STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

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ATTORNEYS GENERAL OF MAINE

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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	1952-1961
George C. West, Augusta	1961-

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	1942-1962
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	1946-1962
Boyd L. Bailey, Bath	1946-1956
George C. West, Augusta	1947-1961
Stuart C. Burgess, Rockland	1949-1953
L. Smith Dunnack, Augusta	1949-
James Glynn Frost, Eastport	1951-1952
Roscoe J. Grover, Bangor	1951-1953
David E. 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	1955-1961
George A. Wathen, Easton	1955-1961
Ralph W. Farris, Portland	1957-
Richard A. Foley, Augusta	1957-1962
Frank A. Farrington, Augusta	1958-
Stanley R. Tupper, Hallowell	1959-1960
Thomas W. Tavenner, Freeport	1960-1962
John W. Benoit, Jr., Augusta	1961-
Ruth L. Crowley, Augusta	1961-
Courtland D. Perry II, Augusta	1961-
Jon R. Doyle, Winthrop	1961-
Wayne B. Hollingsworth, Augusta	1961-
Albert E. Guy, Gray	1961-
Leon V. Walker, Jr., Eliot	1962-
Peter G. Rich, Portland	1962

* 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 MacInnes	Bangor
	Resigned: successor, Howard M. Foley	Bangor
Assistant	Howard M. Foley	Bangor
	Resigned: successor, Thomas E. Needham	Orono
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
Assistant	George S. Hutchins	Ogunquit

STATE OF MAINE

Department of the Attorney General

Augusta, December 1, 1962

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, 1961 - 1962

STATE v. RICHARD A. SPAULDING

On September 14, 1961, Richard A. Spaulding went to a small grocery store in Arundel, owned and operated by the deceased, Eulalie McKenney. He spent some time chatting with Mrs. McKenney, a woman he had known for years. While Mrs. McKenney was standing on a step ladder in the back of the store, Spaulding fired a .22 rifle at her, hitting her in the head. As she lay on the floor, still alive, Spaulding took whatever money and jewelry was available in the store. He then shot Mrs. McKenney again and dragged her body out behind the store where it was discovered later that evening. Spaulding was not apprehended until the next day. He was arrested, indicted, and tried for murder in the January 1962 Term of York County Superior Court. He was convicted of murder and sentenced to life imprisonment.

At the time of the killing, Spaulding was 19 years old; Mrs. McKenney was 64.

STATE v. GLENNA MAE IRELAND

On October 14, 1961, Glenna Mae Ireland stood in the entrance to her husband's bedroom and fired one shot with a 30-30 rifle, killing Simon Ireland instantly. The couple had been fighting for many years, and on the day in question the deceased and Mrs. Ireland had been having a violent argument. After the argument, while the deceased lay on his bed, Mrs. Ireland got the rifle and shot him. She was indicted and tried for murder at the December 1961 Term of Aroostook County Superior Court. She was convicted of manslaughter and sentenced to 7½ to 20 years in State Prison.

STATE v. RICHARD A. DORE

On November 18, 1961, Richard A. Dore, 14 years of age, fired one shot from a rifle into the head of Leon J. Muncey, a 12 year old playmate. The defendant ran to the Chief of Police in Hallowell and explained that the deceased had shot himself. After telling many people the same story, the defendant finally admitted having shot Muncey, but could offer no explanation for his action. He was indicted for murder and during the trial at the February 1962 Term of Kennebec County Superior Court, the defendant was allowed to plead guilty to manslaughter. Dore was sentenced to 7 to 15 years in State Prison.

STATE v. JEROME S. MICHAUD

On December 8, 1961, Jerome S. Michaud fatally stabbed Shirley D. Rollings, at a gravel pit in Topsham. He left the girl to die, but she was found shortly before her death. The defendant was apprehended within hours, at his place of employment. Michaud, in some manner, got Miss Rollings into his car, ostensibly

to take her to Brunswick where she would get a ride to school in Portland. Instead of taking her to Brunswick, he took her to the gravel pit where she was stabbed once in the chest with a hunting knife. Michaud was indicted and tried for murder at the January 1962 Term of Sagadahoc County Superior Court. He was convicted of murder and sentenced to life imprisonment.

STATE v. LAWRENCE FRENCH

On March 15, 1962, at approximately 1:30 in the morning, Lawrence French, in his seventies, fired two shots with a shot gun at his nephew, George French. The first shot struck George French in the side, knocking him to the ground; the second shot hit George French in the head, killing him instantly. The shooting followed a long drinking spell in which the deceased became quite violent. Lawrence French was indicted for murder and at the June 1962 Term of Lincoln County Superior Court he was convicted of manslaughter and sentenced to 4 to 7 years in the State Prison.

STATE v. DAVID EKSTROM

On March 25, 1962, at 1:00 A.M., the defendant fired one shot from a rifle killing the deceased, Douglas Grover, instantly. Grover and Ekstrom lived together in a woods camp, and on the morning in question, Grover returned from an all day drinking bout. Ekstrom was asleep and Grover, accompanied by 2 carloads of friends, woke him up. All of the parties were intoxicated. Grover and his friends tried to get Ekstrom to come outside for a fight with Grover. There was a rifle between Ekstrom and Grover, and Ekstrom grabbed for it for fear that Grover might get it first. In the scuffle that followed, Grover was shot in the chest. Ekstrom was indicted for murder but was allowed to plead guilty to manslaughter at the Piscataquis County Superior Court. He was sentenced to 2 to 10 years in the State Prison.

STATE v. RALPH PARK, II

On June 10, 1962, while walking along a woods path near his home in Winthrop, Ralph T. Park, II, age 15, met Avis V. Longfellow, age 14. Miss Longfellow was approaching the defendant from the opposite direction. She was carrying Gerald True, a 2 year old boy whom she was caring for. A few words were spoken by Miss Longfellow after which the defendant commenced to stab her on the arms and chest. Miss Longfellow dropped the baby, and the defendant continued to stab her. She was stabbed approximately 60 times. The defendant then stabbed the young boy and threw him over a fence into the deep woods, where he was found later. Miss Longfellow's body was found after her parents became alarmed and started searching the woods for her. The young True boy was found shortly thereafter. Ralph Park denied any knowledge of the case until that evening at which time he confessed to his parents. His parents called the police, and the boy repeated his confession to the officers. Park was examined extensively at the Augusta State Hospital and was found to be legally sane. He was indicted and tried for murder at the November 1962 Term of Kennebec County Superior Court. He was found guilty of murder and sentenced to life imprisonment.

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

OTHER CASES

Several complaints were received by this office against the Pan American Technical Schools, Inc., in December of 1960. After an extensive investigation by this office and the Post Office Department the case was tried. On May 19, 1962, at West Palm Beach, Florida, Cecil E. Wood was found guilty on 12 counts of mail fraud and was sentenced on July 13, 1962, to one year in prison, fined $2,500.00 and placed on probation for seven years. The judge instructed the defendant that he was not to engage in correspondence schools or mail order business of any type in the future. Roger Bell and Dean Hughston, co-defendants in the case, were each sentenced to six years probation and fined $1,000.00. The defendants, operators of Pan American Technical Schools, Inc., obtained $700,000.00 from victims through misrepresentation of airline training courses.

This office through Wayne B. Hollingsworth, Assistant Attorney General, collaborated with the attorney for the Town of Bar Harbor in presenting the case of *Swed et al. v. Bar Harbor* to the Law Court in June of 1962. The case was testing the constitutionality or validity of Private & Special Laws of 1961, c. 176, § 3, as that law applies to *bric-a-brac,* linen stores and the constitutionality or validity of the derivative Town ordinance as the latter applies to the business conducted by these plaintiffs. The ordinance was found unconstitutional because of vagueness.

Two cases went to the Supreme Judicial Court to determine the constitutionality of the Sunday Closing Law (P. L. 1961, c. 362; R. S., c. 134, §§ 38, 38-A). These cases were: *State of Maine v. The Fantastic Fair and Karmil Manufacturing Corp.* The court held in each case that the Sunday Closing Law is constitutional. The demurrer was overruled. Case remanded for entry of Judgment for the State. Wayne B. Hollingsworth, Assistant Attorney General, assigned to the main office prepared these cases for the Law Court in November of 1962.

STATISTICS

Statistics have shown that certain crimes are on the increase and others on the decrease. The following lists show the crimes according to percentage of increase or decrease over the last biennium:

Increases		*Decreases*	
Escape	50%	Murder	25%
Miscellaneous	39%	Manslaughter	22%
Arson	33 1/3%	Felonious Assault	19%
Breaking, Entry & Larceny	27%	Drunken Driving	14%
Night Hunting	17%	Larceny	8%
Rape	17%	Liquor	8%
Forgery	14%	Intoxication	6%
Embezzlement	13%	Motor Vehicle	5%
Non-Support	12%		
Assault & Battery	11%		
Sex Offenses	6%		
Robbery	1%		

There was a general increase in overall categories of crimes of 440 more cases (7.5%) than the previous biennium. Tables with statistics compiled for the biennium may be found at page 202.

BAXTER STATE PARK

By statute the Attorney General is a member of the Baxter State Park Authority. The Authority meets several times each year to discuss the general operation of the park and the rules and regulations relating thereto. Being a member of the Authority involves one of the more pleasant duties of this office. The Authority was most pleased with Governor Baxter's gift of additional land for the Park. By the gift the acreage is increased to over two hundred thousand. We believe this to be the largest area ever given by an individual to a state for park purposes. It has been my extreme pleasure to work with Governor Baxter for the past four years.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

The Attorney General, Frank E. Hancock, was chairman of the Eastern Regional Conference and is a member of the Executive Committee of the National Association of Attorneys General.

The Attorney General is chairman of the Anti-Trust Committee of the National Association of the 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 Federal District Court in Massachusetts against asphalt, tar and bituminous companies. The State of Maine brought its treble damage action against six tar companies for conspiracy in November, 1960. The State recovered $215,000.00 as overpayments in a settlement in the fall of 1961.

CONFERENCE OF NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

MARSHALL HOUSE, YORK HARBOR, MAINE

The Eastern Regional Conference of Attorneys General met at the Marshall House, York Harbor, Maine, June 28-30, 1962. The host for the conference was Attorney General Frank E. Hancock. The conference was attended by 56 delegates and their wives from all ten states of the region and Puerto Rico. The ten states include Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont. William L. Frederick, Regional Director of Council of State Governments, New York, attended.

There were panel sessions with regard to: Federal-State Relations and Interstate Cooperation; The Effect of *Mapp v. Ohio* (search and seizure case); Consumer and Investor Legislation; Legislative Apportionment.

On Saturday evening, June 30th, approximately 165 persons attended the State Dinner. The Honorable Archibald Cox, Solicitor-General of the United States, was the speaker. He discussed the work of the Office of Solicitor-General in handling cases for the United States Government on appeal to the Supreme Court. He took note of the differences between his role and that of the private attorney representing a client in the Supreme Court.

OTHER MATTERS

The staff of the Attorney General's Office now consists of the Deputy Attorney General, 13 full-time assistant attorneys general, 2 part-time assistant attorneys general, 2 investigators and 4 clerical employees.

Assistant Attorneys General Milton L. Bradford and Frank A. 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, and prepare legislation for Employment Security Commission.

They also have charge of a two to 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 other improprieties.

During 1961 and 1962 collection of delinquent employer accounts (including interest and penalties) amounted to $221,405.49. In the process of collecting these accounts, 188 statutory liens were filed; a total of 163 suits were instituted in Superior Court, and 43 proofs of claim were filed in the Bankruptcy Court. Twenty-one claimants appealed from Commission decisions to the Superior Court. One case which was decided in favor of the Commission was further appealed by the claimant to the Supreme Judicial Court, and one case which was decided against the Commission, was further appealed by the Commission to the Supreme Judicial Court.

A total of 1,635 claimant investigation cases were completed. The investigators during this period made 3,847 calls and developed as a result thereof a total of 436 fraud cases. Also during this two-year period, Municipal Court action against violators resulted in 65 convictions; fines were assessed in 28 cases, but suspended in 8 of them; jail sentences were imposed in 39 cases, but 30 were suspended; also, 31 claimants were placed on probation.

A total of $50,658.34 was collected on claimant overpayment and fraud cases.

Mr. Bradford has worked with the Commission since 1954 and Mr. Farrington since 1958.

Assistant Attorney General Frank W. Davis and Assistant Attorney General Ruth L. Crowley 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 collection of money for the State for old age assistance, aid to dependent children, reciprocal support and the like. During the fiscal years 1960-61 and 1961-62 they have collected from estates for old age assistance, aid to the blind and aid to the disabled, the sum of $375,855.08 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 $700,743.52 and during the same fiscal period they have collected from fathers for child welfare the total sum of $114,338.24. Total collections from the above and miscellaneous items amounted in that fiscal period to $1,199,856.03. Mr. Davis, the senior assistant, has been with the department since 1953 and Mrs. Crowley has been with the department since 1961.

Assistant Attorney General L. Smith Dunnack is assigned and maintains an office with the State Highway Commission. After ten years of planning, a major step towards providing adequate legal service for the Highway Commission has been achieved. For some years, legal personnel have been employed by the Right of Way Division under the personnel set-up. These attorneys, acting under delegation of duties from the Assistant Attorney General, were in the awkward position of serving two masters, since they were under the administrative control of the Right of Way Division. Now the Highway Commission, with the approval of the Attorney General, has created a Legal Division under the administrative direction of a Chief Counsel, Asa Richardson. Mr. Richardson was among the first of the right of way attorneys employed under the old plan and has been largely responsible for the development of the present system. He has had extensive experience in title searching, map reading, appraisal methods, trial preparations and the miscellaneous legal problems that the Commission encounters.

He acts under a delegation of authority from the Assistant Attorney General who is responsible for the work of the Division to the Attorney General.

At present there are two major sections — the Title Section and the Trial Section. The right of way attorneys are specifically assigned to title examinations but may be called upon for performance of general legal work when the need arises and their specific assignments permit. The trial counsel are specifically assigned to the preparation and presentation of cases before the Land Damage Board and the preparation of cases before the Superior Court. They may be specially assigned to try certain cases when it is deemed expedient.

The present system of retaining local trial attorneys for jury trials is working successfully. Our representatives are top men in their locality and with their extensive experiences in these cases are valuable aids.

There have been 425 cases of motor vehicle accidents adjusted and one case is pending trial.

Some 346 cases have been presented before the Land Damage Board and 36 cases have been tried before the Superior Court.

The advisory service and general legal work, as described in previous reports, is increasing in volume.

Mr. Dunnack has been with the department since 1949.

Assistant Attorney General Orville T. Ranger was assigned to the Insurance Department on a part-time basis. Mr. Ranger resigned on October 31, 1961, and was commissioned Administrative Hearing Officer.

Assistant Attorney General, Albert E. Guy was appointed to replace Mr. Ranger in December, 1961. He is assigned to and maintains an office on a part-time basis with the Insurance Department. Generally, Mr. Guy's duties encompassed the following: Investigation, preparation and prosecution of six administrative hearings for the suspension or revocation of agent's licenses and the investigation and preparation of waivers of hearing in two other cases in which the Commissioner suspended or revoked licenses.

In the Superior Court of the various counties of the State of Maine this assistant brought to a conclusion five cases for the removal of fire hazards which had been commenced by his predecessor, Orville T. Ranger, Esq., and since that time has commenced thirty-nine others, many of which have been brought to a conclusion and the fire hazards removed.

Of prime importance to the Insurance Department is the giving of advice and opinions on countless occasions involving the rights of insurance companies in many respects as well as the powers and duties of the Insurance Commissioner relating to the companies, the state and the public. This necessarily involves attendance at countless conferences at which these various matters were brought up for discussion preceded by a review of law, practices and filings with respect to policy and legal technicalities.

Major studies by this assistant included the activities of out-of-state firms improperly or illegally operating in the State of Maine; and a study of false advertising in all lines by both domestic and foreign companies operating in the State of Maine on both an agency as well as a direct basis which study is still continuing and which may prove of great value not only to the state but possibly to the Federal Trade Commission, which, it appears, may ultimately take direct responsibility for this activity.

The preparation of all departmental legislation which includes eleven specific departmental bills pertaining to insurance and seven departmental bills pertaining to the Division of Fire Prevention. This work also required a review of bills relating to insurance and to the Division of Fire Prevention.

Mr. Guy has been with the Department since 1961.

Assistant Attorney General Henry Heselton is assigned to and maintains his office at the State Liquor Commission on a part-time basis. 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 and advises the Chief Inspector of the enforcement division of the Commission.

Mr. Heselton has been with the department since 1946. He plans to retire on January 5, 1963.

The position of Assistant Attorney General assigned to the Department of Mental Health and Corrections was authorized by the 100th Legislature and was filled in August, 1962, by Courtland D. Perry, presently holding that position.

The Assistant Attorney General assigned to the Department of Mental Health and Corrections serves as counsel to the central office, composed of the commissioner of the department and his immediate staff, the Division of Probation and Parole and the Bureau of Mental Health, and also serves as counsel to the following institutions: Augusta State Hospital, Bangor State Hospital, Pineland Hospital and Training Center, Boys Training Center, Stevens Training Center, Reformatory for Men, Reformatory for Women, Maine State Prison, Military and Naval Childrens' Home and Governor Baxter's School for the Deaf.

Opinions are frequently requested of this assistant by departmental personnel which relate directly to the functions of the department and institutions and generally involve the laws governing the department. Between August, 1961, and December, 1962, thirty-nine written and more numerous oral opinions were rendered to personnel of the Department of Mental Health and Corrections. During the early months of this assistant's tenure much time was spent in interpreting and clarifying the new mental commitment law, so-called, enacted by the 100th Legislature.

The collection of delinquent State Hospital board and care accounts forms no small part of the activities of this assistant. From August, 1961, to the end of the fiscal year, June 30, 1962, collections amounted to $11,302.83, a large portion of which was comprised of delinquent board and care accounts.

It is necessary from time to time to file proofs of claim against the estates of deceased patients or responsible relatives, and also from time to time it becomes necessary to petition for the administration of estates on behalf of the State of Maine as creditor if letters of administration are not taken out by other interested persons.

Occasionally contracts are required to be drafted in whole or in part by this assistant.

During 1962 two interstate contracts of major importance to the Department of Mental Health and Corrections were drafted. The contracts implemented the New England Interstate Corrections Compact and were executed by the states of Maine and New Hampshire, and permit the transfer for confinement of inmates between the two states. The form and legality of contracts are occasionally passed upon by this assistant.

In August, 1962, this assistant attended the Annual Conference of the National Association of Reimbursement Officers at Atlanta, Georgia, and returned with valuable information enabling him to draft a new support and reimbursement law for the Department of Mental Health and Corrections.

Court activities during the year 1962 included a petition in the Waldo County Superior Court brought by this assistant for the discharge from the Pine-

land Hospital and Training Center of a person committed to the Department of Mental Health and Corrections after acquittal on the ground of mental defect under Maine's codified and modified "Durham Rule." This case was peculiar in that the petition for discharge was brought after the boy had been at the Pineland Hospital and Training Center for only two or three months. The boy was discharged by the Court — the Court being satisfied by the report and affidavit of the superintendent of the Pineland Hospital and Training Center that the boy was not a proper subject for the institution and did not constitute a danger to the peace and safety of the community.

The inadequacy of the statutes relating to the disposition of persons pleading insanity was sharply pointed up by this case and legislation relating to disposition of persons pleading insanity will be submitted to the 101st Legislature, in order to make uniform and workable the procedures for commitment for observation, and care and treatment.

Mr. Perry has been with the Department since August, 1962.

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.

Assistant Attorney General John W. Benoit was appointed to the Bureau of Taxation in January, 1961, and an additional assistant, Jon R. Doyle, was appointed in September, 1961, to fill the need arising from the increase in volume of taxes referred for collection.

In 1961, two sales and use tax cases were argued in the Law Court. Both decisions upheld the assessment of the tax assessor. In 1962, four cases were argued in the Law Court; three of these cases are presently pending in the Court.

There were two sales and use tax appeal cases litigated in Superior Court during 1961. In 1962 there were six appeal cases wherein either evidence was taken out in a hearing for the purpose of reporting the case to the Law Court or a hearing was held and the issue decided by the Court. Two appeal cases remained to be litigated at the end of 1962.

