed consent for surgical and/or medical treatment signed by a person having custody of an inmate of your institution.

If the responsible party who executed this consent is dead, then the consent is of no value.

The consent would be valid during any one period of commitment providing the executing person remains alive and competent.

We do not believe it is necessary to incorporate the element of "risk" to any given procedure.

There is a thought contained in the last paragraph of your consent which seems to most of us here to be unnecessary and undesirable. Radiation therapy would, of course, be included within the term "treatment" contained in the preceding portion of the consent, and as you know, the requirements which must be pursued in order to perform an operation resulting in sterility are complex and it should not appear that radiation therapy might be just another method of obtaining this result.

JAMES GLYNN FROST
Deputy Attorney General

November 18, 1960

To: Doris St. Pierre, Secretary of Real Estate Commission

Re: Return of License and Examination Fees

I have your request for an opinion relating to the return of license and examination fees.

Section 5, Chapter 84, provides for an examination fee of $10.00 which entitles the applicant to one retake examination without fee should he fail to pass the first examination, which is in addition to any other fees. There is also an initial fee for a broker's license of $10.00 and an initial fee for a salesman's license of $5.00 which is refunded if the commission does not issue the license. The examination fee is not refundable under the provisions of the law. An examination fee is designed to help defray the costs of investigation and examination of the applicant, whereas a license fee is an amount exacted for issuance of the license.

GEORGE A. WATHEN
Assistant Attorney General

November 22, 1960

To: Carleton L. Bradbury, Chairman Maine State Retirement System

Re: Participation Note for Houlton MIBA Loan

I have your request for our opinion on the protection afforded the Maine State Retirement System in participating in the financing of the Morningstar-Paisley plant in Houlton. As has been previously stated in our opinion dated May 27, 1960, you have authority to participate in the financing of such a project and after having looked over the new arrangement which will result in you holding a mortgage, I believe you are completely protected. It should be kept in mind at all times that the mortgage upon which the notes are based is guaranteed by the Maine Industrial Building Authority.

GEORGE A. WATHEN
Assistant Attorney General

November 28, 1960

To: Warren G. Hill, Commissioner of Education

Re: Release of Funds in Reserve Account for Building Equipment

I have reviewed the request from the Town of South Berwick, forwarded by Superintendent Hubert E. Redding, relating to the release of funds now held in the reserve account to be used for building equipment.

This matter was discussed with Robert Mitchell, Esq., our bond counsel. Although I am in sympathy with the request and feel it to be meritorious, I cannot see a way in which these funds can legally be used for this

purpose. The application and correspondence between the Maine School Building Authority and the town specifically negates the use of funds derived from this bond issue for that purpose. The existing agreements cannot be altered without impairing third party rights.

GEORGE A. WATHEN
Assistant Attorney General

November 29, 1960

To: Dr. Howard L. Bowen, Maine School Building Authority

Re: Expended Funds Re Auburn Project

In looking over the correspondence concerning payment of the $45,000.00 for the land of the Auburn High School, I note that $4,500.00 was to be paid in cash and nine serial promissory notes in the sum of $4,500.00 without interest, one maturing each year were to be treated as payment of this project. Therefore, in regard to your question of whether or not we should treat the $4,500.00 as spent so that we may release Maine School Building Authority funds for the remainder of the project, I am of the opinion that we should treat the entire $45,000.00 as having been spent. My reasons for this: (1) No money could be released for nine more years if we did not so treat it; (2) The arrangement for payment was agreed upon by the Maine School Building Authority and the underlying purpose was at the vendor's request; (3) We have title to the property free and clear of encumbrances at the present time; and (4) This arrangement has committed the City to payment in a different manner than usual but with the same net result. Therefore, the Authority should consider that if the remaining money has been spent, that the balance due on the property should be considered expended at this time.

GEORGE A. WATHEN
Assistant Attorney General

November 29, 1960

To: Andrew Watson, Assistant Chief, Inspections, Agriculture

Re: Rules and Regulations Re Grades of Sardines

I have your request for our opinion relating to rules and regulations relating to the grades of sardines. As I understand the facts, rules have been promulgated regarding packing of ¾ size (12 oz.) cans of mustard packs. Some of the lots have been inspected and found to be substandard. The query now raised is whether the Commissioner can declare a moritorium on the rules setting up these grades and whether or not, after hearing, new rules relating to these particular grades could be promulgated which would be retroactive, so as to make those lots presently substandard eligible for sale as standard sardines.

The Commission is authorized pursuant to Section 258 through 267, Chapter 32, Revised Statutes of 1954, to promulgate rules and regulations regarding the grade and quality of sardines packed in this state (Section 261). The requisite procedure for establishing, amending or modifying grades is set forth in Section 263 which requires notice and hearing.

It is my opinion that the Commissioner is without authority to declare a moritorium on any standard rule or regulation that has been promulgated pursuant to the statutes. I am also of the opinion that he is without authority to establish a grade making it retroactive, either upgrading or downgrading a packing standard.

GEORGE A. WATHEN
Assistant Attorney General

December 5, 1960

To: Austin H. Wilkins, Commissioner of Forestry

Re: Mining on a Public Lot

I have your request for our opinion concerning procedure for entering into a lease regarding mining rights in Township 5, Range 5, an unorganized territory, in Parmachenee. The Brown Company owns the entire township with the exception of the public lots which are not set off. This Company also owns the timber and grass rights on the unlocated public lot. They desire to lease mining rights to a mining company with appropriate royalty provisions. The state has an interest in the land amounting to about 3.2% based on acreage ratios. The cost of setting of the lot would be about $1,000.00. If minerals were discovered on the land, you have stated that the proposed arrangement is for the state and the company to share all profits in the percentage that their interest appears.

In the normal situation of granting mining rights on state lands, Chapter 38-B would control and the Mining Bureau would have jurisdiction. The present fact situation seems to be covered by Section 12, Chapter 36, Revised Statutes of 1954.

Section 12 provides that the Commissioner may, under the direction of the Governor and Council, grant mining rights, after the approval of the mining bureau on lands belonging to the state on such terms as they direct.

Therefore, I suggest that a council order be prepared setting forth the terms and conditions of the agreement with the Brown Company and secure the approval of the Mining Bureau before presentation to the Governor and Council. The royalties as set forth in Chapter 39-B would be a good guide for granting these mining rights.

GEORGE A. WATHEN
Assistant Attorney General

December 6, 1960

To: Dr. Warren G. Hill, Commissioner of Education

Re: Educational Television

I have your request for an opinion regarding whether or not the Department of Education can become a member of Eastern Educational Network, Inc.

Chapter 204, Private & Special Laws of 1955, sets up a committee to study the possibilities of the use of television in an expanding program of education for the citizens of the State and the proper relationship of state agencies to any public or private effort to develop this potential.

This committee was reactivated by Chapter 181, Private & Special Laws of 1957.

The Department of Education is an agency of the State and as such has only those powers as set forth in the statutes. I am unable to find any authority for the Department of Education to join this corporation.

GEORGE A. WATHEN
Assistant Attorney General

December 6, 1960

To: R. W. Macdonald, Chief Engineer of Water Improvement Commission

Re: Transferring a Waste Discharge License

We have your request for an opinion as to whether or not a waste discharge license issued by the Water Improvement Commission can be transferred from the party who initially receives the license to a second party not involved in the initial request.

Under Chapter 79, section 9, Revised Statutes of 1954, applications for licenses must be in writing signed by the applicant and certain requirements of notice and hearing must be met. Under section 8 of Chapter 79, no person or corporation may discharge waste without first obtaining a license from the Commission.

Under neither of these sections is the Water Improvement Commission given any power to transfer a license from the initial licensee to a subsequent party. It is, therefore, our opinion that such a transfer is not within the powers of the Water Improvement Commission and would not be proper.

THOMAS W. TAVENNER
Assistant Attorney General

December 9, 1960

To: John H. Reed, Governor of Maine

Re: Incompatibility

I have your request regarding whether it would be compatible for one to hold the office of a Commissioner on the Board of Pharmacy of this State and at the same time be a legislator.

I have reviewed the opinions compiled in this office regarding the incompatibility of holding an office in more than one branch of the State Government and am of the opinion that the two offices would be incompatible.

GEORGE A. WATHEN
Assistant Attorney General

December 23, 1960

To: E. L. Newdick, Commissioner of Agriculture

Re: Airplane Insurance for our Marketing Specialists

We have your letter of November 23, 1960 in which you inquire as to the legality of the Maine Potato Commission's paying for a group flight policy for those employees of your department doing work servicing and promoting Maine potato advertising.

We are of the opinion that flight insurance would be a proper expenditure of funds and could appropriately be paid by the Maine Potato Commission under its agreement with you for servicing and promoting Maine potato advertising. However, authority for the purchase of such insurance should be obtained from the Governor and Council.

It has long been the policy of the state that the Governor and Council authorize the procurement of insurance both on State property and other forms of insurance. For this reason we believe a Council Order should be prepared for presentation to the Governor and Council with respect to this problem.

JAMES GLYNN FROST
Deputy Attorney General

December 23, 1960

Mr. Harold Dow
Eliot, Maine

Dear Harold:

This is regarding your oral request for an opinion as to whether or not you, as a member of the Interstate Bridge Authority, could also be elected and serve as a Governor's Counsellor.

As you know by the Act creating the Interstate Bridge Authority, the Governor with the advice and consent of the Council, appoints members of the Authority. It is further provided that members may be removed by the Governor and Council for cause. These facts alone, in my opinion, create a conflict between the two offices.

I might add further that the term "civil officer under this state" as used in Article V, Part Second, Section 4 of the Maine Constitution would embrace a member of the Interstate Bridge Authority. The office is created, the powers given, and the duties defined directly by act of the legislature.

Such members exercise a share of the powers of civil government and obtain their authority directly from the State. The emoluments of the office are not a necessary element in determining its character. For this reason it is my opinion that you would have to resign as a member of the Bridge Authority before being elected to the Council since the Constitution reads:

> "Section 4. 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* . . . shall be counsellors. . . . ."

The answer to your question, therefore, must be no.

Very truly yours,

FRANK E. HANCOCK
Attorney General

December 27, 1960

To: Carleton L. Bradbury, Commissioner of Banks and Banking

Re: Servicing Agreement for Mortgages on Property in North Carolina

With respect to the legality of the Maine State Retirement System's purchase of mortgages on property in North Carolina, we offer the following:

Intangible Property Tax and Income Tax in North Carolina

With respect to the intangible property tax levied in the State of North Carolina, section 105-212 of the General Statutes of North Carolina set forth the institutions exempted from such tax.

> "105-212. Institutions exempted; conditional and other exemptions. — None of the taxes levied in this article or schedule shall apply to religious, educational, charitable or benevolent organizations not conducted for profit, nor to trusts established for religious, educational, charitable or benevolent purposes where none of the property or the income from the property owned by such trust may inure to the benefit of any individual or any organization conducted for profit, nor to any funds held irrevocably in trust exclusively for the maintenance and care of places of burial; nor, on or after January first, one thousand nine hundred and forty-two, to any funds, evidences of debt, or securities held irrevocably in pension, profit sharing, stock bonus, or annuity trusts, or combinations thereof, established by employers for the purpose of distributing both the principal and income thereof exclusively to eligible employees, or the beneficiaries of such employees, if such trusts qualify for exemption from income tax under the provisions of section 105-138, subdivision (10); . . ."

Referring to section 105-138 subdivision (10) we find therein those organizations which shall be exempt from income tax.

"(10) Pension, profit sharing, stock bonus and annuity trusts, or combinations thereof, established by employers for the purpose of distributing both the principal and income thereof exclusively to eligible employees, or the beneficiaries of such employees, and so constituted that no part of the corpus or income may be used for, or diverted to, any purpose other than for the exclusive benefit of the employees or their beneficiaries; provided, there is no discrimination, as to eligibility requirements, contributions or benefits, in favor of officers, shareholders, supervisors, or highly paid employees; provided further, that the interest of individual employees participating therein shall be irrevocable and nonforfeitable to the extent of any contributions made thereto by such employees; and provided further, the Commissioner of Revenue shall be empowered to promulgate rules and regulations regarding the qualification of such trusts for exemption under this subdivision. The exemption of any trust under the provisions of the federal income tax law shall be a prima facie basis for exemption of said trust under this paragraph. This subdivision shall be effective from and after January first, one thousand nine hundred and forty-four."

Insofar as the Maine State Retirement System is a state agency administering its funds for pension purposes exclusively for the benefit of eligible employees and employees of participating districts; and insofar as it is exempt from federal income tax, it would be, in our opinion, exempt from North Carolina income taxes and as a result also exempt from the North Carolina Intangible Property Tax.

North Carolina Usury Law

While there appears that there is a usury law in the State of North Carolina, it also appears that laws of that state limiting the rates or time of payment of interest on certain obligations do not apply to the purchase of mortgages guaranteed by FHA.

The first paragraph of Section 53-45 General Statutes of North Carolina appear to spell out the conditions under which it would be legal to purchase such mortgages and not be subject to the usury law.

"(1) Insured Mortgages and Obligations of National Mortgage Associations. — It shall be lawful for all commercial and industrial banks, trust companies, building and loan associations, insurance companies, and other financial institutions engaged in business in this State, and for guardians, executors, administrators, trustees or others acting in a fiduciary capacity in this State to invest, to the same extent that such funds may be invested in interest-bearing obligations of the United States, their funds or the moneys in their custody or possession which are eligible for investment, in bonds or notes secured by a mortgage or deed of trust insured by the Federal Housing Administrator, in mortgages on real estate which have been accepted for insurance by the Federal Housing Administrator, and in obligations of national mortgage associations."

Under the provisions of the above-quoted section it is our opinion that it would be proper for the Retirement System to purchase FHA guaranteed

mortgages in the State of North Carolina and that the usury laws of that State would not apply to the transaction.

We note that under Title 24, Part 221.1 Code of Federal Regulations, the Maine State Retirement System, as a governmental agency, is approved as a mortgagee under section 203 of the National Housing Act insofar as it is empowered to hold mortgages insured under Title II of the National Housing Act as security or as collateral.

JAMES GLYNN FROST
Deputy Attorney General

December 28, 1960

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Thornton Academy

I have your request for an opinion of December 16, 1960, in which you ask the following questions:

"1. Is there any way a contract academy could utilize the Maine School Building Authority?"

Answer:

Subsection V, Section 248, of Chapter 41, R. S. 1954, states that the Maine School Building Authority may build and repair school projects when the superintending school committee of any town or the community school committee of a community school district or the school directors of any School Administrative District has certified the need therefor to the municipal officers of the town for the procurement or addition of school buildings.

Under the present set up the Maine School Building Authority may deal with any administrative unit. The term "administrative" as defined in Section 236 of Chapter 41 includes municipal and quasi-municipal corporations responsible for operating public schools.

Under the provisions of the Maine School Building Authority law and the procedures which have been set up to effectuate the purposes, there is no machinery or authority for dealing with a privately owned academy.

"2. Could a joint effort with the City of Saco for a gymnasium or recreation center be eligible?"

Answer:

This question appears to be an attempt to avoid the inability for the academy to deal directly with the Authority by bringing in a city which, of course, could deal with the Authority in building school buildings. In my opinion a recreation center would not be eligible but a gymnasium, if a part of the school program, might be eligible. The property would necessarily become the property of the City of Saco under the terms of the lease agreement.

"3. Is there any obstacle to getting Federal aid if the state can classify a contract academy with its public schools?"

Answer:

To the best of my knowledge there is no Federal aid for school construction at the present time. If this question is directed in reference to the National Defense and Educational Act, I am not sure what field you are specifically referring to and would not be able to answer this question. If the question relates to Federal aid for school buildings or capital expenditures, I would not be in a position to hazard a guess as to what Congress might or might not do.

"4. Would the state computation of subsidy, based on Saco's payments of tuition, have any influence on the Federal position with Thornton Academy?"

Answer:

As I have stated in answer to question 3, I know of no Federal law relating to aid to states for capital expenditures and therefore could not hazard a guess as to what may or may not be in the law.

GEORGE A. WATHEN
Assistant Attorney General

December 29, 1960

To: Walter B. Steele, Jr., Executive Secretary of Maine Milk Commission
Re: Sale and Delivery of Milk on Land Owned by the United States Government

We have your request dated October 4, 1960 for an opinion with regard to whether or not the Maine Milk Commission has the power to regulate the sale of milk in the Capehart housing project attached to Dow Air Force Base at Bangor.

It appears to be the settled federal law that State Milk Commissions retain jurisdiction over federal projects where exclusive jurisdiction over the area in question has not been accepted by the federal government. *Pennsylvania Dairies, Inc. v. Milk Control Commission*, 318 U. S. 261. In this connection I have been in touch with the Department of the Air Force in Washington and they have informed me in a letter of December 23, 1960 that federal jurisdiction has not been accepted by the United States over the existing Capehart housing project located approximately one mile northwest of Dow Air Force Base.

It is our opinion, therefore, that the Maine Milk Commission has the power and authority to regulate the price of milk within this area. It should be noted, however, that additional housing is planned on an area immediately adjacent to the Base on Griffin Road and State Route No. 222. No action has been taken to accept federal jurisdiction over this latter housing area.

THOMAS W. TAVENNER
Assistant Attorney General

Statistics For The Years 1959 - 1960

MAINE CRIMINAL STATISTICS FOR THE YEARS BEGINNING NOVEMBER 1, 1959 AND ENDING NOVEMBER 1, 1960

The following pages contain the criminal statistics for the years beginning November 1, 1959 and ending November 1, 1960.

Cases included:

The table deals with completed cases as well as cases pending at the end of the year. Disposition of pending cases is left for inclusion in the figures for the year in which it is finally determined. A case is treated as disposed of when a disposition has been made even though that disposition is subject to later modification. For example, if a defendant is placed on probation, his case is treated as completed, even though probation may be later revoked and sentence imposed or executed. No account is taken of the second disposition.

Defendants in cases on appeal who have defaulted bail are treated as pleading guilty.