The year 1961 saw an increase in the use of injunction procedures under the sales and use law. In that year some 8 injunction cases were filed in Superior Court; in 1962, some 14 such suits were instituted.

An analysis of sales tax records reveals that on January 31, 1961, there were 747 individual sales or use tax assessments in the custody of the assistant for collection. On October 9, 1962, the number of assessments had been reduced to 294. These 294 assessments represented 161 accounts.

As of October 9, 1962, 37% of the delinquent accounts were labeled "bankruptcy matters." These accounts represented 45% of the individual assessments. Accounts Receivable Analysis:

Year	Amount Collected	Assessments Closed	Assessments Opened	Amount Turned Over for Collection
1961	$223,612.78	986	735	$198,771.51
1962	$214,173.24	902	760	$192,955.46

Collections for the fiscal year 1961-62 in comparison to collections for the fiscal year 1960-61 show that $65,462.92 more moneys were collected in the former period over the latter period while $56,018.48 *less* moneys were referred for collection in the former period over that of the latter period. Too, there were 17 less assessments referred for collection in the former period over that of the latter period, and 235 more assessments were closed in the former period over that of the latter period. Thus, there existed the indication that less assessments were being referred, i.e., the assessments were being controlled, while more assessments were being closed. The records show the sales and use tax accounts receivable to have reached an all time high at the end of 1960.

Assistant Attorney General Thomas W. Tavenner maintained his office in the main office of the Attorney General and his duties were of a general nature. He completed the work of compiling and bringing up to date the Lawrence Digest of Maine Cases which was begun by a former assistant. He spent a great deal of time reviewing rules and regulations of the various departments, boards and commissions accepting the State Administrative Code. Mr. Tavenner did the bulk of the legal work pertaining to the State's anti-trust suit against six tar companies for conspiracy in November, 1960. Mr. Tavenner also rendered opinions to the Real Estate Commission, Milk Commission, Pharmacy Commission, Maine Mining Bureau, Water Improvement Commission, Agriculture and others.

Mr. Tavenner left this office in September, 1961, to go into private practice in Lawrence, Massachusetts.

Peter G. Rich was employed by this department to take Mr. Tavenner's place in September, 1961. Mr. Rich stayed with the office until November, 1961, when he went into private practice in Portland.

Assistant Attorney General Wayne B. Hollingsworth maintains his office in the main office of the Attorney General and was hired to fill a new position. Mr. Hollingsworth advises the Real Estate Commission, Water Improvement Commission, Sea & Shore Fisheries. He does collection work for all state departments not having an assigned assistant. He does considerable research with regard to criminal matters and assists in drafting legislation.

Mr. Hollingsworth has been with the Department since 1961.

Assistant Attorney General Neal A. Donahue retired from the office of the Attorney General in March, 1962, after rendering his valuable services since 1942, a period of 20 years.

Assistant Attorney General Leon V. Walker, Jr., was appointed to replace Mr. Donahue. He maintains his office in the main office of the Attorney General, and his principal assignments are in the field of Workmen's Compensation and real estate. Additionally, for the past few months, he has represented the Maine Milk Commission, the Board of Registration of Medicine and the Maine Mining

Bureau. In the Workmen's Compensation field, he handles for the State all injuries involving state employees and represents the State in hearings before the Industrial Accident Commission. Hearings are held in all parts of the State and involve considerable travel. The number of on the job accidents involving state employees during the period of this report approximates 2,400. Another 200 earlier cases are still receiving active attention. The real estate work involves purchase and sale of land, condemnations and questions relating to titles. Many questions also arise involving great ponds, riparian rights and tidal flats.

Mr. Walker has been with the Department since February, 1962.

Assistant Attorney General Richard A. Foley is assigned to the main office of the Attorney General and his activities are many and varied. Mr. Foley provides legal services for the Department of Education, providing advice and legal services to the Commissioner, Deputy and other members of the department, as well as services to the Maine School Building Authority and the Maine School District Commission. The workload for the Education Department has increased to such an extent that a full-time assistant assigned to that department has been recommended.

Mr. Foley assists the Maine Industrial Building Authority and the Urban Planning Division of the Department of Economic Development with many legal opinions requested with regard to urban planning grant offers.

He also represents the State with regard to all post conviction actions, not only in the State Courts both Superior and Supreme Judicial, but in the Federal District Courts including the U. S. Court of Appeals and the Supreme Court of the United States. These petitions are brought mainly by prisoners at the Maine State Prison. A few petitions are brought by prisoners at the Men's Reformatory. Post conviction procedures are showing an ever increasing trend. In the calendar year 1961 there were 9 habeas corpus petitions and 2 appeals in the State Courts and 9 habeas corpus petitions and 3 appeals in the Federal Courts. 9 writs of error and 3 appeals in the State Courts, 3 writs of error coram nobis and 18 miscellaneous actions, making a total of 56 actions. Among these miscellaneous actions were two education cases including one complaint and one writ of replevin. In the calendar year 1962 there were 10 habeas corpus petitions and 2 appeals in the State Courts and 4 habeas corpus petitions and 1 appeal in the Federal Courts, 3 writs of error in the State Courts, 7 writs of error coram nobis petitions and 2 appeals in the State Courts and 14 miscellaneous actions, making a total of 43 actions. Among these miscellaneous actions were 3 education cases including one suit, one declaratory judgment and one 10 taxpayers suit. For more details see the petition chart on page 230.

All certificates of incorporation, changes of purposes and mergers are reviewed by this assistant. In 1961, he reviewed 677 certificates of incorporation, 23 changes of purposes and 9 mergers. In 1962, he reviewed 644 certificates of incorporation, 18 changes of purposes and 6 mergers.

Mr. Foley has been with the Department since 1957. In January, 1963, he is leaving the department to go into private practice.

Deputy Attorney General George C. West 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. Mr. West does a good deal of advising and giving of opinions to all department heads, office of the Governor and members of the Legislature. He examines all medical examiners reports that are forwarded to this office. He examined 2,139 medical examiner's reports for the biennium; 1,026 in 1961 and 1,113 in 1962. For additional breakdown with regard to counties, see chart on page 231 of this report.

Mr. West has approved 364 applications for excuse of corporations in the biennium; 166 in 1961 and 198 in 1962.

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.

Mr. West has been with the office of Attorney General since 1947 and has served as Deputy for the past 2 years.

Philip W. Wheeler and Walter C. Ripley are the investigators for the department. Their duties are numerous. Investigations are made at the request of State departments or county officials on both civil and criminal matters. Mr. Wheeler has been with the department since 1942 and Mr. Ripley since 1951.

At the present time Mrs. Olive E. Fessenden, Mrs. Phyllis A. Matthews, Mrs. Cecelia B. Hinkley and Miss Sally Faunce comprise the clerical staff of the office. Mrs. Fessenden has been with the department since 1952; Mrs. Matthews since 1956; Mrs. Hinkley since 1959; and Miss Faunce was hired in November of 1962.

Respectfully submitted,

FRANK E. HANCOCK

Attorney General

OPINIONS

January 5, 1961

To: T. T. Trott, Jr., Director of Research & Statistics, Labor & Industry

Re: Information for Labor Directory

I have your request of December 15, 1960, relating to acquiring statistics from the Maine State Federated Labor Council.

Section 2, Chapter 30, Revised Statutes of 1954, provides in part:

> "The department shall collect, assort and arrange statistical details relating to . . . trade unions and other labor organizations and their effects upon labor and capitol."

Section 3 provides that the commissioner may furnish a list of interrogatories "to any person, or the proper officer of any corporation operating within the state. . ."

The informant required to answer shall not have his name disclosed without his consent and it is further provided that such information is confidential.

It appears that under Section 3 you can require the information by interrogatories.

GEORGE A. WATHEN

Assistant Attorney General

January 10, 1961

To: Honorable John L. Knight
Chairman of the House Committee on Elections
House of Representatives
State House
Augusta, Maine

Dear Mr. Knight:

We have your inquiry with regard to the status of absentee votes in the contest by Carlton Day Reed, Jr., against T. Tarpy Schulton for a seat in the Maine House of Representatives. We understand that approximately 113 absentee ballots are being challenged by Mr. Reed because the applications were not signed by the selectmen pursuant to the provisions of Section 7, Chapter 6, Revised Statutes of 1954. It is understood that there is no allegation of fraud in connection with this contest and that the ballots themselves were properly signed by the voters.

Section 13 of Chapter 6 says that:

> "No ballot presented under the provisions of this chapter shall be rejected for any immaterial addition, omission or irregularity in the preparation or execution of any writing or affidavit required herein, nor shall any such ballot be counted if the officers charged with the duty of counting the same are cognizant of the fact that the voter has died prior to the opening of the polls on the day of election."

In an opinion given former Governor Muskie by the Justices of the Law Court on the eleventh day of December 1956,[1] the court differentiated between

mistakes made by the voters and mistakes made by officers charged with the duty of processing and tabulating ballots.

"We conclude that the provisions of the statute touching the procedure to be employed at the polls and the disposition of applications and envelopes following an election are directory and not mandatory in nature. In other words, violation of the statute by election officials in the situations here under consideration, at least in the absence of fraud, is not a sufficient ground for invalidating ballots.

"We distinguish between acts of the voter and acts of the election officials. The voter must comply with the statute insofar as his acts are concerned. Failure, for example, of the voter to take the prescribed oath invalidates his vote. *Miller v. Hutchinson.* 150 Me. 279."[2]

Based upon the above citations and references, it is our opinion that the failure of the selectmen to sign the affidavit at the bottom of the application for an absentee ballot in no way affects the validity of the vote.

Very truly yours,

THOMAS W. TAVENNER
Assistant Attorney General

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[1] 152 Me. 219.

[2] *Opinion of the Justices,* supra, footnote number 1 at page 225.

January 11, 1961

To: Austin H. Wilkins, Commissioner of Forestry

Re: Setting off Public Lots — Brown Company

I have your request for our opinion regarding whether or not the owners of a township which has an unlocated public lot may force you as an agent of the state to lay off the public lot.

No action can be maintained against a state by one of its citizens without the consent of the state.

Section 28, Chapter 176, provides that lots reserved for public uses must be first set off when there is a partition of real estate. This does not appear to be the case here. Sections 48 through 64, inclusive, Chapter 36, Revised Statutes of 1954, provide for public reserved lots. Section 48 provides that in townships or tracts not sold and not incorporated, may by agreement be set off by the proprietors and the Commissioner. Section 49 provides that when an agreement cannot be reached as to location, the Commissioner may petition the Superior Court for the appointment of commissioners to set out the location. This section provides a condition precedent that the timber and grass rights have not been sold. Section 56 provides for location where portions were reserved on grant and have not been located by the grantee, the Superior Court may appoint, *on application of the Commissioner,* 3 persons to locate the lot.

In the present fact situation, I do not believe the Brown Company has any statutory authorization to bring an action against the state to set off the public lot. In the absence of such authority, they could not maintain an action.

GEORGE A. WATHEN
Assistant Attorney General

January 12, 1961

To: Earle R. Hayes, Executive Secretary of Maine State Retirement System

Re: Suggested Constitutional Amendment

We have your memo of December 29, 1960, in which you state that the Board of Trustees would like our opinion with respect to the following language of the suggested Constitutional amendment, having in mind the purpose of protecting the trust funds of the Maine State Retirement System:

> "All of the assets, and proceeds or income therefrom, of the Maine State Retirement System or any successor system and all contributions and payments made to the System to provide for retirement and related benefits shall be held, invested or disbursed as in trust for the exclusive purpose of providing for such benefits and shall not be encumbered for, or diverted to, other purposes."

We would have no comment as to the necessity for such provision, but are of the opinion that as worded the amendment would adequately achieve the purpose desired by the Board.

JAMES GLYNN FROST
Deputy Attorney General

January 17, 1961

To: Honorable Ralph M. Lovell
House of Representatives
State House
Augusta, Maine

Re: Exempting Industrial Property from Taxation

Dear Mr. Lovell:

We have your request for an opinion as to whether a bill exempting industrial property from taxation would or would not be constitutional. This bill, proposed as an amendment to Chapter 91-A, Section 10, subsection II, would exempt for a period of ten years industrial property locating or relocating in a municipality.

Under the Constitution of the State of Maine, all taxes upon real and personal property must be apportioned and assessed equally according to their just value. *Constitution of Maine,* Article IX, Section 8. Furthermore, no resident of the State of Maine shall be deprived of his property except by judgment of his peers or the law of the land. *Constitution of Maine,* Article I, Section 6.

The question here then is whether or not the proposed amendment would be unconstitutional as constituting an inequitable apportionment of taxes and thus the deprivation of private property without due process of law.

Chapter 91-A, Section 10, subsection II, contains a list of certain properties exempted by law by the imposition of any tax. The proposed amendment would add certain industrial properties to this list which is now composed of certain charitable, governmental and educational institutions. Various proposals and enactments through the years have been aimed at granting tax relief in order to

entice industries to move into a certain locality, and each of these attempts have been held unconstitutional when tested in the law court. In *Brewer Brick Co. v. Town of Brewer,* 62 Me. 62 (1873), a law almost identical in form was struck down. In this case the Town of Brewer, pursuant to legislative authority, voted to exempt the Brewer Brick Co. from the payment of taxes for a period of ten years. This was done in order to encourage the company to build a plant in Brewer. The second year after this vote was passed the town decided that it would no longer honor the agreement and taxed the Brick Co. along with all other businesses. The company paid under protest and brought suit to recover this tax. In holding the abatement of tax unconstitutional, the law court pointed out that such a measure would place a great burden on competitors in receiving such a benefit and would also force the taxpayers of the town to support a private enterprise.

> "Of two competing capitalists, in the same branch of industry, one goes into the market with goods relieved from taxes, while the goods of the other bear the burden. One manufacturer is taxed for his own estate and for that which is exempted, to relieve his competing neighbor, and to enable the latter to undersell him in the common market; — a grosser inequality is hardly conceivable!" *Brewer Brick Co. v. Town of Brewer,* 62 Maine 62, 75.

The latest opinion involving this question of industrial exemption was given by the Justices of the Supreme Court in 152 Me. 440. The question behind this opinion was whether or not an act relating to an industrial development in the City of Bangor would be constitutional. The court was of the opinion that, since the benefit would go to private industry, the act involved a private rather than a public purpose and that the city could neither raise money by taxation nor acquire property by eminent domain for such a purpose.

> "That such a course could well be of great value to the particular enterprise and so to the city or community would not affect the application of the law.
>
> "The test of public use is in the advantage or great benefit to the public. 'A public use must be for the general public, or some portion of it, who may have occasion to use it, in a use by or for particular individuals. It is not necessary that all of the public shall have occasion to use. It is necessary that everyone if he has occasion, shall have the right to use.' "

It is our opinion that the act in question would involve the use of public tax monies for private purposes and would thus violate the several provisions of the State Constitution referred to above.

Verty truly yours,
THOMAS W. TAVENNER
Assistant Attorney General

January 18, 1961

To: R. W. Macdonald, Chief Engineer of Water Improvement Commission

Re: Interstate Pollution Control Work

We have your request for an opinion concerning the power of the Water

Improvement Commission to act with respect to interstate waters. As I understand it, the authority of the Commission to take any action with regard to interstate waters has been questioned and the Commission would like to know whether or not it can conduct hearings, run surveys and enforce interstate classification.

Section 7 of Chapter 79 clearly gives the Commission the authorization to cooperate with other states and specifically mentions waters which run through this state and any other state. The question, therefore, is whether or not the act relating to interstate water pollution control, enacted as Chapter 79-A of the Revised Statutes of the State of Maine, gives the Water Improvement Commission any power to deal with these interstate problems. Under Article IV under this interstate act the control commission "shall make recommendations for any legislative action deemed by it advisable . . . to carry out the intent and purpose of this compact."

In Article V the Commission is given the authority to establish reasonable standards of water quality, with the local agencies of the various states preparing the classification of the interstate waters.

Section 7 of Chapter 79-A then imposes certain restrictions on any action taken in behalf of the State of Maine by the Maine representatives on the Commission. It is clearly set forth that they shall not vote in favor of or commit the State of Maine to any classification of interstate water which would be higher than the classification already established by our legislature, or to any classification of water which has not already been classified by our legislature.

Under the terms of Chapter 79 of the Revised Statutes, the legislature of this State has the sole authority to establish the classification of waters. As a corollary to this proposition, the legislature has forbidden the interstate commission to do that which our State commission could not do. In other words, the legislature remains the sole classifier of waters in the State of Maine. This does not mean, however, that the Water Improvement Commission can take no action pertaining to interstate waters. Under Article V of the interstate compact, the Water Improvement Commission is given the duty of preparing a classification of the interstate waters of the State of Maine for the use of the interstate agency, and to confer with that agency on questions relating to classification of interstate waters. Although such a proposed classification must still be presented to and passed by the legislature of the State of Maine before it becomes effective, it is our opinion that the Water Improvement Commission has the right to conduct hearings and surveys with regard to interstate waters and, once a classification of these waters has been passed by the legislature, to enforce that classification.

The question has also been raised as to the effect of regulations passed by the Interstate Control Commission. Chapter 79-A, section 2, Article IV specifically states that the Interstate Commission shall promulgate rules and regulations for its management and control. As this commission is thus given the authority to make regulations, valid regulations made pursuant thereto have the effect of law.

THOMAS W. TAVENNER

Assistant Attorney General

January 19, 1961

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

Dear Mr. Pease:

In answer to your oral question as to whether or not a person duly qualified as a representative to the Legislature may subscribe to his oath of office before a magistrate other than that set forth by the constitutional provision.

Article IX, Section 1, of the Constitution reads in part as follows:

> "The oaths or affirmations shall be taken and subscribed by . . . the senators and representatives before the governor and council. . . ."

It is our understanding that the Governor will be absent from the State for a few days. Although there may be occasions which would necessitate the taking of oaths by such officers before a magistrate other than that specified above, this is not such an occasion. It is our understanding that the Governor and Council will be in session when the Legislature convenes on Tuesday next and at that time the oath may be administered.

The constitutional provision referred to is a directive and should be followed under the present circumstances.

Very truly yours,

FRANK E. HANCOCK
Attorney General

January 20, 1961

To: Honorable Ralph M. Lovell
Senate Chamber
State House
Augusta, Maine

Dear Senator Lovell:

We have your request for an opinion on L.D. #102, entitled "An Act Authorizing Municipal Construction of Industrial Buildings."

The act adds a new section to Chapter 90-A, section 12, the section setting forth the purposes for which a municipality may raise and appropriate money, and reads as follows:

> "Sec. 12-A. Industrial building construction. A municipality may issue notes or bonds for constructing buildings for industrial use, for lease or sale by the municipality, to any responsible industrial firm or corporation, for the manufacturing, processing or assembling of raw materials or manufactured products."

It is our opinion that L.D. #102 if enacted into law, would be unconstitutional.

The latest word of our court on such laws permitting towns to raise funds for private industrial purposes is seen in 152 Me. 440.

In 152 Me. the court considered an L.D. which proposed a law whereby the City of Bangor would be empowered —

"to acquire by purchase or lease or purchase and lease, or by the right of eminent domain, lots, sites, improvements and places within the City of Bangor to be used for industrial development."

The court, following a long line of cases previously considered in this state, held that the L.D., if enacted, would not be constitutional.

The essence of the court's decision, seen at page 445, treating of both ordinary acquisition and acquisition by eminent domain, is as follows:

"We prefer to place our answer upon consideration of the basic purpose of the Act. This, we are compelled to find, is a private purpose and not a public purpose under our constitution. It follows that the city may neither raise money by taxation nor acquire property by eminent domain for such purpose. There is neither the "public use" of taxation, nor the "public use" of eminent domain. The likelihood that public funds expended in acquisition of property might be repaid in whole or in part, or even with a profit, in its disposal does not alter the situation in its constitutional aspects. The taxpayer in the operation of the plan would be, or might be, called upon to pay therefor; and thus the constitutional bar remains firm."

For the above reasons we believe L.D. #102 would not be constitutional.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

To: Honorable Philip E. Dunn
House of Representatives
State House
Augusta, Maine

January 30, 1961

Dear Mr. Dunn:

We have your request for an opinion regarding whether or not a town has the right to work its highway equipment on a private job for a fee.

It has been held by the Maine courts that a town, in the absence of a special charter, acts in a dual capacity — one governmental and one corporate or private, *Libby v. Portland,* 105 Me. 372.

In acting in its private capacity a town does not exceed its powers by making a contract to lease the town house for a period of six years when the town house is not wanted for town purposes, *Jones v. Sanford,* 66 Me. 585. Ordinary prudent management dictates that municipalities derive some income and the public some benefit from municipal property rather than permit it to lie idle when it is not needed, *Clapp v. Jaffrey,* 97 N. H. 456, 91 A. 2d 464.

It is my opinion, therefore, that when the town's highway equipment is not needed for construction or maintenance of the town roads, rather than have the equipment lie idle, it is within the discretion of the town officials to permit use of the equipment on a private job for a fee.

Very truly yours,

RICHARD A. FOLEY
Assistant Attorney General

January 30, 1961

To: John F. Weston, Chairman of Harness Racing Commission

Re: Awarding of Dates

We have your request for an opinion dated January 27, 1961, as to whether or not the Commission can award dates now for the 1962 season.

Revised Statutes of Maine of 1954, Chapter 86, Section 11, says that the Commission, under certain conditions, may issue a license which expires on the thirty-first day of December. This provision is not discretionary but is mandatory. No license can be issued which will extend beyond December 31st. Later on in that same section the Commission is directed to assign such dates for harness racing as will best serve the interests of the agricultural associations in Maine. This power to assign dates is ancillary to the power to grant licenses. In other words, the Commission cannot issue any license which will extend beyond December 31st and the power to award dates is likewise limited.

This section also states that the Commission may refuse to issue any permit for any date which would be detrimental to the interests of the agricultural associations or any of them. In awarding a date a year in advance, it would seem that the Commission would find it very difficult to take into consideration all of the factors which must be considered in regarding the interests of the various agricultural associations.

For these reasons it is our opinion that the Commission cannot award dates beyond the expiration of the calendar year in which the award is made.

THOMAS W. TAVENNER

Assistant Attorney General

February 1, 1961

Honorable Robert L. Travis
Councilor
Council Chambers
State House
Augusta, Maine

Dear Mr. Travis:

This is in response to your oral request of yesterday concerning compatibility of legislator and private detective.

Our records show that in the past the office has said that nothing would prevent a detective from being a legislator. It does not appear that any of the constitutional provisions placing limitations of qualifications on seats in the legislature would apply to a private detective.

Very truly yours,

JAMES GLYNN FROST

Deputy Attorney General

February 2, 1961

To: Honorable Sanford Jack Prince
House of Representatives
State House
Augusta, Maine

Dear Mr. Prince:

We have your request for an opinion as to the legality of legislative document 263, a proposal to separate the Town of Harpswell into two separate towns to be known as Harpswell and Harpswell Neck. Section 10 of this proposed law would give the citizens of Harpswell Neck the right to vote upon this proposal and their approval would be essential to the formation of the new town. The residents of the original town of Harpswell would not be entitled to vote in this referendum. As I understand it, the question which you have raised is whether or not this procedure is valid.

Boundaries of towns are created by the legislature and cannot be changed by the inhabitants. The legislature, however, can change them at pleasure. *Ham v. Sawyer,* 38 Me. 37, 41 (1854). 117 A.L.R. 267, 271. Unless the legislature makes the act conditional upon the acceptance of the division by the affected residents, the division takes effect without the necessity of any such acceptance. "In the absence of conditional provisions therein, an act of incorporation becomes imperative and binding whenever it takes effect, without any formal acceptance on the part of its inhabitants." *Westbrook v. Deering,* 63 Me. 231, 235-236. (1874). See also *Jonesport v. Beals,* 131 Me. 37 (1932).

Therefore, it is our conclusion that the legislature of the State of Maine can divide any town in the State as it sees fit and need not submit such division to the approval of the residents.

The next question is whether or not the legislature can make such a division subject to the approval only of those residents living in the area which will become the new town. A statute making partition of a town dependent upon the favorable vote of the townspeople is not unconstitutional as an invalid delegation of legislative authority. *Stone v. Charlestown,* 114 Mass. 214 (1873). *Little Rock v. North Little Rock,* 72 Ark. 195 (1904).

In the case of *Stone v. Charlestown,* the Massachusetts legislature passed a law incorporating the Town of Charlestown into the City of Boston. This merger was attacked on the grounds that the delegation of the power of approval to the voters was unconstitutional. The court pointed out that although the legislature had the absolute power to alter town boundaries, it had been the usage of that legislature "to submit acts dividing or uniting towns, or annexing a considerable part of the territory of one town or city to another, to the acceptance of the inhabitants of one or both of the towns or cities whose boundaries are thus altered."

It is our conclusion that section 10 of legislative document 263 would be valid and that the legislature has complete control and authority to decide the manner in which the proposed division shall be approved.

Very truly yours,

THOMAS W. TAVENNER
Assistant Attorney General

February 7, 1961

To: The Honorable Dwight A. Brown
Chairman, Committee on Business Legislation
State House
Augusta, Maine

Dear Senator Brown:

We have considered your oral request for us to determine if H.P. 461, L.D. 661, may contain any legal questions, and submit the following:

It is our belief that legal problems may be present in the consideration of H.P. 461, L.D. 661.

H.P. 461, L.D. 661, is an act to regulate issuance of trading stamps. The first paragraph of the act would prohibit the use of trading stamps or any such similar device. The second paragraph of the act would exempt from the effect of the act,

1) Redemption of stamps or similar devices by a manufacturer or packer, within certain limitations; and,
2) Stamps or similar devices redeemable by merchant at face value, in cash or merchandise from stock of the merchant at regular retail prices, at the option of the holder.

We base our belief that H.P. 461, L.D. 661, contains legal problems on the fact that the decisions of courts in other states considering such legislation follow two lines with the great majority of such decisions being to the effect that anti-trading stamp legislation is unconstitutional as not being a proper exercise of police power.

A few cases, including *Steffy v. City of Casper* (*Gray v. Gold Bond Stamps, Inc.*) 357 Pacific 2d 456 (decided November 29, 1960) have held such legislation to be a constitutional use of the police power. (A Wyoming case.)

In *Steffy v. City of Casper* the court considered and upheld a statute almost identical to that proposed in H.P. 461, L.D. 661. Even so, that court struck down as being an unconstitutional classification that portion of the bill that permitted merchants to issue and redeem stamps for cash or from stock in the store.

The fact above stated, that the great majority of cases are to the effect that such legislation is bad, compels us to the conclusion that the bill poses legal problems.

Very truly yours,
JAMES GLYNN FROST
Deputy Attorney General

February 8, 1961

To: The Honorable Dwight A. Brown
Chairman, Committee on Business Legislation
State House
Augusta, Maine

Dear Senator Brown:

This memo supplements our letter to you dated February 7, 1961.

The Wyoming Court in *Steffy v. City of Casper* (Wyo), 357 Pacific 2d 456, (mentioned in our principle letter) granted a petition for rehearing, the petition

being based upon the fact that the decision of the court was in error in holding as being unconstitutional that provision of the Wyoming law which permitted merchants to issue and redeem stamps for cash or from stock in their stores.

In a decision not yet reported, so citation is unavailable, the court upheld that particular portion of the Wyoming law. The result is that the highest court of the State of Wyoming has completely upheld, as being constitutional, a law which is substantially identical to that proposed to the Hundredth Legislature in H.P. 461, L.D. 661.

This memo does not alter the conclusion that legal problems are present in such a bill, but is intended only to advise you as to the status of the Wyoming case.

Very truly yours,

JAMES GLYNN FROST

Deputy Attorney General

February 10, 1961

To: Scott Higgins, Director of Aeronautics Commission

Re: Transfer of Portland Municipal Airport to the State of Maine

We have your request for an opinion as to whether or not section 20, chapter 24, of the Revised Statutes, authorizes the Maine Aeronautics Commission to apply for and receive federal funds.

The second paragraph of the first subsection states that:

> "The commission with the consent of the governor and council may, from the amounts appropriated and known as the 'Airport Construction Fund,' match funds with the federal government for the purpose of constructing, extending or improving state owned ariports."

It is a rule of statutory construction that the statute in question must be construed as a whole, *Morton, Pet'r v. Hayden,* 154 Me. 6, 15-16. The section of the statute quoted above would have absolutely no meaning unless it authorized the Aeronautics Commission to apply for and receive federal funds. The commission is given the authority, with the consent of the governor and council, to match federal funds. If this grant of authority did not include the power to apply for and receive these funds, the whole purpose of the section quoted above would be destroyed. The Aeronautics Commission could not match federal funds unless it could first apply for and accept those funds.

We are, therefore, of the opinion that the Maine Aeronautics Commission, under the statutory provisions quoted above, has the authority to apply for and receive federal funds, including monies designated for the Portland Municipal Airport.

THOMAS W. TAVENNER

Assistant Attorney General

February 15, 1961

To: Doris M. St. Pierre, Secretary of Real Estate Commission

Re: Non-resident applicants on a part-time basis

This is in answer to your request dated February 8, 1961, for an opinion.

As I understand from your memorandum, a college professor domiciled in another state will be resident in the State of Maine during his summer vacations and has requested a real estate salesman's license. You have inquired as to whether or not such a license can be granted after examination.

There are no resident requirements under the real estate law. An individual who opens a place of business in the State of Maine can immediately apply for a resident license. Section 10, Chapter 84, of the real estate licensing law does not apply in this case since Section 10 only applies to non-resident salesmen and real estate brokers. In the instant case under the present law, the college professor would not be considered a non-resident broker but would have a right to apply for a resident license.

RICHARD A. FOLEY
Assistant Attorney General

February 17, 1961

To: John J. Shea, Director of Probation and Parole

Re: Detention of Probation Violators

We have examined the material submitted to this office by you along with the oral request that we consider same, with the question being whether Probation-Parole Officers have the right to make an arrest of a probation violator before consulting with the court having jurisdiction of the individual.

Prior to the 1957 Special Session amendment of the Probation and Parole Law, there existed some question as to the propriety of a Probation-Parole Officer's arresting a probation violator before reporting the matter to the court and obtaining an order for the return of the probationer.

While Section 7, Chapter 387, Public Laws of 1957 (enacting Chapter 27-A of the Revised Statutes) places in the officer the same authority with respect to the probationer as a surety might have upon a recognizance, still the provisions of Section 8 would cause such officer to hesitate before arresting a violator without advising the court prior to such arrest.

> "Sec. 8. Person violating probation. When a probationer violates a condition of his probation, the Probation-Parole Officer shall forthwith report the violation to the Court, or to a Justice of the Court in vacation, which may order the probationer returned. After hearing, the Court or Justice may revoke the probation and impose sentence if the case has been continued for sentence or if imposition of sentence has been suspended, or may order the probationer to serve the original sentence where its execution has been suspended." Chapter 387, Sec. 8, Public Laws 1957.

However, amendments to Section 7 as enacted by Chapter 428, Public Laws

of 1957, clarify the powers of a Probation-Parole Officer. The pertinent portion of the law now reads as follows:

"Sec. 7. . . .

"Each Probation-Parole Officer has authority to arrest and charge a probationer with violation of probation and take him into his custody in any place he may be found, to detain the probationer in any jail for a reasonable time in order to obtain an order from the court, or Justice of the Court in vacation, returning the probationer to court as provided in section 8. In the event the Court refuses to issue an order returning the probationer as provided under section 8, the Court shall issue an order directing the immediate release of the probationer from arrest and detention. A probationer so arrested and detained shall have no right of action against the Probation-Parole Officer or any other persons because of such arrest and detention. Any action required under sections 8, 9 and 10 may be taken by any Probation-Parole Officer."

. . . . .

Chapter 428, Section 3, Public Laws 1957. (Special Session)

This law now clearly places in the Probation-Parole Officer the authority to arrest and charge a probationer with violation of probation and take him into custody prior to consulting with the court.

As indicated by you in our conversations, the problem may be one of policy, regardless of how the law reads; that is, you believe that even if the law authorizes the procedure of detention prior to court order, you might, as a matter of administrative policy, direct Probation-Parole Officers to first consult with the court. On this point we have no advice to offer. Such a decision would be an administrative decision wholly within the discretion of the person administering the law.

JAMES GLYNN FROST
Deputy Attorney General

February 17, 1961

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

Re: Limitation on real estate investment by loan and building associations.

We have your memo of January 19, 1961 in which you ask for an interpretation of that portion of Chapter 59 under Section 180, Revised Statutes of 1954, which reads as follows:

"Any loan and building association may hold real estate in the municipalities in which such association or any branches thereof are located, to an amount not exceeding 5% of its shareholders' accounts or to an amount not exceeding its reserve fund; but these limitations shall not apply to real estate acquired by the foreclosure of mortgages thereon, or upon judgments for debts or in settlements to secure deeds."

You ask in relation to the above-quoted provision, in the absence of any phrase such as "whichever is greater" or "whichever is lesser," which limitation should apply.

The limitation "whichever is greater" should be applied when determining if

a loan and building association is in compliance with or in violation of the limitations.

The word "or" may be used synonymously with "either;" and the word "or" may be used as allowing an alternative. We believe that the association has a choice, and may hold real estate to an amount not exceeding 5% of its shareholders' accounts, or to an amount not exceeding its reserve fund, whichever limitation the association believes to be most desirable.

JAMES GLYNN FROST

Deputy Attorney General

February 17, 1961

To: Secretary of State

Re: Foreign Corporation

Attention: Bernice Henderson

We have your request for an opinion as to whether or not a Massachusetts corporation having a manufacturer's sales representative in the State of Maine would be considered as doing business in this State and thus subject to the laws relating to foreign corporations.

We have examined the applicable law and the letter from the attorney for this Massachusetts corporation and have concluded that on the basis of the facts contained in that letter the corporation would be doing business in the State of Maine and would thus be subject to our laws relating to a foreign corporation.

THOMAS W. TAVENNER

Assistant Attorney General

March 1, 1961

To: Asa Gordon, Coordinator of Maine School District Commission

Re: Legislative Document Nos. 669, 829, 835, 1071, 1075, 1110 and 1178

This is an answer to your request of February 10, 1961, for an opinion relative to Legislative Document numbers 669, 829, 835, 1071, 1075, 1110 and 1178.

The proposed legislation falls into two classes, i. e., bills for the withdrawal of a municipality from a school administrative district and bills for dissolution of a school administrative district. Since different statutory provisions or legal principles apply to each of the above-mentioned classifications, I will answer the questions you propose with respect to each classification.

Legislation for Withdrawal of a Municipality from a School Administrative District.

Section 111-P, Chapter 41, Revised Statutes of 1954, provides for the procedure for withdrawal as follows:

> "When the residents of a participating municipality have indicated their desire to withdraw from a School Administrative District by a 2/3

vote of the legal voters in said municipality present and voting at a special meeting, called and held in the manner provided by law for the calling and holding of town meetings, such withdrawal may be authorized by special act of the Legislature upon such terms as shall be contained in such special act. 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."

There is no doubt that the Legislature having created the school administrative district may change the district. As stated in *Kelley v. Brunswick School District,* 134 Me. 414 at page 420:

> "A school district is a public agency or trustee established to carry out the policy of the State to educate its youth. The Legislature may change such agencies, and control and direct what shall be done with school property. . ."

In answer to question No. 1 in your memorandum, the legal rights of the other municipalities within the school administrative district are impaired by the withdrawal of one of the towns especially when the school district has outstanding debts. The withdrawal bills would appear to be an attempt to avoid the general law, Section 111-P, Chapter 41, supra, by permitting a town to withdraw under special legislation even though the school district may have debt outstanding. Such special legislation as an attempt to avoid the general law would appear to be class legislation in violation of the State and Federal Constitutions. See *Lewis v. Webb,* 3 Me. 326; *In re Milo Water Company,* 128 Me. 531; *Milton v. Railway Co.,* 103 Me. 218.

The answer to question No. 2 of your memorandum relates to the answer given above to question No. 1, in that other municipalities in other districts are not afforded the privilege granted by the special legislation, i. e., withdrawal of a municipality even though there may be outstanding debt owing by the school district.

Questions No. 3 and No. 4 of your memorandum are not legal questions but inquire as to present or future impairment of the financial rights of other districts. This office cannot properly answer such financial questions; however, inquiries have been made of the bank which handles a majority of the sales of Maine School District Bonds and of the bond counsel, requesting an opinion in answer to questions No. 3 and No. 4. Attached is the answer of the bank, and the answer of the bond counsel will be forwarded when received.

In answer to question No. 5, the Legislature, having granted the municipalities the right to vote on formation of a school district and having granted the voters within the district control of the finances of the school district, has granted a large measure of "home rule." Those bills with emergency provisions do violate the provisions of "home rule" contained in the Constiution of Maine, Article IV, Part Third, Section 16. See *Lemaire v. Crockett,* 116 Me. 263.

Legislation for Dissolution of a School Administrative District.

Chapter 41 of the Revised Statutes of 1954, as amended, prescribes the procedure for the formation of a school administrative district but no provision is made under the law for dissolution of a school administrative district. The Legis-

lature, having created the school district has within its discretionary power the authority to dissolve a school district. In *Kelley v. Brunswick School District,* supra, at page 421, the court stated:

> "A statute cannot be invalidated because it seems to the court to inaugurate an inexpedient policy. All questions as to the expediency of a statute are for the Legislature. This is a line of inquiry which courts cannot pursue in determining the validity of a law.
>
> " 'Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve desired results, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature, and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance.' *Chicago etc., R. R. Co. v. McGuire,* 219 U. S., 549, 55 Law ed., 328."

In answer to question No. 1 of your memorandum, even though the legal rights of the municipalities may be impaired by dissolution of the school administrative district, it is within the discretion of the Legislature to protect the rights of the municipalities within the district by directing the equitable disribution of funds held by the district and proration among the municipalities of debt assumed by the district.

In answer to question No. 2 of your memorandum, dissolution of one school administrative district in no way affects the legal rights of other school administrative districts in the State.

The answers previously given to questions numbered 3, 4 and 5 on withdrawal apply to legislation for dissolution of a district.

RICHARD A. FOLEY
Assistant Attorney General

March 6, 1961

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

Re: Low water level of a great pond

This is in response to your letter of February 13, 1961 in which you ask "How is the natural low water level of a great pond determined?"

To our knowledge such low water level has never been determined with respect to any pond. Of course, the proof would depend upon the reason for asking the question. If the question is as the result of an upland owner trying to determine where his boundary is, we offer the following quote from *Stevens v. King,* 76 Me. 199:

> "The shore of a pond, being the space between high and low water, necessarily has two sides, a high water side and a low water side; and land bounded by the shore may be bounded by the high water side or the low water side. If the side lines of a parcel of land, starting back from the pond, run to the shore, and there stop, and the line between these two points runs along the shore, of course the land will be bounded by the high water side of it. But if the side lines are described as running to the pond, the result will be otherwise. The legal force and effect of

such a description are to carry the land to the pond at all stages of the water, which is equivalent to saying that it extends to low water mark; and if the line between these two points is run along the shore, it must be along the low water side of it; and the land will be bounded at low water mark."

For a determination as to just what the mark is insofar as title in the State is concerned, then as stated above we know of no case where the procedure for such proof has been established. I suppose one could refer to histories of the local area; testimony of the elder inhabitants; bench marks if any there be. There is no rule of thumb for the determination of natural low water level of a great pond.

JAMES GLYNN FROST

Deputy Attorney General

March 13, 1961

To: John F. Weston, Chairman of Harness Racing Commission

Re: Gorham Raceways

We have your memo of March 3, 1961 in which you ask five questions relating to Gorham Raceways.

1. Can the Bankruptcy Court run Gorham Raceways as a track and under what organization?

Answer: We are of the opinion that the duly appointed Bankrupty Court Receiver of the owner, or debtor in possession, of Gorham Raceways is eligible to apply for a license to conduct harness racing meets at Gorham Raceways. The application for license should reveal the Court's approval of the activity.

2. We have a law that protects Gorham Raceways. We have an application from Gorham Raceway, Inc. Would this be termed the same as Gorham Raceway?

Answer: We understand that as a result of a conference held in your office recently that a new application will be filed so we are not at this time answering this question No. 2.