Explanation of headings:

(a) Total means total number of cases during the year.

(b) Acquitted.

(c) Nol pross. etc. includes all forms of dismissal without trial such as nol-prossed, dismissed, quashed, continued, placed on file, etc.

(d) Pending.

(e) Plea of Guilty by Defendant.

(f) Includes convicted on plea of nolo contendere.

(g) Under sentence to fine only come cases where sentence is to fine, costs, restitution or support provided there is no probation or sentence to imprisonment.

(h) Includes cases of fine and imprisonment.

(i) Prison sentence only.

(j) Defendant placed on probation.

1959

1959 ALL COUNTIES—TOTAL INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted					
					Plea guilty (e)	Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	3006	77	909	235	1653	209	858	52	488	387
Arson	22	—	12	—	10	—	—	—	4	6
Assault & Battery	168	4	75	9	80	4	21	—	36	23
Breaking, Entering & Larceny	382	4	135	15	223	9	—	—	106	122
Drunken Driving	496	26	73	51	316	56	274	12	45	15
Embezzlement	25	—	7	7	11	—	—	—	3	8
Escape	23	—	4	3	16	—	—	—	16	—
Felonious Assault	12	1	2	—	9	1	—	—	6	3
Forgery, etc.	152	—	46	23	83	—	20	—	23	40
Hunting Accident	1	—	—	—	1	—	1	—	—	—
Intoxication	123	1	36	16	67	4	35	10	23	2
Juvenile Delinquency	19	1	8	—	10	1	1	1	3	5
Larceny	171	1	59	8	100	4	12	1	43	47
Liquor Offenses	66	—	31	5	29	1	17	6	—	7
Manslaughter	18	2	8	—	7	3	2	—	3	3
Motor Vehicle	767	15	232	61	405	69	375	11	46	27
Murder	8	2	—	—	—	7 1*	—	—	6	—
Night Hunting	87	8	21	2	49	15	46	9	—	1
Non-Support	24	—	8	6	10	—	—	—	5	5
Rape	26	1	8	4	9	5	—	—	9	4
Robbery	34	1	3	1	27	3	—	—	21	8
Sex Offenses	135	5	39	10	73	13	1	—	59	21
Miscellaneous	247	5	102	14	118	13	53	2	31	40

*Guilty of Manslaughter

1959 ARSON—INDICTMENTS AND APPEALS

Totals	22	—	12	—	10	—	—	—	4	6
Aroostook	1	—	—	—	1	—	—	—	—	1
Cumberland	2	—	—	—	2	—	—	—	—	2
Hancock	2	—	1	—	1	—	—	—	—	1
Kennebec	1	—	—	—	1	—	—	—	1	—
Oxford	2	—	2	—	—	—	—	—	—	—
Penobscot	11	—	7	—	4	—	—	—	2	2
Waldo	1	—	1	—	—	—	—	—	—	—
Washington	1	—	1	—	—	—	—	—	—	—
York	1	—	—	—	1	—	—	—	1	—

1959 ASSAULT & BATTERY—INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted					
					Plea guilty (e)	Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	168	4	75	9	73	11	21	—	36	23
Androscoggin	14	—	11	—	3	—	—	—	2	1
Aroostook	19	—	5	1	13	—	1	—	3	9
Cumberland	21	1	7	1	10	3	2	—	7	3
Franklin	7	—	3	—	3	1	2	—	1	1
Hancock	4	—	2	—	2	—	1	—	—	1
Kennebec	12	—	2	—	10	—	2	—	6	2
Knox	2	—	—	1	1	—	—	—	—	1
Lincoln	14	1	12	—	—	2	1	—	—	—
Oxford	4	—	—	1	3	—	1	—	2	—
Penobscot	21	1	9	2	8	2	3	—	5	1
Piscataquis	3	—	2	1	—	—	—	—	—	—
Sagadahoc	3	—	3	—	—	—	—	—	—	—
Somerset	11	—	3	1	5	2	3	—	3	1
Waldo	9	—	5	—	4	—	1	—	3	—
Washington	4	—	—	—	4	—	—	—	3	1
York	20	1	11	1	7	1	4	—	1	2

1959 BREAKING, ENTERING & LARCENY—INDICTMENTS AND APPEALS

Totals	382	4	135	15	223	9	—	—	106	122
Androscoggin	47	—	17	1	29	—	—	—	11	18
Aroostook	33	—	9	4	20	—	—	—	8	12
Cumberland	67	2	14	—	46	7	—	—	29	22
Franklin	4	—	1	1	2	—	—	—	—	2
Hancock	11	—	1	1	9	—	—	—	6	3
Kennebec	33	—	10	—	23	—	—	—	12	11
Knox	8	—	4	3	1	—	—	—	1	—
Lincoln	17	—	3	1	13	—	—	—	9	4
Oxford	19	—	14	—	5	—	—	—	1	4
Penobscot	19	—	2	4	13	—	—	—	6	7
Piscataquis	13	—	4	—	9	—	—	—	2	7
Sagadahoc	6	2	1	—	3	2	—	—	3	—
Somerset	20	—	12	—	8	—	—	—	8	—
Waldo	7	—	2	—	5	—	—	—	1	4
Washington	7	—	1	—	6	—	—	—	2	4
York	71	—	40	—	31	—	—	—	7	24

1959 DRUNKEN DRIVING—INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted					
					Plea guilty (e)	Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	496	26	73	51	316	56	274	12	45	15
Androscoggin	39	—	9	3	27	—	18	2	1	6
Aroostook	64	3	8	12	35	9	35	2	4	—
Cumberland	106	4	14	13	72	7	68	—	7	—
Franklin	10	—	1	1	6	2	6	—	1	1
Hancock	16	1	4	2	9	1	8	—	1	—
Kennebec	42	2	3	2	30	7	28	—	7	—
Knox	11	—	3	2	6	—	6	—	—	—
Lincoln	9	1	2	2	2	3	2	2	—	—
Oxford	12	—	4	3	5	—	5	—	—	—
Penobscot	76	3	6	7	57	6	44	—	10	6
Piscataquis	12	—	—	1	8	3	5	1	5	—
Sagadahoc	8	4	1	2	—	5	1	—	—	—
Somerset	9	—	2	1	5	1	5	—	—	1
Waldo	11	1	1	—	7	3	3	4	2	—
Washington	16	1	2	—	11	3	9	1	3	—
York	55	6	13	—	36	6	31	—	4	1

1959 EMBEZZLEMENT—INDICTMENTS AND APPEALS

Totals	25	—	7	7	11	—	—	—	3	8
Androscoggin	2	—	1	—	1	—	—	—	—	1
Cumberland	3	—	—	1	2	—	—	—	1	1
Franklin	3	—	—	3	—	—	—	—	—	—
Kennebec	1	—	—	—	1	—	—	—	1	—
Knox	1	—	—	1	—	—	—	—	—	—
Oxford	5	—	2	—	3	—	—	—	—	3
Penobscot	7	—	4	1	2	—	—	—	1	1
Piscataquis	1	—	—	—	1	—	—	—	—	1
Washington	1	—	—	—	1	—	—	—	—	1
York	1	—	—	1	—	—	—	—	—	—

1959 ESCAPE—INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted					
					Plea guilty (e)	Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	23	—	4	3	16	—	—	—	16	—
Androscoggin	2	—	—	—	2	—	—	—	2	—
Aroostook	2	—	2	—	—	—	—	—	—	—
Cumberland	6	—	—	—	6	—	—	—	6	—
Hancock	2	—	—	—	2	—	—	—	2	—
Knox	4	—	1	2	1	—	—	—	1	—
Somerset	4	—	—	—	4	—	—	—	4	—
Waldo	2	—	1	—	1	—	—	—	1	—
York	1	—	—	1	—	—	—	—	—	—

1959 FELONIOUS ASSAULT—INDICTMENTS AND APPEALS

Totals	12	1	2	—	9	1	—	—	6	3
Aroostook	1	1	—	—	—	1	—	—	—	—
Cumberland	4	—	1	—	3	—	—	—	1	2
Knox	1	—	—	—	1	—	—	—	1	—
Lincoln	2	—	—	—	2	—	—	—	2	—
Penobscot	1	—	—	—	1	—	—	—	—	1
Somerset	1	—	1	—	—	—	—	—	—	—
York	2	—	—	—	2	—	—	—	2	—

1959 FORGERY—INDICTMENTS AND APPEALS

Totals	152	—	46	23	83	—	20	—	23	40
Androscoggin	25	—	9	5	11	—	—	—	4	7
Aroostook	28	—	13	1	14	—	—	—	4	10
Cumberland	36	—	7	—	29	—	20	—	—	9
Kennebec	13	—	6	—	7	—	—	—	3	4
Knox	5	—	1	3	1	—	—	—	—	1
Lincoln	4	—	—	1	3	—	—	—	2	1
Oxford	12	—	2	8	2	—	—	—	—	2
Penobscot	17	—	5	1	11	—	—	—	9	2
Sagadahoc	1	—	—	1	—	—	—	—	—	—
Somerset	1	—	—	1	—	—	—	—	—	—
Waldo	2	—	—	—	2	—	—	—	—	2
York	8	—	3	2	3	—	—	—	1	2

1959 HUNTING ACCIDENTS—INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted					
					Plea guilty (e)	Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	1	—	—	—	1	—	1	—	—	—
Lincoln	1	—	—	—	1	—	1	—	—	—

1959 INTOXICATION—INDICTMENTS AND APPEALS

Totals	123	1	36	16	67	4	35	10	23	2
Androscoggin	13	—	8	1	4	—	3	—	—	1
Aroostook	6	—	3	1	2	—	—	1	1	—
Cumberland	16	1	—	6	9	1	8	1	—	—
Franklin	5	—	3	—	1	1	2	—	—	—
Hancock	6	—	2	1	3	—	—	—	3	—
Lincoln	8	—	1	—	6	1	1	6	—	—
Penobscot	34	—	4	6	24	—	10	1	12	1
Piscataquis	2	—	2	—	—	—	—	—	—	—
Sagadahoc	2	—	—	—	2	—	—	—	2	—
Somerset	7	—	2	1	4	—	3	—	1	—
Waldo	16	—	6	—	9	1	5	1	4	—
Washington	2	—	2	—	—	—	—	—	—	—
York	6	—	3	—	3	—	3	—	—	—

1959 JUVENILE DELINQUENCY—INDICTMENTS AND APPEALS

Totals	19	1	8	—	10	1	1	1	3	5
Androscoggin	1	1	—	—	—	1	—	—	—	—
Aroostook	4	—	1	—	3	—	—	—	1	2
Cumberland	2	—	1	—	1	—	1	—	—	—
Hancock	2	—	1	—	1	—	—	—	—	1
Kennebec	1	—	—	—	1	—	—	—	—	1
Knox	2	—	2	—	—	—	—	—	—	—
Piscataquis	1	—	—	—	1	—	—	—	—	1
Somerset	1	—	—	—	1	—	—	1	—	—
Washington	5	—	3	—	2	—	—	—	2	—

1959 LARCENY——INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted					
					Plea guilty (e)	Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	171	1	59	8	100	4	12	1	43	47
Androscoggin	10	1	2	2	5	1	—	—	4	1
Aroostook	15	—	8	—	7	—	—	—	5	2
Cumberland	36	—	7	2	25	2	6	—	15	6
Franklin	21	—	11	1	9	—	—	—	—	9
Hancock	4	—	1	—	3	—	—	—	—	3
Kennebec	10	—	4	1	5	—	1	—	—	4
Knox	3	—	1	1	1	—	—	—	—	1
Lincoln	2	—	—	—	2	—	—	—	2	—
Oxford	6	—	2	—	4	—	2	—	1	1
Penobscot	23	—	8	1	13	1	1	—	5	8
Piscataquis	3	—	1	—	2	—	—	—	1	1
Sagadahoc	2	—	1	—	1	—	—	—	—	1
Somerset	6	—	2	—	4	—	—	1	3	—
Waldo	9	—	2	—	7	—	—	—	2	5
Washington	8	—	3	—	5	—	1	—	3	1
York	13	—	6	—	7	—	1	—	2	4

1959 LIQUOR OFFENSES—INDICTMENTS AND APPEALS

Totals	66	—	31	5	29	1	17	6	—	7
Androscoggin	5	—	4	—	1	—	1	—	—	—
Aroostook	16	—	5	2	9	—	5	—	—	4
Cumberland	14	—	8	3	3	—	2	—	—	1
Franklin	2	—	—	—	2	—	1	—	—	1
Kennebec	7	—	3	—	3	1	3	1	—	—
Oxford	5	—	2	—	3	—	2	—	—	1
Penobscot	14	—	6	—	8	—	3	5	—	—
York	3	—	3	—	—	—	—	—	—	—

1959 MANSLAUGHTER—INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted					
					Plea guilty (e)	Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	18	2	8	—	7	3	2	—	3	3
Androscoggin	1	—	1	—	—	—	—	—	—	—
Aroostook	4	—	2	—	2	—	1	—	1	—
Hancock	3	—	—	—	3	—	—	—	1	2
Lincoln	2	—	1	—	—	1	—	—	1	—
Penobscot	1	—	—	—	1	—	—	—	—	1
Waldo	2	—	2	—	—	—	—	—	—	—
Washington	1	1	—	—	—	1	—	—	—	—
York	4	1	2	—	1	1	1	—	—	—

1959 MOTOR VEHICLE—INDICTMENTS AND APPEALS

Totals	767	15	232	61	405	69	375	11	46	27
Androscoggin	64	5	25	3	30	6	29	—	—	2
Aroostook	60	1	16	5	35	4	32	2	3	1
Cumberland	202	5	50	28	71	53	107	1	9	2
Franklin	35	1	11	1	22	1	16	—	2	4
Hancock	16	—	6	3	7	—	4	—	—	3
Kennebec	56	1	17	2	36	1	27	—	8	1
Knox	7	—	3	1	3	—	3	—	—	—
Lincoln	14	—	1	—	11	2	6	4	3	—
Oxford	27	—	14	3	10	—	10	—	—	—
Penobscot	123	—	29	10	84	—	59	2	11	12
Piscataquis	7	—	1	1	5	—	3	—	2	—
Sagadahoc	13	—	8	1	4	—	4	—	—	—
Somerset	34	—	9	2	23	—	19	—	4	—
Waldo	22	—	6	—	16	—	14	—	1	1
Washington	16	—	4	—	12	—	8	2	2	—
York	71	2	32	1	36	2	34	—	1	1

1959 MURDER—INDICTMENTS AND APPEALS

Totals	8	2	—	—	—	8	—	—	6	—
Aroostook	1	—	—	—	—	1*	—	—	1	—
Cumberland	4	2	—	—	—	4	—	—	2	—
Kennebec	2	—	—	—	—	2	—	—	2	—
Sagadahoc	1	—	—	—	—	1	—	—	1	—

*Guilty of Manslaughter

1959 NIGHT HUNTING—INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted					
					Plea guilty (e)	Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	87	8	21	2	49	15	46	9	—	1
Androscoggin	2	—	1	—	1	—	1	—	—	—
Aroostook	9	2	5	—	2	2	2	—	—	—
Cumberland	1	—	—	—	1	—	1	—	—	—
Franklin	10	—	4	2	4	—	4	—	—	—
Hancock	9	—	3	—	6	—	6	—	—	—
Kennebec	1	—	—	—	1	—	1	—	—	—
Knox	1	1	—	—	—	1	—	—	—	—
Oxford	3	1	2	—	—	1	—	—	—	—
Penobscot	24	2	2	—	18	4	19	1	—	—
Piscataquis	2	—	—	—	2	—	—	1	—	1
Sagadahoc	2	—	2	—	—	—	—	—	—	—
Somerset	8	1	—	—	6	2	6	1	—	—
Waldo	6	—	2	—	2	2	4	—	—	—
Washington	9	1	—	—	6	3	2	6	—	—

1959 NON-SUPPORT—INDICTMENTS AND APPEALS

Totals	24	—	8	6	10	—	—	—	5	5
Androscoggin	2	—	—	1	1	—	—	—	1	—
Cumberland	3	—	1	1	1	—	—	—	—	1
Franklin	1	—	—	—	1	—	—	—	—	1
Knox	1	—	—	1	—	—	—	—	—	—
Oxford	3	—	1	—	2	—	—	—	2	—
Penobscot	3	—	1	—	2	—	—	—	—	2
Sagadahoc	3	—	—	2	1	—	—	—	1	—
Somerset	3	—	3	—	—	—	—	—	—	—
Waldo	4	—	1	1	2	—	—	—	1	1
York	1	—	1	—	—	—	—	—	—	—

1959 RAPE—INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted					
					Plea guilty (e)	Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	26	1	8	4	9	5	—	—	9	4
Androscoggin	1	—	1	—	—	—	—	—	—	—
Aroostook	6	—	3	—	1	2	—	—	2	1
Cumberland	3	—	—	2	1	—	—	—	1	—
Hancock	2	—	—	—	2	—	—	—	2	—
Kennebec	4	—	2	—	1	1	—	—	2	—
Knox	1	—	—	1	—	—	—	—	—	—
Oxford	2	1	1	—	—	1	—	—	—	—
Penobscot	2	—	—	—	2	—	—	—	—	2
Sagadahoc	1	—	—	—	1	—	—	—	—	1
Somerset	1	—	—	—	—	1	—	—	1	—
Waldo	1	—	1	—	—	—	—	—	—	—
York	2	—	—	1	1	—	—	—	1	—

1959 ROBBERY—INDICTMENTS AND APPEALS

Totals	34	1	3	1	27	3	—	—	21	8
Androscoggin	7	—	1	1	5	—	—	—	5	—
Cumberland	7	1	1	—	5	1	—	—	3	2
Hancock	1	—	—	—	1	—	—	—	1	—
Kennebec	6	—	—	—	4	2	—	—	5	1
Penobscot	2	—	—	—	2	—	—	—	1	1
Piscataquis	1	—	—	—	1	—	—	—	—	1
Washington	7	—	—	—	7	—	—	—	4	3
York	3	—	1	—	2	—	—	—	2	—