3. Can the Bankruptcy Court lease Gorham Raceways and have it run legally as far as the commission is concerned?

Answer: With the approval of the Bankruptcy Court the present owner may lease the raceways. Such lessee would be eligible to apply for a license. See Section 10 V of Chapter 86.

4. Does Gorham Raceway, which is now in bankruptcy, control the four weeks that are now provided by law?

Answer: If your question runs to whether or not you should still recognize the law governing racing at Gorham Raceways, the answer is "Yes."

5. Can any other track buy just the name "Gorham Raceway", rename their track, and qualify for dates as spelled out by the law?

Answer: The laws relating to Gorham Raceways are public laws and as such relate to the Gorham Raceways installation and are not intended for the benefit of specific persons. The law contemplates the possible change of ownership of such

plant. Thus, in the event the track is operated by a corporation, then that portion of Section 11, Chapter 86, relating to ownership by a corporation would apply.

> "The license of any corporation shall automatically cease upon the change in ownership, legal or equitable, of 50% or more of the voting stock of the corporation and the corporation shall not hold a harness horse race or meet for public exhibition without a new license."

JAMES GLYNN FROST
Deputy Attorney General

March 22, 1961

To: Honorable Norman Minsky
Committee on Industrial and Recreational Development
House of Representatives
State House
Augusta, Maine

Dear Mr. Minsky:

In reply to your request for an opinion with regard to the proposed legislation directing funds received from the gasoline tax paid by non-commercial pleasure boats into the general fund, and in response to our conversation of this morning, we have come to the following conclusions:

1. Funds received from the gasoline tax paid by non-commercial pleasure boats are not covered under the provisions of the Constitution of the State of Maine, Article IX, Section 19. For this reason, the funds collected from these non-commercial pleasure boat owners would go into the general fund could they be ascertained, and the legislature would therefore have the power to provide by specific legislation if clarification were thought necessary.

2. The problem with regard to this proposed legislation concerns the determination as to what part of the total amount of gasoline tax revenue is paid in by the users of non-commercial pleasure boats. We have been informed by Mr. Ernest Johnson, State Tax Assessor, that such a determination would be impossible from records which are now or which could be kept by his office. We understand that it has been proposed that the average figures supplied by the Petroleum Institute of America be used to make this determination. The Constitutional provision referred to above clearly indicates that all revenues derived from the use of vehicles on public highways shall be turned over to the Highway Commission and that none of these revenues shall be diverted for any other purpose. This section of the Constitution was given a very strict construction by the Supreme Judicial Court. In its opinion of May 6, 1957 (152 Me. 453) the Court said that —

> "The language of the Constitution shall not, in our view, be extended beyond its plain and ordinary meaning." (At p. 456)

If average figures are used in determining questions such as the one involved here, the possibility exists that revenues properly dedicated to the Highway fund would be diverted into the general fund in violation of the Constitution.

It is our opinion that the proposed legislation would be unconstitutional unless some method is devised to determine exactly the amount of revenue received from the gasoline tax paid by the users of non-commercial pleasure boats.

Very truly yours,

THOMAS W. TAVENNER
Assistant Attorney General

March 22, 1961

To: Honorable Harry T. Treworgy
Member, Executive Council
State House
Augusta, Maine

Dear Mr. Treworgy:

In answer to your oral question as to the meaning of the term "No person shall be a trustee of the University who is over 70 years of age . . ."

It is our opinion that a person is 70 years of age until he attains the age of 71; therefore, any person appointed to be a trustee of the University of Maine can serve until his 71st birthday.

Respectfully yours,

FRANK E. HANCOCK
Attorney General

March 24, 1961

To: Honorable J. Hollis Wyman
Senate Chamber
State House
Augusta, Maine

Dear Senator Wyman:

We have your letter of March 22 requesting an opinion as to whether or not L.D. 1476 "An Act Relating to Jurisdiction of Public Utilities Commission over Motor Vehicles Carrying Passengers for Hire" would apply to or affect in any way the conveying of cannery workers, blueberry or bean pickers to and from their place of employment in vehicles furnished by their employers. We have discussed this matter with Mr. William Fernald of the Public Utilities Commission and have arrived at the following conclusions:

1. The lease by an employer of a bus for conveying employees to and from work when the bus driver is an employee is not covered under L.D. 1476.

2. The hiring of a bus for conveying employees to and from work when the employer furnishes the driver and the pay is either by the mile or by the day is not covered by L.D. 1476.

3. It is uncertain, from the terms of the proposed legislation, whether the hiring of a passenger automobile which is driven by an employee or by some other person for the purpose of hauling employees to and from work when the pay is either by the mile or by the day and when the employer is to be paid either by the driver or the car owner, is covered under L.D. 1476. For this reason we feel that the following amendment to section 35 would be in order:

> "IV Agricultural transportation. Motor vehicles having a capacity of not more than 6 passengers operated for the sole purpose of transporting agricultural workers from their homes to their work location for the purpose of harvesting agricultural crops."

It is our opinion that this proposed legislation is aimed at the transportation of persons for hire. Thus, if it is a legitimate rental agreement by which the employer rents a bus or other vehicle for the transportation of employees, the operation is not covered by the proposed legislation. If, however, the employer is actually contracting for the transportation of his employees, rather than for the rental of a vehicle, the operation would be included under the proposed legislation. It is to be assumed that the Commission will investigate contracts of this nature to determine whether or not the employer is, in fact, contracting for the transportation of his employees.

Very truly yours,

THOMAS W. TAVENNER

Assistant Attorney General

March 24, 1961

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

Re: Proposed changes in Section 111-P.

This is in answer to your memorandum of March 6, 1961.

The question you propose relates to Section 111-P, Chapter 41, Revised Statutes of 1954, as amended. Numerous school administrative districts have been formed under the general law, Chapter 41, which chapter contains withdrawal provisions as set forth in Section 111-P. Should Section 111-P be changed, must the school administrative districts rely upon the provisions of the general law as they existed when the district was formed?

There is no guarantee by the Legislature to a school district that the general law will not be amended. A school administrative district must comply with the general law as amended and the district cannot revert to the general law as it existed upon the district's formation.

RICHARD A. FOLEY

Assistant Attorney General

April 7, 1961

To: Honorable Leonce J. Jobin, Jr.
House of Representatives
State House
Augusta, Maine

Re: Deputy Sheriff — Per diem deputy, salary and salary increases

Dear Representative Jobin:

We have your letter on April 5, 1961, in which you ask three questions.

"1) What would constitute a per diem deputy sheriff? Is a full-time deputy considered a per diem Deputy?"

Answer: A per diem deputy sheriff is one for whom a rate of pay is established by the day. A full-time deputy sheriff may be considered a per diem deputy if his pay is established by the day.

"2) I would also like to know if there is an existing law setting the salary of full-time deputies at $11.00 per day."

Answer: Chapter 89, Section 150, Revised Statutes of 1954, XVI provides that deputy sheriffs performing special duties under order of the sheriff shall receive for such services $11.00 per day.

The preceding subsection XV provides that Superior Court messengers of Cumberland County shall receive $11.00 per day.

Full-time deputies in Cumberland County receive $11.00 per day. See Chapter 89, Section 173.

Special deputies may be paid a sum not exceeding $3.50 per day. See Chapter 89, Section 153.

"3) If a full-time deputy was receiving less than $11.00 per day would he be entitled to a salary increase?"

A deputy sheriff should receive $11.00 per day if he is performing the duties set forth in Chapter 89, Section 150, XVI, or if he is a court messenger in Cumberland County. We would point out that an $11.00 a day deputy sheriff shall not be entitled to any fees while acting as a per diem officer, Section 150, XVI.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

April 10, 1961

To: Honorable L. Robert Porteous, Jr.

Chairman, Legislative Claims Committee
State House
Augusta, Maine

Dear Senator Porteous:

We have your request for an opinion as to the propriety of the Legislature's authorizing payment of a sum of money based upon the claim presented in H.P. 579, L.D. 799.

It is alleged by the claimant, Bay Ferry Service, that the inauguration of ferry service by the Maine Port Authority has put the Bay Ferry Service "out of business" and compensation is claimed for the consequent damage.

It is our opinion that the legislature may properly appropriate a sum of money for the purpose above mentioned if, in the opinion of the legislature, the States owes a "moral obligation" to the claimant.

A question of this nature — loss of business — was considered by our Supreme Judicial Court in an advisory opinion to the House of Representatives dated February 28, 1961. (See House Advance Journal and Calendar, Wednesday, March 1, 1961.)

The court recognized that "elements of damage for interrupted or loss of business in condemnation proceedings is not legally compensable in the absence of statutory authorization." House Advance Journal and Calendar, supra, page 6.

However, in the following words the court stated the rules pertaining to those cases where the legislature may find facts from which it could conclude that a "moral obligation" was owed by the State to the claimant:

> "The determination of the underlying facts is exclusively for the Legislature and its wisdom and judgment in making such findings are not to be questioned. Whether the facts found warrant the conclusion that a 'moral obligation' exists is always subject to judicial review. 'Such terms as "moral obligation" and obligation "founded on justice and equity" are flexible. They serve to formulate the problem rather than to provide the formula by which the problem may be solved. No yardstick has ever been devised which can be mechanically applied. Nonetheless, in every case there must exist an obligation which would be recognized, at least, by men with a keen sense of honor and with real desire to act fairly and equitably without compulsion of law. The Constitution does not prohibit the Legislature from doing in behalf of the state what a fine sense of justice and equity would dictate to an honorable individual. It does prohibit the Legislature from doing in behalf of the state what only a sense of gratitude or charity might impel a generous individual to do.' "

The court further indicated that the Legislature could not, under the guise of discharging a "moral obligation," grant additional compensation to one where the law provides an adequate remedy available to all claimants similarly circumstanced, and provides the nature and limits of damages recoverable therefor.

The unique circumstances of the case pertaining to the Bay Ferry Service, where it is alleged that it has been put out of business by the entrance of the State into the ferry service business, distinguishes it from the case of a business that is ordinary in the sense that there are a great number of other kinds of business similarly circumstanced. For this reason we are of the opinion that the legislature could, in exercising its wisdom and judgment, pay a sum of money to the instant claimant, if the legislature determines that the facts surrounding the circumstances are such that the State owes a moral obligation to the claimant.

Very truly yours,

JAMES GLYNN FROST

Deputy Attorney General

April 10, 1961

To: George L. Russo, Chairman of Boxing Commission

Re: Jurisdiction of Amateur Boxing Contests

This is in answer to your request for an opinion dated March 24, 1961. You have inquired whether or not the jurisdiction of the Boxing Commission includes amateur boxing contests.

Under Section 6 of Chapter 88, Revised Statutes of 1954, the Boxing Commission has jurisdiction "over all boxing contests or exhibits." Section 7 of the same chapter also makes reference to amateur boxing contests conducted by charitable organizations.

It is my opinion, therefore, that the Commission has jurisdiction over amateur boxing contests.

You have also inquired as to whether or not the referee may be paid any money for refereeing an amateur boxing contest. The payment of the referee in such an amateur contest is entirely within the discretion of the promoter of the boxing match and the referee. The payment of a referee for refereeing an amateur boxing contest would not jeopardize the amateur nature of the boxing contest conducted by a charitable organization. Section 7 of the law does require the licensing of the referees.

RICHARD A. FOLEY

Assistant Attorney General

April 10, 1961

To: Doris M. St. Pierre, Secretary of Real Estate Commission

Re: New England Camp Realty Association, Inc.

This is in answer to your request for an opinion dated April 5, 1961. In a letter attached to your memorandum the proposed activity of the above-named corporation is described and you inquire whether or not a real estate broker's license will be required for the corporation.

The following language appears in the letter attached to your memorandum:

> "It is a nonprofit company conceived for the purpose of identity and promotion in the *listing, selling* and appraisal of Juvenile Camp properties. Even though we advertise and promote under this name, no brokerage commissions will ever enter into it and its *cost will be defrayed by assessment of the parent companies and associates.*" (Emphasis supplied)

The defrayment of costs by assessment to the parent companies and association would appear to be a compensation or valuable consideration within the meaning of Section 2, paragraph I of Chapter 84, Revised Statutes of 1954, as amended. The corporation will be required to obtain a broker's license on the basis of the facts outlined in the letter attached to your memorandum.

RICHARD A. FOLEY

Assistant Attorney General

April 12, 1961

To: Frances J. Banks, R. N.
Maine State Board of Nursing
363 Main Street
Lewiston, Maine

Dear Mrs. Banks:

I have your letter of April 11th presented to me by Miss Mary Sullivan, R.N., a member of your board.

The answer to your question — "Can a member of the board be appointed and serve as acting executive director of an interim period?" is "No." Chapter 69-A, section 3, III-M specifically prohibits such action.

I see no reason, however, why a member of the board acting in her capacity as a member of the board cannot perform such functions as will enable the board to continue to operate effectively under the law until such time as the post of executive director is filled. In the performance of such duties she may receive compensation as set forth under section 3, V of Chapter 69-A.

Very truly yours,

FRANK E. HANCOCK
Attorney General

April 14, 1961

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Occupational Course Law

This is in answer to your request for an opinion dated March 31, 1961.

As I understand the factual situation described in your memorandum, Town A, which maintains a standard secondary school but offers no occupational courses, proposes to send its students to Town B for the purpose of taking occupational courses of study offered by Town B. In return Town A is to offer driver education courses to the students of Town B.

You have inquired whether or not Town A under the provisions of Section 107, Chapter 41, Revised Statutes of 1954, has the authority to make such an arrangement. Section 107 provides in part as follows:

> ". . . Any youth whose parent or guardian maintains a home for his family in an administrative unit that maintains, or contracts for school privileges in, an approved secondary school which offers less than 2 approved occupational courses of study, and who has met the qualifications for admission to the high school in his town, may elect to attend some other approved secondary school to which he may gain admission for the purpose of studying an occupational course not offered or contracted for by the administrative unit of his legal residence."

Town A, therefore, has authority under the law to send its students to Town B for the purposes of studying the occupational courses. There is no authority in

the law, however, to allow Town B to send its students to Town A for driver training course since driver training is not an occupational course.

Under Section 107 Town A and B may agree to a tuition charge for the occupational courses offered by Town B to the students of Town A. There is no authority to substitute an offer of a non-occupational course for a tuition charge.

You have also inquired whether or not Town A by virtue of such an agreement would be considered under the provisions of Section 107 as contracting for school privileges.

I am of the opinion that Town A would not be considered as contracting for school privileges within the meaning of Section 107. The words "or contracts for school privileges" as used in Section 107 refer to contracts for an entire curricular rather than for a limited number of occupational courses.

RICHARD A. FOLEY
Assistant Attorney General

April 20, 1961

To: Roderic O'Connor, Manager of Maine Industrial Building Authority

Re: Definition of Industrial Project as including an Engineering and Office Building

This is in answer to your request for an opinion dated April 6, 1961, as to whether or not a combination engineering and office building which will be adjacent to a manufacturing operation qualifies for state mortgage insurance under the Industrial Building Authority Law.

Revised Statutes of Maine of 1954, Chapter 38-B, Section 5, paragraph III defines "Industrial Project" as follows:

> "III. '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 manufacturing products."

It is my opinion that the Industrial Building Authority is justified in making a finding of fact under Section 9-A of the law that a combination engineering and office building which is adjacent to and an integral part of a manufacturing operation is eligible for mortgage insurance as an "industrial project" within the meaning of Section 5, paragraph III, supra.

RICHARD A. FOLEY
Assistant Attorney General

April 20, 1961

To: Roderic O'Connor, Manager of Maine Industrial Building Authority

Re: Eligibility of Hatchery Plant

This is in answer to your request for an opinion dated April 6, 1961, as to whether or not a "hatchery" which is an integral part and adjacent to a poultry

processing plant qualifies as an industrial project within the meaning of Revised Statutes of 1954, Chapter 38-B, Section 5, paragraph III.

In a recent case, *C. M. T. Co., Inc. v. Me. Emp. Sec. Comm.*, 156 Me. 218, in discussing the nature of a "hatchery" the court stated:

> "It would be difficult to define with precision what constitutes a 'farm' in this day of mechanized agriculture. In the instant case, however, our task is made somewhat easier by the fact that the 'hatchery' alone has attributes which give it a commercial and industrial aspect rather than an agricultural one. Aside from the artificially induced hatching of eggs and the care and feeding of newly born chicks for a very brief period, not one of the operations usually associated with a 'farm' is conducted there. . ."

It is my opinion that the Industrial Building Authority is justified in making a finding of fact under Section 9-A of the law that a hatchery which is an integral part of a poultry processing plant is eligible for mortgage insurance as an industrial project.

RICHARD A. FOLEY

Assistant Attorney General

April 27, 1961

To: Roderic O'Connor, Manager of Maine Industrial Building Authority

Re: Eligibility of Hatchery Plant

This is in answer to your request for an opinion dated April 26, 1961, in clarification of the opinion of this office dated April 20, 1961.

I am of the opinion that a new hatchery plant of itself would qualify for mortgage insurance under the Industrial Building Authority Act in the event that the Industrial Building Authority make a finding of fact that the hatchery plant is an industrial project within the meaning of the act.

RICHARD A. FOLEY

Assistant Attorney General

May 1, 1961

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

Re: Organization — Maine State Guard

We have your letter of 4 April 1961 which reads as follows:

"1. I wish to make reference to:

a. Sections 89-100, R. S. Maine 1954 (Maine State Guard).

b. Section 109, Chapter 1, Title 32, US Code Annotated (Maintenance of Other Troops).

"2. The Department of the Adjutant General is currently reviewing situations which might require the organization of a Maine State Guard as referred to in reference 'a', above. Our opinion would indicate that under this reference

we are precluded from organizing until such time as 'any part' of the Maine National Guard is called into service.

"3. Reference 'b', above, appears to indicate that were reference 'a' worded to permit the organization of a 'Maine State Guard' such could be accomplished at this time.

"4. It is requested that —

(1) You comment on our assumptions.

(2) Recommend, if necessary, a possible solution which would allow organization of a State Guard."

In response to your request we believe that, in reference to "b" above, that your assumption that you are precluded from organizing a Maine State Guard until such time as any part of the Maine National Guard is called into service, is a proper assumption.

It appears to us that this situation can only be changed by Legislative Act. Those sections of Chapter 14 relating to the Maine State Guard would have to be amended so as to eliminate those provisions which would indicate that the Maine State Guard could be organized only when any part of the National Guard of this State is in active federal service, and the elimination of related provisions such as appear in sections 89 and 99 of chapter 14, R. S. 1954.

JAMES GLYNN FROST

Deputy Attorney General

May 1, 1961

To: Robert R. Washburn, Director of Veterans Affairs

Re: Ruling requested on eligibility for World War Assistance based on type of discharge

This memo is in response to yours of February 23, 1961 in which you ask questions relating to the determination of the status of a veteran in so far as his discharge is concerned.

> "For World War Assistance purposes, Paragraph IV of Section 10 of Chapter 26 as amended of Revised Statutes of 1954, defines a veteran as follows:
>
> 'The term "veteran" shall be construed to mean any person who served in the armed forces of the United States on active duty during World War I, World War II or the Korean Campaign, not dishonorably discharged.' "

You state that:

> "Inasmuch as the Veterans Administration makes rulings on eligibility for their benefits based on types of discharges and because they are in the best position to make such rulings, it is the desire of this Division to follow VA policy on eligibility insofar as is consistent with the statutes under which we operate.
>
> "We have no problem with the straight honorable discharge, nor with the straight dishonorable discharge. There are a myriad of types in between and certain other special situations that we encounter. It is with some of these that we have difficulty."

You then ask for rulings on the following situations:

"1. Veteran enters service during wartime, is discharged solely for purposes of reenlistment without interruption, and was not otherwise eligible for discharge at that instant. Subsequently, he is dishonorably discharged in either a wartime or peacetime period. VA holds this is in effect one period of service and no eligibility for benefits based on this period of service. Our present policy: same as VA and so recommend."

Answer: The policy appears to us to be proper.

"2. Veteran has two periods of service during wartime, one period honorable and other dishonorable. VA holds benefits may be granted based on the honorable period of service. Our present policy: to base eligibility on the *second* period of service and so recommend."

Answer: The policy appears to us to be proper assuming that the second period of service is the one on which a dishonorable discharge has been granted.

"3. There are a myriad of types of discharges between honorable and dishonorable. There are even some types ostensibly honorable in nature which VA has ruled after investigation to be in effect dishonorable. Our present policy: to follow VA ruling."

Answer: VA rulings ought to be used by you merely as a guide. It would be improper for you to permit some third party to substitute his discretion and judgment for that discretion and judgment that should be exercised by you. Otherwise the policy appears to be proper.

"4. As our benefits are based on war time service, our policy is to totally ignore any period of service rendered solely in peacetime regardless of type of discharge, and so recommend."

Answer: This policy appears to be proper; peacetime meaning any time outside the periods indicated by section 10 of Chapter 26, which section outlines the dates of World War I, World War II, or the Korean conflict.

JAMES GLYNN FROST

Deputy Attorney General

May 5, 1961

To: Doris M. St. Pierre, Secretary of Real Estate Commission

Re: Application for Real Estate Brokers License

This is in answer to your request for an opinion of May 2, 1961.

You have inquired whether or not an individual who holds a broker's license and is designated as a broker for other corporations must have the recommendations of three citizens as required by the Revised Statutes of 1954, Chapter 84, Section 5. In my opinion, requirements of Section 5 are mandatory and every application for a broker's license must have the recommendations provided by Section 5.

You have also inquired whether or not other individuals who will work for the corporation must be licensed when the corporation already has a designated broker. I would refer you to the Revised Statutes of 1954, Chapter 84, Section 3,

second paragraph requiring that every member or officer of a corporation who actively participates in the brokerage business must hold a real estate broker's license or a salesman's license.

RICHARD A. FOLEY
Assistant Attorney General

May 11, 1961

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Closing of Elementary Schools

This is in answer to your request for an opinion dated April 19, 1961.

The situation outlined in your memorandum is as follows:

A town voted to close its only elementary school for 1 year. However, the school committee did not recommend the closing of the elementary school.

Revised Statutes of Maine of 1954, Chapter 41, Section 14, provides in part: ". . . any town at its annual meeting, or at a meeting called for the purpose, may determine the number and location of its schools and may discontinue them or change their location; but such discontinuance or change of location shall be made only on the written recommendation of the superintending school committee and on conditions proper to preserve the just rights and privileges of the inhabitants for whose benefit such schools were established; . . ."

Since the school committee did not recommend the discontinuance of the school prior to the town vote, the vote to close the school is invalid.

You have inquired whether or not the school committee can suspend the school for one year and make arrangements for the pupils to attend school in another town.

Revised Statutes of Maine of 1954, Chapter 41, Section 14, provides in part: ". . . that in case any school shall hereafter have too few scholars for its profitable maintenance, the superintending school committee may suspend the operation of such school for not more than 1 year, but shall not close such school for a longer period nor again thereafter suspend operation of such school unless so instructed by the town, . . ."

There is no provision, after the school committee suspends a school as provided in Section 14, to pay tuition to another town for the schooling of its elementary pupils.

You have also inquired whether or not a school committee has authority, while maintaining a school, to allow pupils who wish to do so to attend school on a tuition basis in another town.

Revised Statutes of Maine of 1954, Chapter 41, Section 93, provides:

"*Children to attend school in adjoining administrative unit: tuition.* — Children living remote from any public school in an administrative unit in which they reside may be allowed to attend the public schools, other than a high school approved as provided in section 107, in an adjoining administrative unit, under such regulations and on such terms

as the school committees or school directors of said administrative units agree upon and prescribe, and the school committee or school directors of the administrative unit in which such children reside shall pay the sum agreed upon out of the appropriations of money raised in said administrative unit for school purposes. It shall be the duty of any superintending school committee, community school committee or board of school directors to accept tuition pupils from any nearby administrative unit that has a total April 1st resident pupil count of 10 or less pupils when so requested by the state board of education. Except as above provided, a child may attend a public elementary school in an administrative unit other than the administrative unit where he lives with his parent as defined in section 44, after having obtained the consent of the superintending school committee or school directors of such administrative unit, and the parent or guardian shall pay as tuition a sum equal to the average expense of each scholar in such school."

It is clear that under Section 93 when a town maintains an elementary school, the only basis for allowing a pupil to attend school in another town and payment of tuition by the sending town is upon a finding of the school committee that the pupil lives remote from the public school in his own town, except that with approval of the school committee a parent may send his child to another town but the parent must pay the tuition and not the sending town.

RICHARD A. FOLEY

Assistant Attorney General

May 24, 1961

To: Raeburn W. Macdonald, Chief Engineer of Water Improvement Commission

Re: Legislative Document #316

We have your request of May 22, 1961 for an opinion as to certain aspects of Legislative Document #316 (An Act Relating to Pollution Abatement). It is our understanding that you wish advice as to whether or not this proposed legislation, if enacted, would enable the Water Improvement Commission to make additional grants for municipal pollution abatement programs already under way, when and if this legislation becomes effective.

The general rule of statutory construction is that all laws are prospective and not retrospective unless it is the plain intent of the legislature that the law be retrospective. *Bowman v. Geyer,* 127 Me. 354; *Nichols v. Nichols,* 118 Me. 24; *Central Maine Power Co. v. Public Utilities Commission,* 150 Me. 269.

This legislation would affect projects or portions of projects begun or carried on after the effective date of the law. In light of this, the answers to your specific questions are as follows:

(1) No additional funds could be granted under this legislation to a municipality which had already been granted State funds for a project finally concluded in all respects before the effective date of L.D. #316.

(2) No additional contribution could be made to a municipality engaged in a project which was physically complete but on which State and Federal contributions were still due.

(3) In the situation in which an application for funds was made and granted and the construction was under way and State payments partially made, additional payments could be made to the municipality on the work still remaining to be done, on the date on which this legislation goes into effect. These additional funds could be granted upon supplementary application by the municipality, but would be limited to a percentage of the total cost of the project, which percentage would be based upon the amount of work still remaining to be done on the effective date of this legislation.

(4) The answer to number (3) would not be altered by the fact that no State payments had been made to the municipality. Additional payments must be limited to the work remaining to be done upon the effective date of this legislation.

(5) Grants made upon any application between now and the date upon which this legislation becomes effective must be limited in accordance with the statute now in effect and cannot be based upon the payment schedule contained in L.D. #316. This does not mean, however, that supplemental application could not be made in accordance with (3) above.

(6) See answer to (3) above.

THOMAS W. TAVENNER

Assistant Attorney General

May 26, 1961

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

Dear Mr. Steele:

We have your memo of May 5 in which you question the practice whereby certain grocery chains doing business in Maine require the milk dealers servicing them to date-code their milk and provide a fresh supply in entirety at least as often as every three days.

You state that "Obviously, this creates an additional cost to dealers since they are compelled to replace any three day old milk even though it is still perfectly fit for human consumption. This is especially true of milk carried over a week end by the store. Additionally, dealers so affected must comply or risk the loss of their market to a competitor who would provide this service."

With respect to this practice you ask whether this type of dealer-store relationship falls into a "guaranteed sale" category and, as such, becomes an added service which could be considered contrary to the provisions of the Maine Milk Commission Law.

We can find no section of the Maine Milk Commission law (Chapter 33, R. S. 1954 as amended) which is violated by this practice, nor can we find any reference in the law to "guaranteed sales."

The thought has been expressed that perhaps the practice in question may be prohibited by that portion of section 4 of chapter 33 which provides that "it shall be unlawful for any person to engage in any practice destructive of the scheduled minimum prices for milk established under the provisions of this Chap-

ter for any market, including but not limited to any discount, rebate, gratuity, advertising allowance or combination price for milk with any other commodity."

We do not believe the practice is an act destructive of prices established for the sale of milk. The practice approaches a consignment with title to the product remaining in the vendor dealer and the store paying for so much of the dealer's milk as is sold within a specified period. Sale on a consignment basis is not prohibited by the Maine Milk Commission law, but, to the contrary, appears to be recognized in section 1 (defining dealer) and again in that portion of section 4 authorizing dealers who purchase or receive milk for sale as consignee to deduct an allowance for transportation.

Very truly yours,

JAMES GLYNN FROST

Deputy Attorney General

June 2, 1961

To: Earle R. Hayes, Executive Secretary of Maine State Retirement System

Re: Status Under the Retirement System of Berwick Academy and North Yarmouth Academy

We have your memo of February 13, 1961 in which you ask if certain academies now participating in the Maine State Retirement System revert to strictly private schools can they then, in their status of private schools, withdraw from the Maine State Retirement System.

We gather that the schools in question have never been purely public schools; that is, schools supported by general taxation, open to all free of expense, and under the control and superintendence of agents elected by the voters, but that they are institutions incorporated by special charter or under the laws of a state, and are controlled in most instances by their own officers. Occasionally such an academy may be governed with respect to certain matters by a joint board composed of trustees of the academy and a superintending committee of a town, but such joint board does not actually change the overall status of the school. See chapter 41, section 105, R. S. 1954 as amended, as to joint boards.

Membership in the Maine State Retirement System is as a result of legislation, and notwithstanding that such schools are private in nature.

The statutes authorizing participation by such academies remain unchanged on our books, and are of such a tenor that the academies are in the System regardless of their private, semi private, or other status.

Pertinent statutes are as follows:

1. Section 3, chapter 63-A, provides that "employees" become members of the Retirement System as a condition of employment.

2. "Employee" is defined in section 1 of chapter 63-A as meaning ". . . for the purposes of this chapter (Maine State Retirement System law) teachers in the public schools . . . "

3. "Public schools" are defined in section 1 of chapter 63-A as follows:

" 'Public school' shall mean any public school conducted within the State under the authority and supervision of a duly elected Board of

Education or superintending school committee and any school which received any direct state aid in 1950, and municipal tuition funds amounting to at least the amount of such state aid, during the same year."

The academies in question are not participating districts of our system under the provisions of section 17, subsection VII, chapter 63-A (a section authorizing any educational institution in the State teaching courses equivalent to or higher than secondary institutions to participate in the benefits of the system) but are members of the system by virtue of coming within the definition of "public school" above quoted — because they received direct State aid in 1950, and municipal tuition funds amounting to at least the amount of such State aid, during the same year.

Participating in our System by virtue of such statutes, the statutes remaining unchanged, compels the conclusion that the teachers of such schools remain in the System and the academies may not withdraw from participation in the System.

JAMES GLYNN FROST
Deputy Attorney General

June 7, 1961

To: Lawrence Stuart, Director of State Park Commission

Re: Park Regulations in Town of Cape Elizabeth

We have your request for an opinion as to the applicability as to town regulations on State owned land at Crescent Beach and the question of whether or not the Police Department of the Town of Cape Elizabeth has authority to enforce the ordinance.

Although no city can exercise control over State property that will interfere with the authority of the State, "The city laws may be enforced upon state territory as elsewhere so long as they do not encroach upon its sovereign rights or powers. State and county property are frequently within the limits of municipalities." McQuillin Municipal Corporations, Volume 2, page 307. See also *Day v. City of Salem,* 131 Pac. 1028 (Oregon, 1913).

It is our opinion, therefore, that ordinances adopted by the Town of Cape Elizabeth, when not conflicting with State Park regulations, are applicable to the Crescent Beach property and can be enforced by the Police Department of the Town of Cape Elizabeth.

We also notice that you request an opinion as to whether municipal police have authority to enforce State Park Commission rules and regulations inside a park within that municipality. Again we point out that the municipal police deparments of the various towns have authority to enforce the rules and regulations on State owned land providing that enforcement in no way conflicts with the interests of the State. It is, therefore, our opinion that the Police Department of the Town of Cape Elizabeth has authority to enforce State Park Commission rules and regulations, and any other State law, within the confines of the State property located at Two Lights.

THOMAS W. TAVENNER
Assistant Attorney General

June 8, 1961

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

Re: Van Buren-Madawaska Corporation

Reference is made to your letter of May 10, 1961 and the attached letter from Van Buren-Madawaska Corporation.

According to the letter from the Van Buren-Madawaska Corporation they use six boats on the St. John River for log driving purposes. These boats are made in Canada. They are used only in the section between the mouth of the Burningham brook and the mouth of the St. Francis River. The boats are used for about three or four weeks and then returned to Canada following the drive.

The question raised is whether these boats must be numbered under the provisions of Public Laws 1959, Chapter 349.

It would appear that the boats are in Canada for about 48 to 49 weeks of each year. They are in American waters only 3 to 4 weeks per year. It would seem logical to conclude that these are boats "from a country other than the United States." Chapter 36-A, section 6, II.

The next question to be answered is: Are they "*temporarily* using the waters of the States?" (Emphasis ours.)

Normally, the rules and regulations promulgated by the Commissioner would cover this problem. In the present instance the Commissioner has not yet made rules and regulations. Therefore, this office, in the absence of departmental regulations, will rule as a matter of law that use of a boat or boats from Canada for 3 to 4 weeks per year is a temporary use.

Our conclusion is that these boats do not require a license.

GEORGE C. WEST
Deputy Attorney General

June 8, 1961

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

Re: Licensing of Foreign Banking Corporations

Refer to your memo of June 7, 1961. In this memo you state:

"A foreign banking corporation has proposed to place advertisements in papers distributed in this state for the purpose of soliciting deposit accounts. They ask if any conditions must be fulfilled to comply with state law prior to undertaking this venture.

"We have advised the writer that the bank should make application for a license which would authorize a foreign banking corporation to conduct business in this state as provided by Section 1, Subsection VII of Chapter 59. We have considered that the solicitation of accounts to be 'doing a banking business' as that phrase is defined in Section 4 of Chapter 59. We are of the belief that this definition which includes the term 'solicitation' without qualification as to method, place, etc., imposes a different standard than that usually applied to 'doing business' activities. More particularly, it would appear that resident agents or in-state offices are not essential prerequisites in this instance to 'doing business'."

This office concurs in the thoughts expressed above. The wording of the

statute leaves little doubt that the "soliciting" of money on deposit as a regular business intended to derive profit from the loan of money, with the exception noted in the statute, constitutes doing a banking business in Maine.

The only limitation that might be placed on this prohibition is that such solicitation by advertisement must be in papers, magazines, flyers, etc. "published" in Maine. The fact that an advertisement may be placed in some paper or periodical published outside the State and incidentally "distributed" in this State would not constitute doing a banking business in Maine.

GEORGE C. WEST
Deputy Attorney General

June 8, 1961

To: Dean Fisher, M.D., Commissioner of Health and Welfare

Re: Prepaid Funeral Arrangement

You have asked for a ruling on the instrument signed and dated February 12, 1961, whereby an undertaker agrees to furnish a complete funeral upon death.

The question raised is whether or not this prepaid funeral expense is to be considered as a cashable asset. Previous to this, the department has always considered prepaid funeral expenses as cashable assets because most agreements have been worded in such a way that the person depositing the money with the funeral director could recall the funds at any time.

Since September 12, 1959, Chapter 151 of the Public Laws of 1959, has been in effect. This provides in substance that all monies paid during a person's lifetime to any individual, firm, etc., under an agreement that services be performed in providing burial of the individual, shall be deposited by the funeral director within thirty days in a separate account in a bank in the name of the funeral director as mortuary trustee. The law further provides that this money shall be held in such account, together with the interest.

There are three conditions under which the funeral director may withdraw the funds:

1) With the written permission of the person paying the money
2) Written instructions of his legal representative, or,
3) Death of person paying the funds.

It was the apparent intention of the legislature that any payments made to a funeral director are made under a so-called statutory trust agreement and he is duty bound to fulfill that trust. It would appear that a withdrawal during the lifetime of the person paying the money to a funeral director could only be done for the purpose of transferring the account to another bank. There is nothing in the law which allows revocation of the trust by mutual agreement of the parties.

It seems to me that the person making these payments to the funeral director has divested himself or herself of this money and cannot claim the money back at any time. Therefore, I feel that the previous ruling of the department and any previous opinion by the Attorney General's Office should be now reversed on the basis that the legislature has changed the situation. I, therefore, rule that Public Law 1959, Chapter 151, is effective to make such prepaid funeral expenses no longer a cashable asset.

GEORGE C. WEST
Deputy Attorney General

June 9, 1961

To: William E. Schumacher, M.D., Director of Bureau of Mental Health

Re: Ruling on New Commitment Law, C. 303, P.L. 1961

This is with reference to your memo of June 1, 1961 regarding the above subject.

Any valid commitment made prior to the effective date of the new commitment law would still be valid. A law changing procedure does not invalidate legal procedure taken under a former law.

GEORGE C. WEST
Deputy Attorney General

June 15, 1961

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Vocational Training under Grants-in-Aid

You inquire whether or not the State has authority to accept federal grants-in-aid for vocational training. The authority to accept such federal grant-in-aid is granted to the Governor with the advice and consent of the Council, R. S. 1954, c. 11, § 15. This same section empowers the Governor to take such necessary action to carry out the provisions of the federal law.

RICHARD A. FOLEY
Assistant Attorney General

June 15, 1961

To: Asa Gordon, Coordinator of Maine School District Commission

Re: Status of Teacher and Assistant Principal

This is in answer to your request for an opinion dated May 26, 1961.

As I understand it, an employee of the Town of Livermore Falls employed as a teacher and assistant principal for some twenty (20) years has been assigned the duty of principal. The school committee in assigning the principalship has attempted to put the principal on a probationary contract under R. S. 1954, c. 41, § 87, sub-section V.

I am of the opinion that under Section 87 of the law, the principal is included within the definition of teachers and that since he has served some twenty years in the school system of Livermore Falls, he should be considered as having served his three-year probationary period and he is now on a two-year continuing contract until a six months written notice is given by the school committee of the termination of his contract.

RICHARD A. FOLEY
Assistant Attorney General

June 16, 1961

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

Re: Public Lot Agreement Proposal

This is in answer to the questions proposed in your memorandum of May 23, 1961.

Question No. 1: Whether or not the State of Maine through the Forestry Commissioner can agree with the proprietors of an unincorporated township that the Forestry Commissioner will not locate a public reserve lot so long as the proprietors contemplate mining operations within the unorganized township.

Answer: R. S. 1954, c. 36, § 12, as amended, provides in part:

> "The commissioner, under the direction of the governor and council, . . . may . . . grant mining rights, after the approval of the mining bureau, on public reserve lots in any township or tract of land until the same is incorporated, on such terms as they direct."

It is clear from the above that the Forestry Commissioner may negotiate the granting of mining rights on a public reserve lot. When the public lot is not located, the State has a right to a proportionate share of the land revenues of the unincorporated township as the acreage of the public land bears to the acreage of the entire tract of land, *Mace v. Land & Lumber Co.,* 112 Me. 420.

R. S. 1954, c. 36, § 48, provides in part:

> "In townships or tracts sold and not incorporated, the public reserved lots may be selected and located by the commissioner and the proprietors, by a written agreement, describing the reserved lands by metes and bounds, signed by said parties and recorded in the commissioner's office. . ."

Under Section 49 the commissioner, when he cannot agree with the proprietors on the location of the public reserved lot, may file proceedings in the Superior Court for locating the lot.

The discretionary power vested in the Forestry Commissioner to locate a public reserved lot is an official duty and cannot be contracted away. Therefore, in any contract between the Forestry Commissioner and the proprietors of a township and the mining company, the Forestry Commissioner could not agree to refrain indefinitely from locating public reserved lots.

As I understand it, the proprietors of the unorganized township and the mining company feel that if mineral wealth is discovered within the township, the State through the Forestry Commissioner would locate a public reserved lot at the mineral deposit itself. This would not be the case as the proprietors and the mining company are protected under R. S. 1954, c. 36, § 48, as amended, since the reserved lot must average in quality, situation and value as to mineral rights with the other lands therein.

Question No. 2: Whether or not the contract which you attached to your memorandum provides in sufficient detail the 5 per cent royalty requirement under the Maine Mining Bureau Law.

Answer: I am of the opinion that the contract does sufficiently require the payment of 5 per cent royalty. However, the mining company as well as the proprietors of the unorganized township could be made a party to the contract.

Question No. 3: Whether or not the State should contract only with the proprietors of the unorganized township relative to the State's proportionate share

of the land rentals and mining royalties paid by the mining company to the proprietors for the unlocated public reserved lots.

Answer: I am of the opinion that both the proprietor and the mining company should be made a party to the agreement.