1959 SEX OFFENSES—INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted					
					Plea guilty (e)	Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	135	5	39	10	73	13	1	—	59	21
Androscoggin	12	1	3	—	8	1	1	—	5	2
Aroostook	25	1	10	2	9	4	—	—	11	1
Cumberland	19	1	7	—	7	5	—	—	11	—
Franklin	5	—	2	—	3	—	—	—	1	2
Hancock	3	—	2	—	1	—	—	—	1	—
Kennebec	10	1	2	—	6	2	—	—	4	3
Knox	4	—	—	4	—	—	—	—	—	—
Lincoln	1	—	—	—	1	—	—	—	—	1
Oxford	9	—	4	1	4	—	—	—	1	3
Penobscot	20	—	4	—	16	—	—	—	11	5
Piscataquis	1	—	—	—	1	—	—	—	1	—
Sagadahoc	3	—	1	2	—	—	—	—	—	—
Somerset	11	—	2	1	8	—	—	—	8	—
Waldo	3	—	1	—	2	—	—	—	1	1
Washington	4	—	—	—	4	—	—	—	3	1
York	5	1	1	—	3	1	—	—	1	2

1959 MISCELLANEOUS—INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted					
					Plea guilty (e)	Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	247	5	102	14	118	13	53	2	31	40
Androscoggin	17	1	8	1	7	1	2	—	—	5
Aroostook	41	—	21	—	19	1	11	—	1	8
Cumberland	37	1	8	1	24	4	10	—	9	8
Franklin	10	1	5	1	3	1	2	—	—	1
Hancock	7	1	2	1	3	1	1	1	—	1
Kennebec	11	1	3	1	6	1	—	—	6	—
Knox	1	—	—	1	—	—	—	—	—	—
Lincoln	14	—	8	1	3	2	3	1	—	1
Oxford	7	—	4	—	3	—	—	—	—	3
Penobscot	18	—	6	1	10	1	6	—	2	3
Piscataquis	3	—	2	—	1	—	—	—	1	—
Sagadahoc	9	—	4	3	2	—	1	—	1	—
Somerset	21	—	9	1	10	1	9	—	2	—
Waldo	20	—	6	1	13	—	6	—	3	4
Washington	13	—	6	—	7	—	1	—	3	3
York	18	—	10	1	7	—	1	—	3	3

1959 BAIL

COUNTIES	Bail Called, Cases and Amounts		Scire Facias Begun		Scire Facias Continued for Judgment		Scire Facias Cases Closed		Scire Facias Pending at End of Year		Cash Bail Collected	Bail Collected by County Attorney
Androscoggin	—	——	1	——	—	——	—	——	—	——	——	——
Aroostook	—	——	—	——	—	——	—	——	—	——	——	——
Cumberland	3	$ 3,500.00	—	——	3	$3,500.00	—	——	—	——	——	——
Franklin	—	——	—	——	—	——	—	——	—	——	——	——
Hancock	—	——	—	——	—	——	—	——	—	——	——	——
Kennebec	—	——	—	——	—	——	—	——	—	——	$6,381.40	——
Knox	—	——	—	——	—	——	—	——	—	——	——	——
Lincoln	—	——	1	$ 400.00	—	——	—	——	1	$ 400.00	——	——
Oxford	1	300.00	—	——	—	——	—	——	—	——	300.00	——
Penobscot	24	7,030.00	9	2,550.00	—	——	9	$1,055.45	—	——	30.00	$1,055.45
Piscataquis	4	1,700.00	—	——	—	——	—	——	—	——	——	——
Sagadahoc	3	450.00	—	——	—	——	—	——	—	——	——	——
Somerset	(Not Received)											
Waldo	—	——	—	——	—	——	—	——	—	——	2,200.00	——
Washington	—	——	—	——	—	——	—	——	—	——	——	——
York	1	2,500.00	1	2,500.00	—	——	1	200.00	1	2,500.00	——	——
Totals	36	$15,480.00	12	$5,450.00	3	$3,500.00	10	$1,255.45	2	$2,900.00	$8,911.40	$1,055.45

County	Name of Case	Outcome
Androscoggin	Bussiere, Rosario A.	Judgment for Respondent.
Aroostook	Blanchard, Frederick	Pending.
	London, Donald F.	Pending.
	Osborne, Fred	Exceptions overruled. Case remanded for trial.
Cumberland	Bagley, Clifford	Pending.
	Benson, Ralph E.	Appeal dismissed. Exceptions overruled. New trial denied.
	Davis, Frank C.	Pending.
	Field, Robert	Pending.
	Greenlaw, Stephen	Appeal dismissed. Exceptions overruled. New trial denied.
	Huff, Richard	Pending.
	Larrabee, Edward	Pending.
	Mottram, Robert H.	Appeal dismissed. Exceptions overruled. New trial denied.
	Rand, William D.	Pending.
	Ward, Richard N.	Pending.
Kennebec	Trask, Daniel A.	Exceptions overruled. Judgment for the State.
Knox	Doak, Robert G.	Pending.
Lincoln	Small, Fred T.	Pending.
Penobscot	Fleming, George	Judgment for the State.
Sagadahoc	Burbank, Fredith	Pending.
Waldo	Sanborn, John B.	Pending.
York	Kaplan, Morton	Not entered as Bill of Exceptions were not filed.
	Rowe, Richard W.	Pending.

FINANCIAL STATISTICS, YEAR ENDING NOVEMBER 1, 1959

COUNTIES	Cost of Prosecution Superior Court	Support of Prisoners	Paid Grand Jurors	Paid Traverse Jurors	Fines & Costs Imposed Superior Court	Fines & Costs Collected All Courts
Androscoggin	$ 29,378.45	$ 36,624.61	$ 2,131.70	$14,224.80	$ 5,079.00	$ 58,267.67
Aroostook	4,090.92	36,304.30	1,696.20	10,882.80	10,419.26	125,519.63
Cumberland	67,992.17	106,516.99	2,368.60	12,529.50	15,829.71	163,566.88
Franklin	4,097.40	8,021.20	405.80	1,074.65	3,457.95	8,048.50 — M.C. 7,417.80 — T.J.
Hancock	1,738.53	6,176.38	918.00	5,337.80	3,123.03	33,315.80
Kennebec	12,226.47	25,552.34	1,390.20	3,958.00	4,201.00	77,287.73
Knox	887.96	1,171.56	760.00	380.00	2,376.00	2,376.00
Lincoln	4,336.17	712.10	1,200.00	3,636 90	991.00	687.00
Oxford	2,883.87	1,821.82	857.20	4,552.00	2,140.92	35,350.58
Penobscot	19,096.97	30,567.69	2,355.00	7,226.20	21,796.18	134,894.59
Piscataquis	804.60	3,542.96	465.20	832.60	1,130.70	10,830.80
Sagadahoc	16,369.68	6,044.68	1,282.60	7,244.80	2,340.96	24,995.92
Somerset	15,723.71	16,849.95	1,958.00	5,492.00	5,676.01	51,725.34
Waldo	12,174.48	28,943.88	1,299.00	4,614.20	4,160.60	33,063.30
Washington	16,441.56	14,568.80	1,098.00	4,502.00	2,751.80	33,522.75
York	16,023.03	29,555.56	2,570.00	11,021.50	7,742.50	189,486.08
Totals	$224,265.97	$352,974.82	$22,755.50	$97,509.75	$93,216.62	$990,356.37

1959 PETITIONS

TYPES OF PETITIONS		GOVERNOR & COUNCIL		LEGISLATURE		STATE COURTS		FEDERAL COURTS			
Miscellaneous	Total	Cases	Outcome	Cases	Outcome	Cases	Outcome	U.S.D.C.	Outcome	U.S. Supreme	Outcome
Appeal from Decision of Secretary of State	1					1	J/State				
Habeas Corpus	19					10	J/State (8) Pet'r Released (2)	8	Denied	1	Pending
Writ of Error	2					2	J/State (1) Pending (1)				
Writ of Error							J/State (8)*				
Coram Nobis	9					9	Pending (1)				
Miscellaneous	2	1	Pet'r Released on Parole	1	Denied						
Education Cases											
Declaratory Judgment	1					1	J/State*				
Writ of Mandamus	2							2	Dismissed		
Quo Warranto	2					2	A. G. Withdrew (1) Denied (1)*				
10 Taxpayers' Suit	1					1	J/State*				
**Appeals*											
Miscellaneous	4					4	Withdrawn (1) Denied (2) Appeal denied w/exceptions. Returned to Superior Court for further action. (1)				
TOTALS	43	1		1		30		10		1	

J/—Judgment for

1960

1960 ALL COUNTIES—TOTAL INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted					
					Plea guilty (e)	Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	2798	62	795	207	1658	138	804	43	532	355
Arson	11	1	1	4	5	1	—	—	4	1
Assault & Battery	175	4	74	7	89	5	21	—	41	28
Breaking, Entering & Larceny	371	1	87	23	259	2	1	—	143	116
Drunken Driving	438	25	66	34	285	53	250	24	32	7
Embezzlement	14	—	7	1	4	2	—	—	3	3
Escape	12	—	—	2	10	—	1	—	9	—
Felonious Assault	15	—	3	3	7	2	—	—	6	3
Forgery, etc	172	—	61	14	97	—	1	—	52	44
Hunting Accident	3	—	—	—	2	1	2	1	—	—
Intoxication	125	1	32	5	87	1	58	2	19	8
Larceny	200	3	53	12	129	6	16	1	64	51
Liquor Offenses	35	1	15	2	17	1	13	2	—	2
Manslaughter	9	—	2	—	1* 4	2	2	—	4	1
Motor Vehicle	626	7	205	47	358	16	329	5	21	12
Murder	8	—	—	4	3†	1	—	—	4	—
Night Hunting	87	6	19	5	48	15	49	8	—	—
Non-Support	36	—	10	7	19	—	—	—	11	8
Rape	28	3	7	4	12	5	—	—	13	1
Robbery	38	3	10	2	20	6	—	—	19	4
Sex Offenses	130	2	41	6	76	7	3	—	47	31
Miscellaneous	265	5	101 1‡	25	126	12	58	—	40	35

*Guilty of Negligent Homicide
†Plead Guilty to Manslaughter
‡Turned over to Federal Authorities

1960 ARSON—INDICTMENTS AND APPEALS

Totals	11	1	1	4	5	1	—	—	4	1
Androscoggin	1	—	—	—	1	—	—	—	1	—
Aroostook	1	—	—	1	—	—	—	—	—	—
Hancock	1	—	—	1	—	—	—	—	—	—
Knox	2	—	—	1	1	—	—	—	1	—
Oxford	1	—	—	—	1	—	—	—	1	—
Penobscot	2	—	—	1	1	—	—	—	1	—
Sagadahoc	1	—	1	—	—	—	—	—	—	—
Somerset	1	1	—	—	—	1	—	—	—	—
Washington	1	—	—	—	1	—	—	—	—	1

1960 ASSAULT & BATTERY—INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted					
					Plea guilty (e)	Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	175	4	74	7	89	5	21	—	41	28
Androscoggin	8	—	6	1	1	—	—	—	1	—
Aroostook	31	1	14	—	15	2	2	—	11	3
Cumberland	29	—	13	1	15	—	1	—	8	6
Franklin	20	1	14	—	5	1	—	—	3	2
Hancock	4	—	1	—	3	—	1	—	1	1
Kennebec	12	—	6	—	6	—	1	—	4	1
Knox	6	—	—	3	3	—	2	—	1	—
Oxford	6	—	3	—	3	—	—	—	1	2
Penobscot	18	—	7	—	11	—	1	—	5	5
Piscataquis	2	1	—	—	1	1	—	—	—	1
Sagadahoc	1	—	—	—	1	—	—	—	1	—
Somerset	12	1	2	1	8	1	2	—	5	1
Waldo	10	—	4	—	6	—	4	—	—	2
Washington	6	—	1	1	4	—	3	—	—	1
York	10	—	3	—	7	—	4	—	—	3

1960 BREAKING, ENTERING & LARCENY—INDICTMENTS AND APPEALS

Totals	371	1	87	23	259	2	1	—	143	116
Androscoggin	52	—	9	7	36	—	—	—	31	5
Aroostook	46	—	14	2	30	—	1	—	8	21
Cumberland	61	—	4	1	55	1	—	—	35	21
Franklin	11	—	4	—	7	—	—	—	7	—
Hancock	12	—	3	—	9	—	—	—	3	6
Kennebec	44	—	13	1	30	—	—	—	13	17
Knox	11	—	2	3	6	—	—	—	6	—
Lincoln	12	—	2	—	10	—	—	—	7	3
Oxford	22	—	7	5	10	—	—	—	4	6
Penobscot	32	—	9	2	21	—	—	—	8	13
Piscataquis	2	—	1	—	1	—	—	—	—	1
Sagadahoc	5	—	1	—	4	—	—	—	2	2
Somerset	30	—	8	2	20	—	—	—	8	12
Waldo	4	—	1	—	3	—	—	—	2	1
Washington	14	1	3	—	10	1	—	—	7	3
York	13	—	6	—	7	—	—	—	2	5

1960 DRUNKEN DRIVING—INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted					
					Plea guilty (e)	Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	438	25	66	34	285	53	250	24	32	7
Androscoggin	43	3	9	3	24	7	25	—	3	—
Aroostook	41	4	7	1	27	6	26	2	1	—
Cumberland	84	3	14	7	57	6	53	2	3	2
Franklin	12	1	4	1	5	2	5	—	1	—
Hancock	14	1	2	2	8	2	6	2	1	—
Kennebec	42	2	5	2	30	5	24	5	3	1
Knox	14	—	1	4	8	1	6	1	2	—
Lincoln	5	—	—	—	3	2	5	—	—	—
Oxford	10	—	2 2*	—	6	2	5	1	1	1
Penobscot	76	—	5	7	55	7	45	5	10	2
Piscataquis	5	—	—	2	2	1	—	1	2	—
Sagadahoc	10	1	3	2	3	2	3	1	—	—
Somerset	14	2	2	2	8	2	5	—	2	1
Waldo	11	—	—	—	11	—	8	2	1	—
Washington	19	4	1	1	13	4	10	1	2	—
York	38	4	9	—	25	4	24	1	—	—

*Respondent Deceased

1960 Embezzlement—Indictments and Appeals

Totals	14	—	7	1	4	2	—	—	3	3
Aroostook	4	—	3	—	1	—	—	—	—	1
Cumberland	1	—	—	—	—	1	—	—	1	—
Franklin	3	—	2	—	—	1	—	—	—	1
Knox	1	—	—	1	—	—	—	—	—	—
Penobscot	2	—	—	—	2	—	—	—	2	—
Waldo	3	—	2	—	1	—	—	—	—	1

1960 ESCAPE—INDICTMENTS AND APPEALS

Totals	12	—	—	2	10	—	1	—	9	—
Androscoggin	1	—	—	—	1	—	1	—	—	—
Cumberland	5	—	—	—	5	—	—	—	5	—
Knox	3	—	—	2	1	—	—	—	1	—
Piscataquis	2	—	—	—	2	—	—	—	2	—
Waldo	1	—	—	—	1	—	—	—	1	—

1960 FELONIOUS ASSAULT—INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted					
					Plea guilty (e)	Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	15	—	3	3	7	2	—	—	6	3
Aroostook	4	—	1	1	2	—	—	—	1	1
Hancock	1	—	—	—	—	1	—	—	1	—
Lincoln	1	—	—	1	—	—	—	—	—	—
Oxford	1	—	—	—	—	1	—	—	1	—
Piscataquis	1	—	—	—	1	—	—	—	—	1
Sagadahoc	2	—	—	1	1	—	—	—	1	—
Somerset	2	—	2	—	—	—	—	—	—	—
Washington	1	—	—	—	1	—	—	—	—	1
York	2	—	—	—	2	—	—	—	2	—

1960 FORGERY—INDICTMENTS AND APPEALS

Totals	172	—	61	14	97	—	1	—	52	44
Androscoggin	17	—	8	3	6	—	—	—	3	3
Aroostook	26	—	7	1	18	—	—	—	9	9
Cumberland	17	—	6	—	11	—	—	—	7	4
Hancock	5	—	—	—	5	—	—	—	4	1
Kennebec	16	—	5	—	11	—	—	—	3	8
Knox	7	—	4	2	1	—	—	—	1	—
Lincoln	5	—	2	—	3	—	—	—	2	1
Oxford	23	—	10	6	7	—	—	—	4	3
Penobscot	27	—	10	1	16	—	—	—	9	7
Piscataquis	2	—	—	—	2	—	—	—	1	1
Sagadahoc	3	—	—	—	3	—	—	—	3	—
Somerset	6	—	1	—	5	—	1	—	2	2
Waldo	3	—	—	—	3	—	—	—	2	1
Washington	3	—	—	—	3	—	—	—	—	3
York	12	—	8	1	3	—	—	—	2	1

1960 HUNTING ACCIDENT—INDICTMENTS AND APPEALS

Totals	3	—	—	—	2	1	2	1	—	—
Lincoln	1	—	—	—	1	—	1	—	—	—
Oxford	1	—	—	—	1	—	1	—	—	—
Piscataquis	1	—	—	—	—	1	—	1	—	—