RICHARD A. FOLEY
Assistant Attorney General

June 20, 1961

To: Frank S. Carpenter, Treasurer of State

Re: Internal Revenue Service Levies upon State Held Monies

We have received and considered your verbal request for an opinion as to whether or not the State of Maine should honor levies made by the Internal Revenue Service upon monies held by the State and owing to a delinquent taxpayer.

This problem has arisen several times in the past in various situations involving State employees and independent contractors doing work for the State. As we understand the question here, however, it includes all levies whether on monies owed to a State employee, independent contractor or any other person or corporation to whom the State owes a sum of money. This question has recently been decided finally by the Supreme Court of the United States. *Sims v. United States of America,* 359 U.S. 108, March 23, 1959. The opinions of the Supreme Court are absolutely binding upon all courts in the State of Maine and in all other States. *State v. Furbush,* 1881, 72 Me. 493, 496.

In *Sims v. United States of America* the question was whether the Internal Revenue Service could enforce a levy against wages owing from the State of West Virginia to a delinquent taxpayer. In upholding this right of levy the Supreme Court pointed out that "nothing in the constitution requires that the salaries of State employees be treated any differently, for federal tax purposes, than the salaries of others, . . . " The court went on to rule that any State should be treated as would a natural person for the purpose of enforcing the provisions for levy contained in the Internal Revenue Code.[1]

It is our opinion, therefore, that:

1) Under the terms of the opinion in *Sims v. United States,* the State of Maine is a person with regard to federal tax levies.
2) Under 26 U.S.C. 6332, every person holding money of a delinquent taxpayer is subject to levy.
3) Therefore, the State of Maine is subject to any and all federal levies against monies owing by it to a taxpayer.

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[1] Section 6332 of Chapter 26, U. S. Code, provides that "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 of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process."

THOMAS W. TAVENNER
Assistant Attorney General

June 21, 1961

To: Madge E. Ames, Director of Labor and Industry

Re: Amendments to Minimum Wage Law

We have your memo of May 17 requesting our interpretation of certain provisions of the amendments to the Minimum Wage Law promulgated by the 100th Maine Legislature. In this memo you ask two questions. The first of these is whether or not you are correct in assuming that you cannot count camp counselors, taxicab drivers, and bona fide executives, administrators, and professional people as employees in determining whether or not an employer must comply with the Minimum Wage Law.

It is our opinion that this assumption is basically correct. The amendments to Chapter 30, sections 132-A through J, clearly provide that of all the excluded groups only waiters, waitresses, doormen, bellhops, chamber maids, students, and members of the employer's family shall be included for the purpose of determining coverage. It should be pointed out, however, that students or members of the employer's family shall be included whether or not they are engaged in one of the excluded categories of work. A student or a member of the family should be included in the determination no matter what his occupation. With this exception, no other class of exempt employees shall be included in making this determination.

You ask further if there is any legal definition of the terms "executive," "administrative," and "professional."

An executive is a person whose duties relate to active participation in the control, supervision, and management of business. *Black's Law Dictionary, 4th Edition.*

A person employed as an administrator is one whose job it is to discharge the duties of an office; to manage or conduct; to take charge of a business and to manage its affairs; to serve in the conduct of affairs. *Black's Law Dictionary, 4th Edition.*

A person employed in a professional capacity is one who is practicing a vocation or occupation involving skill, education or special knowledge, which skill or labor is predominantly mental or intellectual rather than physical or manual. *Black's Law Dictionary, 4th Edition.*

As a general proposition, the exclusion covering bona fide executives, administrators, and professional people we feel refers to persons employed to conduct and manage a business and to guide the actions taken by the corporation. Such a person is to be distinguished from one whose job it is to perform the services or create the product upon which the business is based.

THOMAS W. TAVENNER
Assistant Attorney General

June 28, 1961

To: John F. Weston, Chairman of Harness Racing Commission

Re: R. S. 1954, c. 86, § 15, amended by Chapter 399, Public Laws of 1961

In your memorandum of June 26, 1961, you have asked two questions. We herewith return our answers.

"1. Under the above amendment, is the Harness Racing Commission responsible for the administration of this section of the law?"

This question is very broad. It is not possible to give a "yes" answer without some specific directions. Although we do not like to do more than answer a question, we feel in this instance, because of the nature of the question, that we must mention certain specific things the Commission must do under the amendment.

First: the Commission must determine the total amount of the tax on all pari mutuel pools.

Second: the Commission must make a proper division of 1/6 of that total among the licensees, as stated in the amendment.

Third: the Commission must determine that each licensee use the money so returned to it "for the purpose of supplementing purse money."

"2. Do the licensees have to wait until the full racing schedule is completed before receiving their proportionate part of the money or can they receive the money at the close of their race meet?"

The licensees must wait until the full racing schedule is completed. It is not possible to determine the amount each licensee is to receive until the racing schedule is completed. Consequently, a licensee cannot receive its money at the completion of its racing meet.

GEORGE C. WEST

Deputy Attorney General

June 28, 1961

To: Maynard F. Marsh, Ass't. Chief Warden of Inland Fisheries & Game

Re: Use of Artificial Light to Illuminate Wild Birds and Animals

By your memorandum of June 21, 1961, you have asked if the provisions of Chapter 194 of the Public Laws of 1961 apply during the special bow and arrow season on deer.

Chapter 194, Public Laws of 1961 reads as follows:

> "Sec. 97-A. Use of artificial lights for lighting game. The use of artificial lights between 1/2 hour after sunset and 1/2 hour before sunrise to illuminate, jack, locate, attempt to locate or show up wild birds or animals shall be unlawful *during open season on deer,* except as provided in section 94, and section 113, subsection IV." (Emphasis ours.)

Section 38, Chapter 37, R. S. 1954, provides:

> "The words 'open season' mean *the time* during which it shall be lawful to take animals, birds and fish as specified and limited by law." (Emphasis ours.)

This definition of "open season" indicates that the term applies to a *time* when deer may be legally killed. It does not refer to the *method* of killing deer.

Therefore, the conclusion is reached that Chapter 194, Public Laws of 1961, does apply during the special bow and arrow season.

GEORGE C. WEST

Deputy Attorney General

June 29, 1961

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

Dear Mr. Langlois:

In answer to your letter of June 26th, you are correct in stating that L. D. 1633 (now Chapter 217, P & S Laws of 1961) cannot take effect until September 16, 1961, ninety days after the recess of the Legislature (Constitution of Maine, Article IV, Part Third, § 16). In theory, the matter could be put to referendum within that ninety-day period and defeated by a vote of the people.

There is nothing to prevent you from making a request of the Governor and Council for a sum of money from the contingent fund to allow you to provide adequate service to Long Island Plantation until the specific appropriation is available in September. The Governor and Council legally may make such funds available.

In answer to Mr. Thompson's question submitted in his letter of June 27th to this office, we agree that L. D. 1633 is not an amendment to Chapter 190 relating to Penobscot Ferry Service. It is simply an appropriation and a direction by the Legislature to the Authority to provide service for the next two fiscal years to Long Island Plantation. The Department of Accounts and Control will set up, after September 16th, a Long Island Plantation activity account within the Maine Ferry Service Account. Only $12,000 will be available and can be expended on that activity in each of the next two fiscal years. This is a bookkeeping transaction but in effect is a separate and distinct fund.

Very truly yours,

FRANK E. HANCOCK
Attorney General

June 30, 1961

Lee Ricker, Trial Justice
Eustis
Maine

Dear Mr. Ricker:

Recently this office was asked informally if the holding of the positions of Trial Justice and Selectman of a town were incompatible. I checked into the matter and found that on several occasions this office has ruled that such offices are incompatible.

This opinion is based on a Maine case, *Howard v. Harrington,* 114 Me. 443. In that particular case the law court held that the office of Mayor and Judge of the Municipal Police Court were incompatible because the Mayor was charged with the responsibility of enforcing certain laws and city ordinances. The same laws required that any violations be brought before the police court.

This meant that the Mayor had to act as prosecutor and judge, which of course cannot be done. By analogy it would appear that the same reasoning would apply to the office of Selectman and Trial Justice. There are certain laws which require the municipal officers to be the enforcing agency, at the same time giving a Trial Justice exclusive or concurrent jurisdiction with municipal courts. Thus, you are charged with enforcing certain laws in your capacity as Selectman and at the same time required to judge the guilt or innocence of a person whom you must be charging with a violation.

This same case states that the acceptance of the second office automatically vacates the first office. I do not know in what order you accepted these two positions. It does seem to me, however, that if it is true that you are currently a Selectman of Eustis, that the acceptance of this office at the recent town meeting would have vacated the office of Trial Justice which you accepted in November 1958. However, I am only advising you on this matter and my opinion does not have the force of law. The only way this matter can be decided is by bringing the matter to the attention of the proper court in a proper action.

I felt it advisable, however, to write to you about this because you may assume to act as a Trial Justice and possibly place a man in jail when it might be entirely possible that you did not have the authority which you would be assuming. I would suggest very strongly that you talk with your attorney about this matter, solely as a protection to yourself personally.

Very truly yours,

GEORGE C. WEST

Deputy Attorney General

July 10, 1961

To: Doris M. St. Pierre, Secretary of Real Estate Commission

Re: Personnel Bulletin #1151 "Right of Way Appraiser"

This is in answer to your memorandum of June 14, 1961.

As I understand it, the Personnel Department has issued a bulletin on the qualifications of a State Right of Way Appraiser and one of the qualifications is the possession of a broker's certificate of registration issued by the Maine Real Estate Commission.

The Commission does not want to issue a license to the broker since he will not have a place of business for a private broker's practice but they agree to cooperate with the Personnel Board in giving broker's examinations and notifying the Personnel Board when an applicant has passed the broker's examination.

This procedure is within the power of the Commission but I would suggest that when the applicant takes the examination that he be informed that the only reason for giving the examination in that particular case is for a determination of his qualifications as a Right of Way Appraiser and not for the issuance of a real estate broker's license.

RICHARD A. FOLEY

Assistant Attorney General

July 10, 1961

To: Mrs. Augusta K. Christie
Presque Isle, Maine

Dear Senator Christie:

This is in answer to your letter of June 28, 1961, regarding School Administrative District No. 1.

You have inquired as to the constitutionality of the action of the district directors of School Administrative District No. 1 in sending pupils from Presque Isle to a district school in Westfield. The Supreme Judicial Court of Maine has recently ruled in two cases on constitutionality of school administrative districts. In the two cases, *McGary v. Barrows,* 156 Me. 250, and *Elwell v. Elwell,* 156 Me. 503, the court has held the statute regarding school administrative districts to be constitutional. In *Elwell v. Elwell,* supra, the court indicated that a school administrative district is a quasi municipal corporation for educational purposes. Under the Sinclair Law, Revised Statutes of 1954, Chapter 41, Sections 111-I and 111-R, the district directors have the responsibility for the management and control of all of the affairs of the district. Having such control, it would be within their discretion to transport children from one town to another for educational purposes as long as the towns are within the district.

If the residents of the City of Presque Isle are dissatisfied with the action of their directors, the redress of the people reposes in the ballot since the directors are the elected representatives of the people.

If you require any further information on this matter, we will be glad to furnish it.

Very sincerely yours,

FRANK E. HANCOCK
Attorney General

July 11, 1961

John V. Keaney, Esquire
85 Exchange Street
Portland 3, Maine

Dear John:

I have your letter of July 7 asking if I see any conflict between your service as a member of the Industrial Accident Commission and teaching a course at Portland University Law School which is now a part of the University of Maine.

I can see nothing incompatible between the two positions. I feel that it is perfectly all right for you to continue with the arrangements which you have had with Portland University in the past.

Very truly yours,

GEORGE C. WEST
Deputy Attorney General

July 18, 1961

To: Earle R. Hayes, Executive Secretary of Maine State Retirement System

Re: Status National Guard Service under Retirement System

The Board of Trustees of the Maine State Retirement System have requested an opinion as to whether "Prior Service" credits should or should not be granted members of the Maine National Guard.

First we must examine several pertinent provisions of the Revised Statutes. Chapter 63-A, § 1, "Definitions" provides in part:

" 'Prior Service' shall mean service rendered prior to the date of establishment of the retirement system for which credit is allowable under the provisions of section 4.

" 'Service' shall mean service as an employee, as defined in this section, for which compensation was paid.

" 'Employee' shall mean any regular classified or unclassified officer or employee in a department, . . . In all cases of doubt, the board of trustees shall determine whether any person is an employee as defined in this chapter."

Chapter 63, § 11, provides in part:

"*Unclassified service.*—The unclassified service comprises positions held by officers and employees who are:

. . . .

"VI. Officers and enlisted men in the National Guard and naval militia of the State.

. . . . "

There can be no question that an officer or any enlisted man in the national guard or naval militia of the state is an unclassified employee of the state. (See statutory reference above.)

As a state employee such person is eligible for membership in the Maine State Retirement System.

Chapter 63-A, § 1, "Definitions" provides:

" 'Member' shall mean any employee included in the membership of the retirement system, as provided in section 3."

Section 3 provides in subsection I:

"Any person who shall become an employee shall become a member of the retirement system as a condition of employment . . . "

We now turn to section 4 of Chapter 63-A to determine whether such persons are eligible for "Prior Service" consideration in accordance with the definition of "Prior Service."

This section in sub-paragraph I provides:

"Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of his membership service, and also, if he has a prior service certificate which is in full force and effect, the period of the service certified on his prior certificate."

Sub-paragraph III provides that under such rules and regulations as the board of trustees shall adopt, each member shall file a detailed statement of all service rendered by him both before and after the applicable date of establishment for which he claims credit.

It seems from an examination of the Maine State Retirement System law that "Prior Service" credits can be granted to members of the Maine National Guard.

GEORGE C. WEST

Deputy Attorney General

July 18, 1961

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

Re: Interpretation of Chapter 466, Public Laws of 1955, to Establish Board of Construction Safety Board Rules and Regulations

You have asked for an opinion covering an apparent conflict between parts of Sections 88-B and 88-E of Chapter 466 of the Public Laws of 1955.

Section 88-B provides in part:

". . . The term 'construction' . . . shall not apply to construction for self use."

It must be borne in mind that this section only *defines* terms or words used in the law. "Definitions" are not a substantive part of the statute. They only assist in understanding the meaning of words and phrases used in a statute.

Section 88-E says in part:

"The provisions relating to safety . . . shall not apply to construction for self use providing not more than 5 persons are employed for wages in such construction or that such construction is not performed by a party for hire under a verbal or written contract."

Section 88-E is a substantive part of the statute. It sets forth exceptions relating to that which the statute shall not cover or extend. Being substantive in nature it is a necessary part of the statute and must be considered as controlling.

In short, the exceptions in Section 88-E are determinative of what the statute does not cover.

GEORGE C. WEST

Deputy Attorney General

July 21, 1961

To: William E. Schumacher, M.D., Director of Bureau of Mental Health

Re: Examination and Commitment costs of Mentally Ill Person — Responsibility for

You have asked, in substance, who is responsible for the costs of examination and commitment of a mentally ill person to a state hospital.

Answer: Sections 137 and 138 of Chapter 27, Revised Statutes of 1954, outlines the channels of financial responsibility for the examination and commitment. Section 137 provides that the town where the mentally ill resided or was found at the time of his arrest is first chargeable. Section 138 then provides that the town first chargeable may recover the amount paid from (1) the mentally ill person, if able, or (2) from persons legally liable for his support or (3) from

the town where he had a legal settlement but (4) if no legal settlement from the state.

You mention in your memo section 135 as requiring the probate court to certify the proposed patient's inability to pay for his support.

Answer: Section 135 was written at the time the law provided for commitment by the municipal officers of a city or town. The probate court had concurrent jurisdiction with the municipal officers to commit mentally ill persons. The only other persons having jurisdiction to commit were two justices of the peace. The new law removes this duty from such officials and places the responsibility upon the probate court when judicial procedure is necessary.

Therefore, it would appear that the phrase "or any officers with like power to commit" must apply to a probate court judge. It would appear that the probate court judge should inquire into the ability of the mentally ill person to support himself in the hospital and the ability of legally responsible relations to support him and then certify to his findings of *inability* only. The judge does not have to certify as to ability to pay for support.

You have further asked who bears the cost of re-examination.

Answer: I feel that the wording of section 137 is adequate to have the costs of re-examination charged to the town where the mentally ill resided or was found at the time of his arrest. That town again is reimbursed as stated in section 138.

GEORGE C. WEST

Deputy Attorney General

July 21, 1961

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

Re: "Initial Plates" re Amputee Veterans

I have your memo of July 18, 1961, asking the following question:

"Does the provision of Sec. 2 of Chapter 261 become compatible with the provision of Sec. 13, Chapter 22, R. S., as amended? Are we authorized to provide and issue such initial or combination type plates, in lieu of the regular straight numeric plates, at no 'service fee' of $10.00."

Answer: Section 2 of Chapter 261, Public Laws of 1961, is entirely compatible with the provisions of Section 13 of Chapter 22, Revised Statutes of 1954.

In substance the 16th paragraph of section 13 of Chapter 22 provides that under certain conditions amputee veterans may receive free registrations and plates for their motor vehicles.

In substance, Chapter 261, P. L. 1961, provides that the Secretary of State may issue initial type registration plates to be used in lieu of other numeric type registration plates. Section 2 provides for a special service fee in addition to the regular registration fee, for those persons who wish to have the initial type plates.

The Secretary of State has no authority to issue the newly provided initial type plates unless the applicant pays the extra service fee. No exemptions from the payment of this extra service fee is provided in the law. This is a special privilege accorded to those who wish to pay for the service.

Just as the amputee veteran was not entitled to free registration and plates until the legislature so provided by statute so he is not now entitled to free initial type registration plates or combination of initials and numeric type registration plates without payment of the extra service fee. The legislature may at any time provide him with such plates without cost but until it does, he must pay the service fee.

GEORGE C. WEST

Deputy Attorney General

July 26, 1961

To: Roy U. Sinclair, Chairman of Maine Employment Security Commission

Re: Employment Security Law

We have your request for a ruling with respect to Revised Statutes of 1954, Chapter 29, Section 13, Subsection III. Our answer applies also to Subsection II of Section 13.

Chapter 361 of the Public Laws of 1961 amends several sections of the Employment Security law (Chapter 29, Revised Statutes 1954). The amendments will take effect on September 16, 1961, except with respect to Section 13, Subsection II, relating to weekly benefit amounts for total unemployment, and Subsection III relating to weekly benefit for partial unemployment. These two sections specifically take effect, by the wording of the law, on and after October 1, 1962.

In our opinion, it certainly was not the intention of the legislature to leave a void between September 16, 1961 and October 1, 1962 with respect to payments of benefits for total and partial unemployment. Therefore, the law now in effect, i.e. Chapter 29, Section 13, Subsection II as amended in 1957 and Chapter 29, Section 13, Subsection III as amended in 1959, will remain in effect until the specified statutory change date of October 1, 1962.

The printing of the law will cause some confusion. May we suggest that your office in compiling your laws in pamphlet form include an explanation of those two sections for purposes of clarification.

FRANK E. HANCOCK

Attorney General

July 27, 1961

To: Honorable L. Robert Porteous, Jr.

113 Foreside Road

Falmouth Foreside, Maine

Dear Senator Porteous:

This is in answer to your letter of July 13, 1961, regarding the question of tuition students of the proposed Town of Harpswell Neck attending Brunswick public schools.

Should Harpswell Neck separate from the Town of Harpswell by vote of the people, I believe paragraph 9 of the proposed contract agreement with Brunswick will remedy the problem of Harpswell Neck contracting with Brunswick for

tuition students. However, I note that paragraph 9 of the proposed contract provides that the newly formed town and Brunswick *may* contract for tuition students. It would, therefore, be discretionary for both parties and it may be that Brunswick would refuse to accept Harpswell Neck tuition students.

I believe this situation can be remedied by amending the Private and Special Laws of 1961, Chapter 83, at the next regular session of the Legislature to require Brunswick to contract with Harpswell Neck for tuition students as well as Harpswell and the surrounding towns.

In reviewing the whole case, however, I am of the opinion that there should be no difficulty as far as Harpswell Neck is concerned in contracting with Brunswick under the provisions of paragraph 9 of the proposed contract for tuition students as I do not foresee that Brunswick will refuse to contract.