1960 INTOXICATION—INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted: Plea guilty (e)	Convicted: Plea not guilty (f)	Convicted: Fine (g)	Convicted: Fine & Prison (h)	Convicted: Prison (i)	Convicted: Probation (j)
Totals	125	1	32	5	87	1	58	2	19	8
Androscoggin	11	—	3	—	8	—	6	—	2	—
Aroostook	12	—	1	1	10	—	4	—	5	1
Cumberland	17	—	3	2	12	—	6	—	2	4
Franklin	4	—	2	1	1	—	1	—	—	—
Hancock	1	—	—	—	1	—	—	—	1	—
Kennebec	4	—	3	—	1	—	—	—	1	—
Knox	2	—	—	—	2	—	2	—	—	—
Lincoln	2	—	—	—	2	—	—	—	2	—
Oxford	4	—	1	—	3	—	3	—	—	—
Penobscot	26	—	4	—	22	—	17	1	3	1
Piscataquis	1	—	—	—	1	—	1	—	—	—
Sagadahoc	3	—	—	—	3	—	3	—	—	—
Somerset	7	—	3	1	3	—	2	—	1	—
Waldo	14	—	1	—	13	—	10	1	2	—
Washington	3	—	1	—	2	—	2	—	—	—
York	14	1	10	—	3	1	1	—	—	2

1960 LARCENY—INDICTMENTS AND APPEALS

Totals	200	3	53	12	129	6	16	1	64	51
Androscoggin	26	—	5	—	21	—	—	—	10	11
Aroostook	9	—	3	—	6	—	2	—	3	1
Cumberland	33	—	6	2	25	—	5	—	13	7
Franklin	13	1	3	3	5	2	2	—	3	1
Hancock	9	—	4	—	4	1	—	—	4	1
Kennebec	21	—	4	—	17	—	2	—	6	9
Knox	3	—	—	1	2	—	—	—	—	2
Lincoln	9	—	4	2	3	—	1	1	—	1
Oxford	18	2	9	—	6	3	—	—	4	3
Penobscot	14	—	2* 4	2	6	—	1	—	1	4
Piscataquis	8	—	2	1	5	—	—	—	4	1
Sagadahoc	4	—	2	1	1	—	—	—	—	1
Somerset	16	—	1	—	15	—	2	—	9	4
Waldo	5	—	1	—	4	—	—	—	4	—
Washington	3	—	—	—	3	—	1	—	2	—
York	9	—	3	—	6	—	—	—	1	5

*Turned over to Federal Authorities.

1960 LIQUOR OFFENSES—INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted					
					Plea guilty (e)	Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	35	1	15	2	17	1	13	2	—	2
Aroostook	5	—	3	—	2	—	2	—	—	—
Cumberland	7	—	3	—	4	—	4	—	—	—
Franklin	1	1	—	—	—	1	—	—	—	—
Hancock	1	—	—	—	1	—	1	—	—	—
Knox	1	—	—	—	1	—	1	—	—	—
Oxford	1	—	1	—	—	—	—	—	—	—
Penobscot	9	—	3	2	4	—	3	—	—	1
Piscataquis	1	—	—	—	1	—	—	1	—	—
Sagadahoc	2	—	1	—	1	—	—	1	—	—
Somerset	1	—	1	—	—	—	—	—	—	—
Washington	4	—	3	—	1	—	1	—	—	—
York	2	—	—	—	2	—	1	—	—	1

1960 MANSLAUGHTER—INDICTMENTS AND APPEALS

Totals	9	—	2	—	5	2	2	—	4	1
Cumberland	2	—	—	—	2	—	—	—	2	—
Hancock	2	—	1	—	1*	—	1	—	—	—
Kennebec	1	—	—	—	—	1	—	—	1	—
Penobscot	2	—	—	—	1	1	1	—	1	—
Somerset	1	—	1	—	—	—	—	—	—	—
Waldo	1	—	—	—	1	—	—	—	—	1

*Guilty of Negligent Homicide.

1960 MOTOR VEHICLE—INDICTMENTS AND APPEALS

Totals	626	7	205	47	358	16	329	5	21	12
Androscoggin	41	—	21	—	19	1	19	—	—	1
Aroostook	47	—	15	1	31	—	29	—	1	1
Cumberland	128	3	44	12	66	6	63	1	2	3
Franklin	32	—	7	1	23	1	21	—	2	1
Hancock	15	—	9	2	4	—	4	—	—	—
Kennebec	53	—	16	4	32	1	28	1	3	1
Knox	19	—	5	3	10	1	9	1	—	1
Lincoln	10	—	6	2	2	—	2	—	—	—
Oxford	32	—	11	—	20	1	21	—	—	—
Penobscot	120	—	32	17	71	—	60	1	7	3
Piscataquis	5	—	1	1	3	—	2	—	—	1
Sagadahoc	13	—	2	1	10	—	7	1	2	—
Somerset	33	2	5	1	25	2	23	—	2	—
Waldo	20	—	3	—	16	1	15	—	2	—
Washington	13	—	4	1	8	—	8	—	—	—
York	45	2	24	1	18	2	18	—	—	—

1960 MURDER—INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted					
					Plea guilty (e)	Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	8	—	—	4	3*	1	—	—	4	—
Androscoggin	3	—	—	1	1*	1	—	—	2	—
Aroostook	2	—	—	2	—	—	—	—	—	—
Waldo	1	—	—	1	—	—	—	—	—	—
York	2	—	—	—	2*	—	—	—	2	—

*Plead Guilty to Manslaughter.

1960 NIGHT HUNTING—INDICTMENTS AND APPEALS

Totals	87	6	19	5	48	15	49	8	—	—
Aroostook	13	—	8	—	5	—	5	—	—	—
Cumberland	3	—	3	—	—	—	—	—	—	—
Franklin	9	3	—	—	5	4	6	—	—	—
Hancock	3	—	—	—	—	3	3	—	—	—
Kennebec	5	—	—	—	5	—	5	—	—	—
Knox	1	—	—	—	1	—	1	—	—	—
Oxford	6	3	—	—	3	3	3	—	—	—
Penobscot	19	—	4	1	14	—	10	4	—	—
Piscataquis	6	—	1	—	2	3	5	—	—	—
Sagadahoc	2	—	—	—	2	—	2	—	—	—
Somerset	9	—	1	—	8	—	4	4	—	—
Waldo	6	—	2	—	2	2	4	—	—	—
Washington	5	—	—	4	1	—	1	—	—	—

1960 NON-SUPPORT—INDICTMENTS AND APPEALS

Totals	36	—	10	7	19	—	—	—	11	8
Androscoggin	1	—	1	—	—	—	—	—	—	—
Aroostook	1	—	—	—	1	—	—	—	—	1
Cumberland	8	—	—	2	6	—	—	—	4	2
Franklin	1	—	1	—	—	—	—	—	—	—
Kennebec	3	—	—	—	3	—	—	—	—	3
Knox	1	—	—	1	—	—	—	—	—	—
Oxford	5	—	3	—	2	—	—	—	2	—
Penobscot	8	—	2	—	6	—	—	—	4	2
Sagadahoc	2	—	—	2	—	—	—	—	—	—
Somerset	1	—	1	—	—	—	—	—	—	—
Waldo	2	—	1	1	—	—	—	—	—	—
Washington	2	—	—	1	1	—	—	—	1	—
York	1	—	1	—	—	—	—	—	—	—

1960 RAPE—INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted: Plea guilty (e)	Convicted: Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	28	3	7	4	12	5	—	—	13	1
Androscoggin	1	—	—	—	1	—	—	—	1	—
Aroostook	3	—	2	—	1	—	—	—	1	—
Cumberland	7	—	1	1	5	—	—	—	5	—
Franklin	5	1	3	1	—	1	—	—	—	—
Knox	2	—	—	2	—	—	—	—	—	—
Oxford	2	—	1	—	—	1	—	—	1	—
Penobscot	4	1	—	—	3	1	—	—	2	1
Piscataquis	1	—	—	—	—	1	—	—	1	—
Waldo	1	—	—	—	1	—	—	—	1	—
Washington	2	1	—	—	1	1	—	—	1	—

1960 ROBBERY—INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted: Plea guilty (e)	Convicted: Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	38	3	10	2	20	6	—	—	19	4
Androscoggin	4	—	—	1	2	1	—	—	2	1
Aroostook	3	—	2	—	1	—	—	—	1	—
Cumberland	4	2	—	—	2	2	—	—	2	—
Hancock	3	—	—	—	3	—	—	—	2	1
Kennebec	4	—	—	1	3	—	—	—	1	2
Lincoln	4	—	2	—	2	—	—	—	2	—
Penobscot	2	—	—	—	1	1	—	—	2	—
Somerset	1	1	—	—	—	1	—	—	—	—
Waldo	11	—	6	—	4	1	—	—	5	—
York	2	—	—	—	2	—	—	—	2	—

1960 SEX OFFENSES—INDICTMENTS AND APPEALS

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted: Plea guilty (e)	Convicted: Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	130	2	41	6	76	7	3	—	47	31
Androscoggin	2	—	—	—	2	—	—	—	—	2
Aroostook	39	—	17	—	22	—	2	—	9	11
Cumberland	9	—	2	—	6	1	—	—	5	2
Franklin	3	—	1	—	2	—	—	—	1	1
Hancock	5	—	—	2	3	—	—	—	3	—
Kennebec	16	—	3	—	13	—	1	—	5	7
Knox	7	—	1	4	—	2	—	—	2	—
Lincoln	8	—	5	—	2	1	—	—	3	—
Oxford	6	1	2	—	2	2	—	—	1	2
Penobscot	12	1	3	—	8	1	—	—	4	4
Piscataquis	1	—	—	—	1	—	—	—	1	—
Sagadahoc	5	—	4	—	1	—	—	—	1	—
Somerset	6	—	—	—	6	—	—	—	6	—
Waldo	2	—	—	—	2	—	—	—	—	2
Washington	1	—	—	—	1	—	—	—	1	—
York	8	—	3	—	5	—	—	—	5	—

Dispositions	Total (a)	Acquitted (b)	Nol pross. etc. (c)	Pending (d)	Convicted					
					Plea guilty (e)	Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	265	5	102	25	126	12	58	—	40	35
Androscoggin	22	1	13	3	5	1	4	—	1	—
Aroostook	26	—	11	3	12	—	6	—	3	3
Cumberland	31	2	7	4	17	3	5	—	9	4
Franklin	18	—	10	1	5	2	5	—	1	1
Hancock	7	1	4	—	2	1	—	—	2	—
Kennebec	20	—	8	2	8	2	1	—	3	6
Knox	8	—	2	3	3	—	3	—	—	—
Lincoln	6	—	1	—	4	1	4	—	—	1
Oxford	11	—	5	1	5	—	2	—	—	3
Penobscot	35	1	1* 10	1	22	1	3	—	7	12
Piscataquis	4	—	2	—	2	—	—	—	2	—
Sagadahoc	8	—	2	1	5	—	4	—	—	1
Somerset	17	—	6	—	10	1	5	—	4	2
Waldo	19	—	5	3	11	—	6	—	5	—
Washington	13	—	6	3	4	—	2	—	—	2
York	20	—	9	—	11	—	8	—	3	—

*Turned over to Federal Authorities.

1960 BAIL

COUNTIES	Bail Called, Cases and Amounts		Scire Facias Begun		Scire Facias Continued for Judgment		Scire Facias Cases Closed		Scire Facias Pending at End of Year		Cash Bail Collected	Bail Collected by County Attorney
Androscoggin	—	——	—	——	—	——	—	——	—	——	——	——
Aroostook	—	——	—	——	—	——	—	——	—	——	——	——
Cumberland	—	——	2	$ 400.00	—	——	2	$ 400.00	—	——	$ 750.00	$1,150.00
Franklin	—	——	—	——	—	——	—	——	—	——	——	——
Hancock	2	$ 800.00	4	——	—	——	—	——	3	$ 800 00	——	——
Kennebec	1	100.00	—	——	—	——	—	——	—	——	——	——
Knox	—	——	—	——	—	——	—	——	—	——	——	——
Lincoln	2	700.00	—	——	—	——	1	100.00	—	——	——	——
Oxford	—	——	—	——	—	——	—	——	—	——	——	——
Penobscot	14	3,310.00	—	——	—	——	—	——	—	——	457.00	——
Piscataquis	2	1,000.00	1	500.00	—	——	—	——	1	500.00	——	——
Sagadahoc	3	2,400.00	3	2,400.00	—	——	1	2,000.00	2	400.00	——	2,000.00
Somerset	—	——	—	——	—	——	—	——	—	——	——	——
Waldo	—	——	—	——	—	——	—	——	—	——	——	——
Washington	—	——	—	——	—	——	—	——	—	——	1,425.00	——
York	7	750.00	—	——	—	——	1	2,500.00	—	——	175.00	——
Totals	31	$ 9,060.00	10	$3,300.00	—	——	5	$5,000.00	6	$1,700.00	$2,807.00	$3,150.00

1960 LAW COURT CASES

County	Name of Case	Outcome
Androscoggin	Duguay, Vincent Edward	Pending.
Aroostook	Wardwell, Gaylon L.	Unknown.
Cumberland	Davis, Frank C.	Exceptions sustained. New trial ordered.
	Field, Robert	Pending.
	Huff, Richard	Pending.
	Larrabee, Edward	Conviction sustained.
	Rand, William D.	Conviction sustained.
	Ward, Richard	Demurrer sustained. Complaint quashed.
	Westbrook, City of	Pending.
Kennebec	Beck, Melvin W.	Judgment for the State.
Knox	Bennett, Otto	To be reported.
	Tripp, George O., Jr.	Pending.
Lincoln	Small, Fred T.	Exceptions sustained. Judgment arrested.
Piscataquis	Dinan, William L., Jr.	Pending.
Waldo	Hale, Clayton Brooks	Certified to Law Court.
	Sanborn, John	Pending.
York	Couture, Reynald A.	Appeal sustained. New trial granted.
	Rowe, Richard W.	Appeal denied. Exceptions 1 and 2 dismissed; and 3 and 4 overruled. Judgment for State.

FINANCIAL STATISTICS, YEAR ENDING NOVEMBER 1, 1960

COUNTIES	Cost of Prosecution Superior Court	Support of Prisoners	Paid Grand Jurors	Paid Traverse Jurors	Fines & Costs Imposed Superior Court	Fines & Costs Collected All Courts
Androscoggin	$ 39,859.21	$ 35,986.57	$ 2,039.80	$17,287.60	$ 4,527.68	$ 53,375.10
Aroostook	5,421.66	29,870.83	1,319.40	10,033.80	10,374.17	136,334.49
Cumberland	56,388.21	100,943.95	1,448.80	10,700.50	35,275.12	131,107.52
Franklin	6,063.74	9,434.94	201.30	1,958.60	2,595.55	21,663.40
Hancock	14,133.55	9,427.18	1,147.20	4,423.60	3,932.29	35,682.63
Kennebec	14,713.93	26,100.47	1,274.00	5,058.10	5,210.00	71,299.39
Knox	1,284.80	11,579.75	940.00	648.00	2,561.00	22,663.50
Lincoln	3,461.56	929.00	1,022.50	3,303.50	2,286.00	2,286.00
Oxford	3,279.73	2,532.83	787.70	4,480.60	3,940.98	44,292.14
Penobscot	13,856.80	29,130.50	2,015.40	9,017.10	17,305.83	173,654.24
Piscataquis	2,604.51	5,404.98	424.30	1,487.40	2,391.04	16,365.50
Sagadahoc	6,341.01	4,131.01	608.80	3,449.80	4,126.60	20,752.68
Somerset	18,331.02	—	1,778.40	7,550.80	3,299.40	47,039.94
Waldo	14,173.72	26,505.54	494.40	3,561.00	9,545.37	31,652.85
Washington	7,251.98	18,547.39	1,060.40	4,876.00	4,721.80	45,696.14
York	17,792.07	34,939.88	2,166.00	7,026.22	6,109.90	97,013.57 (County) 77,549.40 (State)
Totals	$224,957.50	$345,464.82	$18,728.40	$94,862.62	$118,202.73	$1,028,428.49

1960 PETITIONS

TYPES OF PETITIONS						STATE COURTS		FEDERAL COURTS			
Miscellaneous	Total	Legis-lature	Suits against State	Other	Outcome	Cases	Outcome	U.S.C.A	U.S.D.C.	U.S. Supreme Court	Outcome
Appeal from Decision of Sec'y of State	1					1	J/State				
Writ of Certiorari	3								1	2	Denied (2) With-drawn (1)
Complaint, etc.	1								1		Order Affirmed*
Writ of Error	8					8	Dismissed (1) J/State (3) Pending (2) Sentence— Recalled (1) Vacated (1)				
Writ of Error Coram Nobis	19					19	Dismissed (1) J/Plaintiff (1) J/State (14)* Pending (3)				
Forma Pauperis	4					2	Denied (1) Pending (1)	1	1		Denied (2) *
Habeas Corpus	40					31	Dismissed (1) J/State (14) Not Considered (2) Pending (6) Pet'r Discharged (4) Withdrawn (4)	1	7	1	Denied (7) * Pending (2)
Writ of Mandamus	2					2	J/State (2)				
Miscellaneous	9	1	1	2	Declined (1) J/Plaintiff (1) License Suspended (1) Pending (1)	3	Dismissed (1) J/State (1) Pending (1)		2		Denied (2)

1960 PETITIONS (Continued)

TYPES OF PETITIONS						STATE COURTS		FEDERAL COURTS			
Education Cases	Total	Legis-lature	Suits against State	Other	Outcome	Cases	Outcome	U.S.C.A.	U.S.D.C.	U.S. Supreme Court	Outcome
Declaratory Judgment	1					1	J/State*				
Writ of Mandamus	1					1	J/Relators				
Miscellaneous	1		1		Pending						
**Appeals*											
Miscellaneous	9					4	Denied (3) Pending (1)		5		Denied (3) Granted (1) Pending (1)
TOTALS	99	1	2	2		72		2	17	3	

J/—Judgment for

MEDICAL EXAMINERS' REPORTS OF DEAD BODIES

Counties	1959	1960
Androscoggin	12	12
Aroostook	108	104
Cumberland	95	102
Franklin	19	30
Hancock	26	49
Kennebec	167	93
Knox	56	51
Lincoln	33	17
Oxford	66	67
Penobscot	177	206
Piscataquis	30	32
Sagadahoc	——*	——*
Somerset	74	79
Waldo	——*	3
Washington	33	65
York	156	188
Totals	1,052	1,098

*No reports received.

INDEX TO OPINIONS