Very sincerely yours,

RICHARD A. FOLEY
Assistant Attorney General

July 28, 1961

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Determination of Legal Tuition Rate

You have requested my interpretation of Chapter 248 of the Public Laws of 1961, regarding the computation of legal tuition rates.

I am in agreement with the conclusions reached in your memorandum, that is, that the average daily membership of the preceding year ending on June 30 should be the basis for computing the tuition.

Your conclusion that the current fiscal year refers to the last completed fiscal year preceding the closing of the school year is also correct.

RICHARD A. FOLEY
Assistant Attorney General

July 28, 1961

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Legality of Loan to City of Westbrook of Equipment in the National Industrial Equipment Reserve

This is in answer to your memorandum of July 17, 1961, in relation to the contract for the loan of certain industrial equipment to the City of Westbrook for use in their school system. The "loan" from the federal government has considerable conditions attached to the loan contract and I can find no authority to permit a city to deal directly with the federal government on educational grants-in-aid from the federal government. However, under the Revised Statutes, Chapter 11, Section 15, the Governor and Council may accept equipment from the federal government on behalf of the State. The Governor and Council can further designate an agency of the state to carry out the provisions of any federal law relative to grants-in-aid to the State.

I would, therefore, suggest that the Governor and Council may properly accept this equipment on behalf of the public schools in Westbrook and direct the school board of Westbrook to carry out the provisions of the contract.

RICHARD A. FOLEY
Assistant Attorney General

July 28, 1961

To: Doris M. St. Pierre, Secretary of Real Estate Commission

Re: Trading Stamp Premiums for Listings of Real Estate

This is in answer to your memorandum of June 15, 1961, requesting an opinion as to the legality of giving green stamp premiums when a real estate broker gets a three month exclusive contract for the sale of real estate.

Such an offer of premiums appears to be in violation of Section 13 of Chapter 84, R. S. 1954, providing that it shall be unlawful for any licensed broker to offer, promise, allow, give or pay, directly or *indirectly,* any part or share of his commission from any real estate transaction to any person who is not a licensed broker or salesman.

RICHARD A. FOLEY
Assistant Attorney General

August 2, 1961

To: Honorable Harold Stewart
Box 773
Presque Isle, Maine

Dear Bud:

I believe you asked a question of the girls in my office as to whether or not you could accept an appointment to the bench of the new district court. Article IV, Part Third, Section 10 of the Constitution 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."

This would mean that you would be unable to accept an appointment as a district court judge during the two year term beginning January, 1961, and this would be true even though you resigned from your legislative position. There is nothing to prevent your appointment after that two year period assuming, of course, you are no longer a senator or a representative at that time.

I trust this will answer your inquiry.

Sincerely yours,

FRANK E. HANCOCK
Attorney General

August 2, 1961

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

Dear Ed:

This is in answer to your request for an opinion dated July 12, 1961.

You have inquired whether or not the Maine Port Authority has authority to construct and maintain a pier on Long Island Plantation and expend the funds appropriated under Chapter 217, Private and Special Laws of 1961, for the purpose of constructing and maintaining said pier.

I find no specific authority granted to the Port Authority to construct and maintain a pier on Long Island Plantation, but under Chapter 5, Private and Special Laws of 1941, Section 1(d), the Port Authority with the consent of the Governor and Council may receive by gift, grant, devise or bequest any real property not otherwise authorized or permitted. It would be permissible to receive as a gift the existing pier on Long Island Plantation and expend the funds appropriated under Chapter 217, supra, for the improvement and maintenance of said pier.

I also find authority under Chapter 5, Section 1(d), supra, to hire, lease and rent from others any property deemed desirable for the Port Authority's purpose.

I would conclude, therefore, that the Port Authority, with the consent of the Governor and Council, could accept as a gift the Long Island Plantation Pier and expend money for its improvement or enter into a lease agreement for said pier.

You have also inquired whether or not the Port Authority can charge reasonable fares for transportation to Long Island Plantation.

Chapter 125, Section 2, Private and Special Laws of 1959, provides as follows:

> *"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."

The words underlined, that is, "such ferry line or lines" refer to the Penobscot Bay Ferry Line running to North Haven, Vinalhaven, Islesboro and Swan's Island. Thus the Long Island Plantation ferry service could be operated as a spur line of the Penobscot Bay Ferry Line.

Section 4, Chapter 190, Private and Special Laws of 1957, provides that:

> "The Maine Port Authority shall operate such ferry line or lines as a toll system to retire the bonds issued as provided by this act and to provide for all expenses and maintenance incurred hereunder. . ."

Since one of the expenses of the Port Authority would be the operation of a

ferry service to Long Island Plantation, I conclude that the Port Authority can properly collect a toll on the Long Island Plantation Ferry Service.

You ask whether or not one of the ferries now used on the Penobscot Bay Ferry Line may be used to give limited service to Long Island. I am of the opinion that it is within the discretion of the Port Authority to either use one of the Penobscot Bay ferries for service to Long Island Plantation or contract for such a service to Long Island Plantation with a contract carrier using a smaller ferry. Should one of the Penobscot Bay ferries be used, it would be proper to charge against the Long Island Plantation appropriation charter hire for use of the Penobscot Bay ferry.

I believe this letter substantially anwsers the various questions proposed by you and if you require further elaboration, we would be glad to furnish it.

Very sincerely yours,

RICHARD A. FOLEY

Assistant Attorney General

August 4, 1961

To: S. F. Dorrance, Assistant Chief of Division of Animal Industry, Agriculture Department

Re: Enforcement of Provisions of Dog License Laws

You have asked the following question:

"Providing the municipal officers issue a warrant to a police officer, constable or humane agent on July 15, for the collection of delinquent dog license fees, are said officers entitled to the $2.00 fee for carrying out their duties as provided for in the June 1, warrant?"

Section 14, Chapter 100, as amended in 1955, 1957 and 1961, provides for two different warrants for two different purposes. The same section, together with section 15, provides for two different $2.00 fees for carrying out the provisions of the warrants.

The first warrant may, after September 16, 1961, be issued by either the municipal officers or State humane agents within ten days from the first day of June, returnable on the 15th day of July to one or more police officers or constables directing him or them to proceed forthwith to enter complaint and summons to court the owner or keeper of any unlicensed dog. The police officer or constable shall, before entering the complaint and obtaining a summons, call on the owner or keeper and demand the license fee. If the owner pays the license fee, he shall also pay the officer's fee of $2.00. This must be done before the 15th of July.

The next warrant shall be issued by the municipal officers of State humane agents on the 15th day of July to one or more police officers or constables, returnable on the first Monday of the following February directing him or them to seek out, catch and confine all dogs within such municipality which are not licensed, collared and tagged, or enclosed, and to enter complaint and summons to court the owner or keeper. The court may order the police officers or constables to sell, give away, kill or cause to be killed, each dog after being detained by him or them for a period of six days.

Section 15 provides that each police officer or constable must return the warrants at the time specified. The officer shall receive from the city, town or plantation, the sum of $2.00 for each dog killed or otherwise disposed of and they may receive such further compensation as the municipal officers may determine for other services rendered under the provisions of sections 9 to 28.

In your question you have mentioned the municipal officers issuing a warrant to a humane agent. The statute does not provide for the issuing of a warrant to a humane agent, but only to police officers or constables. I might point out that by the 1961 amendment the State humane agents may issue the warrants rather than the municipal officers, but the State humane agent may not execute the warrants.

You will note the distinction that on the June 1 warrant the officer or constable shall collect his $2.00 fee from the owner of the dog in the event the owner does license the dog after being so requested by the officer or constable.

The city, town or plantation is responsible for paying the police officer or constable $2.00 for each dog killed or otherwise disposed of under the second warrant and subsequent court order.

GEORGE C. WEST

Deputy Attorney General

August 4, 1961

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

Re: Pepperell Trust Company

I have been over the file which you left with me as well as the banking laws.

I find nothing in the banking laws which would indicate that you, as Banking Commissioner, should become involved in the internal affairs of a bank, except where the matter would adversely affect the public.

It seems to me that the only function which you have in this particular matter is to see that nothing is done by the bank officials to adversely affect the capital structure of the bank.

GEORGE C. WEST

Deputy Attorney General

August 4, 1961

To: John F. Weston, Chairman of Harness Racing Commission

Re: Chapter 399, Public Laws of 1961

You have requested an answer to the following question:

"Is the money that is to be divided among the licensees based on the number of racing days granted by the commission or on the number of days actually raced?"

The second sentence of Chapter 399, Public Laws of 1961 provides:

> "This sum shall be divided equally among the licensees in the proportion that the number of racing days of a licensee *granted* (Emphasis supplied) by the Commission bears to the total number of racing

days *granted* (Emphasis supplied) in any one year by the Commission."

There is no question that the legislature intended that the division of the money to the licensees is based on a proportion between the racing days granted to an individual licensee and the total racing days granted to all licensees. The number of days actually raced has no bearing whatsoever upon the division of the money among the licensees.

GEORGE C. WEST
Deputy Attorney General

August 4, 1961

To: William E. Schumacher, M.D., Director of Bureau of Mental Health

Re: Chapter 303, Public Laws, 1961

Section 171, Chapter 303, Public Laws of 1961, provides — "A voluntary patient who requests his release or whose release is requested, in writing, by his legal guardian, parent, spouse or adult next of kin, shall be released forthwith except that: . . . "

You have asked for an interpretation of this part of the section as to whether or not the request for release must be in writing whether made by the patient or the other parties named in this section.

A careful reading of this section would indicate that any request for release, whether by the patient or by the other parties named, must be in writing. A verbal request for release by a patient should not be accepted.

GEORGE C. WEST
Deputy Attorney General

August 4, 1961

To: Mrs. Frances J. Banks, R.N., President
Maine State Board of Nursing
363 Main Street
Lewiston, Maine

Dear Mrs. Banks:

We have your letter of August 3 inquiring to what extent your office can protect the confidentiality of records.

In order to answer your question properly it would be necessary for this office to know particular records to which you are referring. A review of Chapter 69-A, Practice of Nursing, does not indicate that any records of your office are declared to be confidential. Generally in the absence of a statutory declaration of confidentiality, the records of a public office are public records. It may be possible that certain records can be treated as confidential, but in order for this office to advise you on the matter it would be necessary for us to know to what records you are referring.

The so-called Right to Know Law in general provides that any administrative body composed of three or more members must transact its business at public meetings. The minutes of such meetings as are required by law shall be promptly recorded and open to public inspection except as otherwise specifically provided by statute.

A further provision of this law states that every citizen of this State shall, during the regular business or meeting hours of all such bodies or agencies have the right to inspect all public records including minutes of meetings and take memoranda abstracts or photographic or photostatic copies of the records or minutes so inspected.

It would appear that any actions taken by your Board as a group are of a public nature, especially as the act creating your Board does not provide that such acts shall be confidential.

If there are any other records of your office which you feel should be confidential and you wish a further ruling from this office, you should specify the nature of these records in order for this office to properly advise you.

Very truly yours,

GEORGE C. WEST

Deputy Attorney General

August 8, 1961

To: Joseph T. Edgar, Deputy Secretary of State

Re: Connor Voting District, Aroostook County

You have asked when Chapter 81, Resolves of 1961, becomes effective.

This resolve becomes effective on September 16, 1961, being 90 days after final adjournment of the legislature. However, it should be pointed out that it is effective only so far as it pertains to elections for the choice of Representatives to the 101st, and subsequent, Legislatures. If by any chance a special election is held to fill a vacancy in the 100th Legislature, the present legislative districts would be used.

You have asked a second question relative to the township of Connor, particularly as it pertains to where the voters of that township will vote in the October 10th Referendum Election.

Chapter 360 of the Public Laws of 1961 "An Act Revising the Election Laws" becomes effective on September 16, 1961, also. This law will be in effect at the date of the October 10th Referendum Election. So its provisions will control the voting at that election.

Section 29 of Chapter 360 provides the method of determining the place of voting of the voters in a township. In substance, this section provides that such a voter may register, enroll and vote in any town within his representative district. There are then some exceptions which do not need elaboration in this opinion.

The October 10th election does not elect Representatives to the Legislature; therefore, Chapter 81 of the Resolves of 1961 does not govern the place of voting. Until the June, 1962 primary, voters of the township of Connor are in the

Representative District comprised of Limestone, Stockholm, Caswell Plantation, Cyr Plantation and Hamlin Plantation. Consequently, by virtue of section 29 of Chapter 360, the voters of the township of Connor may register and vote in any of these places.

Revised Statutes 1954, Chapter 10, section 22, paragraph XIX, provides that in statute construction "The word 'town' includes cities and plantations, unless otherwise expressed or implied." Also section 5 of the new election law provides "The provisions of this chapter pertaining to towns apply equally to plantations."

At the present time the voters of Connor are registered in Limestone in a separate polling place by virtue of section 65 of Chapter 5, Revised Statutes of 1954. Although this law has been repealed and will not be in effect on October 10, 1961, it would appear to be advisable to have the voters of Connor vote at their usual voting place and under their usual conditions rather than re-register in one of the other places in this representative district for this one Referendum Election.

Beginning with the June, 1962 primary, the provisions of section 29 of Chapter 360 of the Public Laws of 1961, and Chapter 81, Resolves of 1961, will be effective. In that and subsequent State elections through 1972, the voters of Connor will register, enroll and vote in any town within their representative district unless allowed individually to register in some other town by the Secretary of State. The new representative district is comprised of Van Buren, Caswell Plantation, Cyr Plantation, Hamlin Plantation and Connor. The voters of Connor may register and vote in any one of the other four places in that representative district.

We would call your attention to section 195 of Chapter 360, Public Laws of 1961, whereby the municipal officers may divide a town into voting districts.

GEORGE C. WEST

Deputy Attorney General

August 15, 1961

To: Maine Real Estate Commission

Re: New Fees

In your memo of August 14 you have asked for an opinion as to whether or not you are within your rights to notify the applicant for a license or an examination of the changes in the fees upon receipt of an application accompanied by fees in the amounts required prior to September 16.

Chapter 138, Public Laws of 1961, raised the fees for examination licenses and renewal of licenses. This chapter becomes effective September 16, 1961.

The date of the receipt of an application has no bearing on the amount of fee to be accepted. The important date is the date of the giving of an examination or the granting of a license, whichever is involved.

If the examination is to be held subsequent to September 16, the fee will be $20.00 regardless of when the application for the examination is filed. If the license is to be granted subsequent to September 16, the fee will be that set forth in Chapter 138, Public Laws of 1961, regardless of when the application was filed.

Therefore, you are within your rights to notify the applicant of the increase in fees if his application is accompanied by the fees now in existence where the examination or the issuance of a license will not take place prior to September 16.

GEORGE C. WEST

Deputy Attorney General

August 18, 1961

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

Re: Maine Boat Law — Dual Licensing

Reference is made to your memo of August 10, 1960, and the reply of September 16, 1960 from this office. This office has reviewed the reply and finds that it is in error. The reply should read as follows:

We have your memo of August 10, 1960 in which you ask if, under the provisions of the Maine Boat Law, you can require a person to obtain a license and pay the two dollars ($2.00) fee for such license, for boat which is to be used on the waters of East Grand Lake, if that boat has already been issued a number by the U. S. Coast Guard.

Answer: Yes.

Our State Boating Act (Chapter 36-A, Revised Statutes of 1954, enacted by Public Laws of 1959, Chapter 349) complements and supplements the Federal Boating Act of 1958 (Public Law 85-911). Together, the federal law and the state act are meant to provide for a program of generally uniform laws and enforcement procedures to promote safety in recreational boating. See *Suggested State Legislation* Program for 1959, supplement Council of State Governments, page 20.

The State Boating Act, Section 3, provides that:

> ". . . No person shall operate or give permission for the operation of any motorboat on such waters (waters of this State as defined in the act) unless the motorboat is numbered in accordance with this chapter, or in accordance with applicable federal law, or in accordance with a numbering system of the state of which he is a resident, and unless the certificate of number awarded to such motorboat is in full force and effect, and the identifying number set forth in the certificate of number is displayed on each side of the bow of such motorboat."

Section 4, paragraph II, provides:

> "The owner of any motorboat already covered by a number in full force and effect which has been awarded to it pursuant to federal law or a numbering system of the state of which he is a resident, *shall record the number prior to operating the motorboat on the waters of this State in excess of the 90 days reciprocity period provided for in section 6, subsection I.* Such recordation shall be in the manner and pursuant to the procedure required for the award of a number under subsection I, except that no additional substitute number shall be issued;" (Emphasis ours)

Although section 3 provides that no person shall operate or give permission for the operation of a motorboat on the waters of this State unless such motor-

boat is *numbered* in accordance with our law or in accordance with applicable federal law or the numbering system of another State, yet section 4, paragraph II, requires the *number* issued by the Coast Guard or another State to be *recorded* in this State where the motorboat has been within this State for a period in excess of 90 consecutive days.

Therefore, we must conclude that a motorboat numbered in accordance with applicable federal law or the numbering system of another State which has been within this State for a period in excess of 90 consecutive days must have that number recorded with the Commissioner of Inland Fisheries and Game.

GEORGE C. WEST
Deputy Attorney General

August 24, 1961

To: Governor John H. Reed
State House
Augusta, Maine
Re: Casco Bay Lines

Dear Governor Reed:

On Wednesday, August 23, a request was received in this office from the Maine Public Utilities Commission asking our interpretation and construction of Chapter 79 of the Private and Special Laws of 1959, and particularly section 3 of that chapter.

Section 3 of Chapter 79, Private and Special Laws of 1959, amends Private and Special Laws of 1929, Chapter 114, section 1, by adding subsection (f) which reads as follows:

> "Ferry service between mainland and islands in Casco Bay. Whenever it is determined by the Public Utilities Commission that ferry transportation for persons and property between the mainland and the islands in Casco Bay located within the limits of the City of Portland and the Town of Cumberland can no longer feasibly be provided by private operators at rates established by said Public Utilities Commission, the Port Authority shall take such means as shall be necessary to provide such service, either through contract with private operators or by acquiring and operating the necessary facilities as provided herein."

In discussing this section with the Public Utilities Commission's attorney, we both agreed that the feasibility relates directly to rate establishment which is not the particular problem presented in the present Casco Bay Lines situation because of the following language in this subsection:

> "Whenever it is determined by the Public Utilities Commission that ferry transportation . . . can no longer feasibly be provided by private operators at rates established by said Public Utilities Commission, the Port Authority shall take such means as shall be necessary to provide such service . . . "

We, therefore, look to other sections of the Maine Port Authority law which are scattered throughout Private and Special laws from 1929 until 1959. For-

getting for the moment section (f) above, we refer you to section 1, subsection (b), which sets forth the Port Authority's purposes.

> "The said Port Authority is constituted a public agency of the State of Maine for the general purpose of acquiring, constructing and operating piers and terminal facilities at the Port of Portland and the Port of Bar Harbor and for the purpose of securing and maintaining adequate ferry transportation for persons and property between the mainland and the islands in Casco Bay located within the limits of the City of Portland and the Town of Cumberland, with all the rights, privileges and power necessary therefor, . . . "

We then refer you to the second paragraph of section 6 of the Port Authority law which reads as follows:

> "The Maine Port Authority may take for public use, for its purposes, any property, right, easement, use, interest or estate in any wharf, dock, pier or site, including related approaches, abutments and appurtenances, ferry line, boat or landing area already appropriated to or charged with a public use, under the power of eminent domain; but consideration shall be given to such existing public use and all reasonable efforts shall be made to interfere no more than may be reasonably necessary with the business, service or functions of the owner, operator, possessor or other person controlling, managing or operating such existing public use. No such property, right, easement, use, interest or estate already appropriated to or charged with a public use shall be taken without contract with or consent of the owner, operator, possessor or other person controlling, managing or operating the same, unless or until the Public Utilities Commission, after notice and hearing, shall have determined that such property, right, easement, use, interest or estate appropriated to or charged with a public use is necessary to said Authority for the purposes of this act, and that the taking by said Authority is in the public interest."

It appears to us that under the present situation where certain of the wharves have been closed by order of the Public Utilities Commission, that the Maine Port Authority may take, under its purposes as stated in section 1, above referred to, by the authority granted in the second paragraph of section 6, the necessary wharf rights and landing areas, in behalf of the State of Maine, at a reasonable market value figure and proceed on a repair program; meanwhile, allowing the Casco Bay Lines Co. to continue its ferry operation. This seems proper, particularly in light of the following language of the second paragraph of section 6:

> ". . . but consideration shall be given to such existing public use and all reasonable efforts shall be made to interfere no more than may be reasonably necessary with the business, service or functions of the owner, operator, possessor or other person controlling, managing or operating such existing public use."

Any such eminent domain proceedings could not be accomplished "until the Public Utilities Commission, after notice and hearing, shall have determined that such property, right, easement, use, interest or estate appropriated to or charged with a public use is necessary to said Authority for the purposes of this act, and that the taking by said Authority is in the public interest."

The law above quoted in which the Maine Port Authority may proceed seems to us to better fit the present problem than does section (f) in which apparently there is some question in the minds of the Public Utilities Commission as to the feasibility heretofore discussed. The Public Utilities Commission might well find it difficult to determine that it is no longer feasible for a private operator to provide service according to the established rates.

We see no reason why you, as Governor, could not request the Maine Port Authority to proceed along the lines as outlined in the second paragraph of section 6. It would appear that the State then would be going as far as it necessarily would have to and still allow the continuance of the business by private operation.

I believe that the general consensus is that the State should not be in the ferry business. This action would put the State in the position of helping to continue service to the islands and yet not actually delving into the operation of the ferry line.

Very truly yours,

FRANK E. HANCOCK

Attorney General

August 25, 1961

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: School Administrative District #4

This is in answer to your request for an opinion dated August 18, 1961, relative to expenditures for capital outlay purposes by the district directors.

As I understand it, some $23,000.00 previously obtained from the participating municipalities when the district was formed has been carried from year to year by the district directors as a balance carried forward. The directors have designated that sum as a contingency account. The voters of the district did not set up the account as a contingent account at a budget meeting as provided in Revised Statutes, Chapter 41, Section 111-S, nor was the balance set up as a reserve fund for capital outlay purposes under R. S., c. 41, § 111-L-1.

You inquire whether or not the directors can use the $23,000.00 to supplement a $145,000.00 capital outlay bond issue where the amount authorized in the district budget meeting of $145,000.00 is not sufficient to complete the work contemplated.

Since the voters have not designated the $23,000.00 as a contingency fund or a capital reserve fund at the district budget meeting, I find no authorization in the law to use that money to supplement the bond issue.

The fact that a bond issue originally authorized is not sufficient to carry out the contemplated work has been anticipated in the law and the procedure for obtaining additional capital outlay bonds or notes not exceeding 1 per cent of the total State valuation of all participating towns in the district is set out in R. S., Chapter 41, § 111-K, second paragraph.

It is our recommendation that the directors follow the above procedure of obtaining additional funds by supplemental bond issue rather than use the $23,000.00 account previously carried forward.

RICHARD A. FOLEY

Assistant Attorney General

August 25, 1961

To: Governor John H. Reed

Re: Validity of Appointment of Chairman of Board of Registration of Voters

You have requested us to give an opinion with regard to the advisability of asking the Supreme Judicial Court for a ruling as to whether or not the appointment of the Chairman of the Board of Registration of Voters of Lewiston was valid.

Under the terms of the Constitution of the State of Maine, the Justices of the Supreme Court are required to give opinions to the Governor only when the occasion for that opinion is "solemn." At one time it was thought that any determination by the Governor that an occasion was solemn would not be questioned by the Court. See 95 Me. 564 (Dissent). However, our Supreme Court has ruled that it will first decide whether or not an occasion is solemn before it answers a request for an opinion. *Opinion of the Justices,* 95 Me. 564, 567. The Justices of the Supreme Court thus have the final authority to determine whether or not they will answer a request for an opinion.

It has been determined that opinions requested of the Supreme Court will be given only if their giving enables the requesting party to take affirmative action. *Opinion of the Justices,* 147 Me. 410, 415. Where no action is possible on the part of the requesting authority, no opinion will be given by the justices; *Opinion of the Justices,* 95 Me. 564, 567. *Opinion of the Justices,* 147 Me. 410, 415-416; 148 Mass. 623; nor will the Supreme Judicial Court give an opinion involving the rights of parties where those same rights can and may be the basis of subsequent private litigation which could eventually come before the said Supreme Judicial Court. *Opinion of the Justices,* 95 Me. 564, 569-571.

It thus appears:

1. That the Court will determine when a solemn occasion exists.
2. A solemn occasion does not exist where no affirmative action can be taken by the requesting party.
3. No solemn occasion exists when the issues forming the basis of the request can be determined by private litigation.

In the instant case, the Chairman appointed by you, which appointment was contested by an appointee of the Mayor of Lewiston. Your appointment has already been made, and there does not seem to be anything further which you, as Governor, can do with regard to this matter. The dispute between the two gentlemen in question can, and should be, resolved through the ordinary judicial processes. For either of these reasons, it is our opinion that the Supreme Judicial Court would determine that the occasion for an opinion determining this controversy would not be solemn. They would, therefore, refuse to give an opinion.

THOMAS W. TAVENNER
Assistant Attorney General

September 12, 1961

To: Steven D. Shaw, Administrative Assistant, Executive Department

Re: Council Order Number 444

Reference is made to your memo of August 22 in which you ask for our comments relative to the jurisdiction of the Governor and Council in this matter.

It would seem appropriate to point out a little past history relative to the subject matter of this Council Order. The Federal Civil Defense Act of 1950 was amended by Public Law 85-606. Title II, section 205 was amended by section 4 of the above Public Law to provide that the Federal Government would contribute sums which would "not exceed one-half of the total cost of such necessary and essential state and local Civil Defense personnel and administrative expenses."

This amendment also provided that the grants from the Federal Government should be made by the Federal Administrator of Civil Defense after plans for the State Civil Defense activities had been submitted by the States and approved by the Federal Administrator.

Among the plans to be submitted shall be — "(4) Provide for the employment of a full time Civil Defense Director, or Deputy Director, by the State, and have such other methods of administration, including methods relating to the establishment and maintenance of personnel standards *on the merit basis,* (Emphasis supplied) (Except . . .) as the Administrator shall find to be necessary and proper for the operation of the plan;"

You will note that the Federal law simply provides that any plan which relates to personnel and administration shall provide that personnel standards shall be *"on the merit basis."* There is no reference in the Federal law to the requirement that the merit basis be the same as used in the State. Presumably any employment by the political subdivisions of the State in Civil Defense could be on a merit basis even though not the same as that used by the State.

Next, we would call to your attention that during the 100th Legislature there was introduced L.D. 1126 which was amended by Committee Amendment A, #H-281. This Legislative Document as amended was indefinitely postponed. The wording of the Committee Amendment A was substantially the same as that contained in Council Order Number 444. This would indicate to us that the legislature did not favor the action taken by the Council.

This office can now point out that the Personnel Board is a creature of the Legislature. The Personnel Board being created by the Legislature and its duties prescribed by that body, can only have its duties enlarged or diminished by the Legislature. It is the opinion of this office that the Executive Council has no jurisdiction to order the State Personnel Board to extend its services to the political subdivisions of the State. That action can be taken only by the Legislature.

The Council Order further authorizes political subdivisions to accept the service of the State Personnel Board and adopt the regulations of that Board. The political subdivisions of the State are created and controlled by the Legislature. Only the Legislature can authorize political subdivisions to do or not do certain acts. This authority does not extend to the Executive Council.

It is, therefore, the conclusion of this office that Executive Council Order Number 444 has no effect as far as the State Personnel Board or the political subdivisions of the State are concerned.

GEORGE C. WEST

Deputy Attorney General

September 18, 1961

To: Alfred Boudreau
State Board of Barbers & Hairdressers
1096 Broadway
South Portland, Maine

Dear Sir:

We have your letter of September 11, 1961, requesting an opinion as to the duties of the executive secretary of the Board of Barbers and Hairdressers. As we understand it, you are requesting an opinion as to whether under the provisions of Chapter 359, Sections 213 and 230A of the Public Laws of 1961, the executive secretary of the Board of Barbers and Hairdressers will be required to make personal inspections of barbers and hairdressers establishments or whether these inspections can be conducted by special inspectors under the direction of said secretary.

As of September 16, 1961, Revised Statutes, Chapter 25, Section 213, is no longer in effect and has been replaced by the above Chapter 359. The old provisions have now been repealed and we will not consider them in answering your question. Paragraph 4 of Section 213 of the new law clearly states that the executive secretary shall make sanitary inspections as directed by the Board. This section also provides for the employment of special inspection personnel. Taking these two provisions together, it is our opinion that if the Board so directs, the executive secretary may turn over all inspection duties to his Board of Inspectors.

As Section 230A of Chapter 359 is substantially identical to Section 213, the same rules of construction would govern.

It is our conclusion, therefore, that the executive secretary need inspect neither hairdressing establishments nor barber shops personally unless so directed by the State Board of Barbers and Hairdressers.

Very truly yours,

THOMAS W. TAVENNER
Assistant Attorney General

September 19, 1961

To: Mrs. Ina G. Bean, R. N.
Board Member
Maine State Board of Nursing
363 Main Street
Lewiston, Maine

Dear Mrs. Bean:

I have your letter of September 15 replying to my letter of August 4. It is rather difficult to draw a definite line as to what records may be considered public records and what records may be considered confidential.

I believe, however, that the first section of the so-called Right to Know Law perhaps gives considerable assistance in framing a definition. This section says:

"The legislature finds and declares that *public proceedings* exist to aid in the conduct of the people's business. It is the intent of the legislature that their actions be taken openly and that their deliberations be conducted openly." (Emphasis ours.)

From this and the other provisions of this law it may be said in general that any records made as the result of an action or actions taken by the Maine State Board of Nursing are public records.

These records are to be distinguished from records furnished to the Maine State Board of Nursing by other people. Such records furnished to the Board would not be public records, but would be treated as confidential records.

As applied to the situations outlined in your letter, I would say that under item 1, applications, transcript of high school and school of nursing, and letters of reference, would be confidential. The examination records with achievement grades being records made by the Board, would be public records.

Item 2. These items being matters furnished to the Board would not be public records insofar as the Board is concerned. I might state, of course, that any record of prosecution is a public record in the court where the prosecution took place.

Item 3. Character references would, of course, be confidential as they would be records furnished to the Board.

Item 4. It is difficult to determine the status of reports and surveys of the schools upon which their accreditation status is dependent. Here again, I think it depends on whether the reports and surveys are made by the members of the Board, in which case they would be a public record. If the reports and surveys are furnished to the Board by the schools, then the reports and surveys would be confidential. Of course, any determination of accreditation or non-accreditation made by the Board as a result of the reports and surveys would be public records as they are the result of public proceedings transacted by the Board.

I trust that this will assist you in determining what information may be given out by the Board and what information may be withheld.

Very truly yours,

GEORGE C. WEST
Deputy Attorney General

September 20, 1961

Honorable Welden W. Hanson

House of Representatives

Bradford, Maine

Re: P. & S. Laws of 1961, C. 82

Dear Representative Hanson:

This is in answer to your letter of September 15, 1961, regarding the Bradford School District.

I can well understand your concern with the action of the trustees of the Bradford School District in drilling for water on the school lot, however, the trustees of the district have the authority to manage the affairs of the district

under Section 2 of the legislation authorizing the district. This authority to manage the affairs of the district includes control of the real property.

I note that the trustees have the power to issue bonds and notes not exceeding $50,000.00 and that the current assets of the Town of Bradford held for elementary school purposes may be turned over to the trustees upon authorization of the voters. If the trustees are expending money received by bonds or notes or monies transferred to the district by authorization of the voters, then the trustees are apparently expending the money within the authority granted in the law. Since the district is a quasi-municipal corporation under Section 4 of the law, the trustees act as a separate entity separate from the Board of Selectmen.

You inquire whether or not injunction proceedings should be instituted against the trustees. Any citizen of the town could initiate such a proceeding but I am very doubtful that a court would interfere with the discretion of the trustees since they have authority to expend money for acquired property for the Bradford School District.

Very truly yours,

FRANK E. HANCOCK

Attorney General

September 22, 1961

To: Harry Henderson, Deputy Treasurer

Re: Unemployment Compensation Funds

Reference is made to your memo of August 31 enclosing photocopies of correspondence with the Travellers Insurance Company together with copy of an opinion from this office dated December 31, 1956.

You ask: "Has any change in legal provisions been made since December 31, 1956 which would alter the opinion issued by Mr. Frost at that time?"

As I understand the situation, there is a new federal program known as the Temporary Extended Unemployment Compensation Act of 1961 (TEC). The Federal Government has asked whether or not the bond of the Treasurer of the State covers funds transmitted to the State by the Federal Government under this Act.

This office confirms the opinion by James Glynn Frost, former Deputy Attorney General, dated December 31, 1956, and advises that this opinion covers the additional funds coming to the State through the new federal program. It is the opinion of this office that the bond of the State Treasurer does cover the funds received under the provisions of the Temporary Extended Unemployment Compensation Act of 1961. I might state that since the opinion of December 31, 1956 the Treasurer's bond has been increased from $150,000 to $500,000.

GEORGE C. WEST

Deputy Attorney General

September 27, 1961

To: Honorable John H. Reed, Governor of Maine

Re: Meaning of Term "Regular Election" — Public Laws of 1961, C. 302

This is in answer to your request for an interpretation of the term "any regular election" as contained in Chapter 302 of the Public Laws of 1961.

Subparagraph E-3 of Chapter 302, Public Laws of 1961, provides:

> "Paragraph E shall not be effective in any city until a majority of the legal voters, present and voting, at *any regular election* so vote, and shall not be effective in any town until an article in a town warrant so providing shall have been adopted at an annual town meeting. The question in appropriate terms may be submitted to the voters at *any regular city election* by the municipal officers thereof and shall be so submitted upon petition of at least 20% of the number of voters voting for the gubernatorial candidates at the last state-wide election in that municipality. Such petition shall be filed with the municipal officers at least 30 days before *such regular election.* When a municipality has voted in favor of adopting paragraph E, said paragraph shall remain in effect until repealed in the same manner as provided for its adoption." (Emphasis supplied)

The key phrase in the above-mentioned section is "The question in appropriate terms may be submitted to the voters at any regular city election. . ." The words underlined above "any regular election" and "such regular election" relate to the words "any regular city election." It is my opinion that "any regular city election" does not mean a general election for state, county or national officers, a referendum election or special election but means the city election provided for in the city charters for the election of municipal officers.

The same reasoning applies to a town vote on the question, i.e., the question may be presented at the annual town meeting and not at a special meeting.

FRANK E. HANCOCK

Attorney General

September 28, 1961

Governor John H. Reed
State House
Augusta, Maine

Dear Governor Reed:

We have an inquiry from Alvin W. Perkins as to his status as Judge of the Piscataquis Municipal Court after October 7, 1961, the expiration date of his present term.

Sec. 2 of Chapter 386 of Public Laws, 1961, refers to the transition from the present municipal court system to the district court system. The second paragraph of that section reads as follows:

> "After the effective date of this act, except as provided in the following paragraphs, no trial justice and no judge, associate judge

or recorder of a municipal court shall be appointed or reappointed; but the term of any trial justice and of any judge, associate judge or recorder of a municipal court, holding office at the time of the effective date of this act, which shall expire prior to the establishment of the District Court in the district in which such trial justice resides, or such municipal court is located, is extended until such establishment."

In our opinion, this language extending the terms of municipal court judges violates the constitution. Article VI, section 8 of the Maine Constitution states that judges of municipal courts shall be appointed and hold this office for 4 years. This cannot be abrogated by legislative act.

The law further provides that:

"If in a municipal court the office of judge becomes vacant prior to the establishment of the District Court in the district in which such municipal court is located, and there is an associate judge of such court, he shall thereafter, and until the District Court is established in the said district, be paid the same salary as provided for the office of judge of such court. If such court has no associate judge, the Governor may, with the advice and consent of the Council, notwithstanding that such court may already have a recorder, appoint an associate judge of such court to serve until the establishment of the District Court in such district; and such associate judge shall be paid the same salary as provided for the office of judge of such municipal court. Upon the establishment of the District Court in the said district such municipal court shall cease to exist, and all cases pending in such court and all of its records shall be transferred to the District Court for the division in which such court was located; and all persons then on probation pursuant to order of such municipal court shall be deemed to be on probation under the order of said District Court."

By Private and Special Act the Piscataquis Clerk of Courts is automatically recorder of the Piscataquis Municipal Court. By statute a recorder becomes an associate judge if he is a member of the bar. At the present time Keith N. Edgerly, an attorney, is Clerk of Courts of the County and Associate Judge of Piscataquis Municipal Court. Therefore, he will continue to serve as Associate Judge and be paid the same salary as provided for the office of Judge. Judge Perkins's duties will cease as of October 7, 1961.

In those jurisdictions in which judges' terms expire before the establishment of a district court and where there is no associate judge, you may appoint an associate judge for a term of four years. Upon the establishment of a district court, such municipal court and the associate judge's duties will cease to exist, albeit he will continue to be, in name, an associate judge until the expiration of his four-year term. Of course, he may resign at any time.

Judges whose terms expire before the establishment of a district court may, of course, be reappointed as associate judges for four-year terms, provided there is no associate judge presently serving.

Very truly yours,

FRANK E. HANCOCK

Attorney General

September 29, 1961

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

Re: Cancellation of Social Security Agreement with South Portland Housing Authority

Reference is made to your memo of September 18 to which you attached a copy of the letter from the Regional Representative, Bureau of Old-Age and Survivors Insurance.

The question seems to be whether or not a city may terminate a housing authority which has been active in that city.

The creation of a housing authority is set forth in Revised Statutes of 1954, Chapter 93, section 3, as follows:

> "In each city and in each town there is created a public body corporate and politic to be known as the 'Housing Authority' of the city or town; provided, however, that such authority shall not transact any business or exercise its powers hereunder until or unless the governing body of the city or the annual meeting of the town, as the case may be, by proper resolution shall declare that there is need for an authority to function in such city or town;"

Section 4 of the same statute provides for the appointment of commissioners by the proper city or town officials. Apparently the City of South Portland at one time created a housing authority in accordance with section 3. Now the City of South Portland has decided it does not need an active housing authority and the City Council has passed an order attempting to terminate the housing authority in that city.

It is quite apparent that the legislature has created the housing authority and the city has only activated this authority. Chapter 93 does not provide for a method of terminating such an authority. Only the legislature can terminate a housing authority as it is the body which created it.

A city or town may suspend the active status of an authority by failure to have commissioners appointed on the completion of the term of office of current commissioners.

It would follow that the action of the City Council would simply suspend the operation of the authority but does not terminate it as a public body corporate and politic. Of course, it cannot function until it is revived and commissioners appointed, but this can be done at any time the City Council decides it is necessary.

GEORGE C. WEST

Deputy Attorney General

October 9, 1961

To: Warren G. Hill, Commissioner of Education

Re: School Construction Assistance under Chapter 41, Section 237-H

You have inquired whether or not a town which authorized school construction and sold a bond issue to finance the construction prior to August 28, 1957,

is eligible for the school construction aid under Revised Statutes, Chapter 41, Section 237-H.

Revised Statutes, Chapter 41, Section 237-H, provides in part as follows:

". . . Said apportionment (construction aid) shall apply similarly to payments made for capital outlay purposes on school construction, approved by the commissioner after August 28, 1957, in single municipality administrative units where the April 1st enrollment of resident and tuition pupils in grades 9 through 12 for that year is over 700 pupils. . ."

The approval of the commissioner indicated above is the approval contained in Revised Statutes, Chapter 41, Section 26, which provides,

". . . all plans and specifications for any such proposed school building and plans for the reconstruction or remodeling of any school building, the expense for which shall exceed $500, shall be submitted to and approved by the Commissioner and the Bureau of Health before the same shall be accepted by the superintending school committee. . . ."

The facts relevant as to whether or not the town qualifies for the construction aid are as follows: The town authorized a $650,000 bond issue on May 27, 1957, and sold the bonds on August 1, 1957. The plans and specifications for the construction were submitted to the Department of Education for the Commissioner's final approval on or about April 10, 1958. On June 11, 1958, the contract for construction was executed. The plans were finally approved by the Commissioner of Education on May 26, 1959. No moneys were expended for construction nor was construction commenced until after August 28, 1957.

Although the plans and specifications for the construction were not approved until after construction was begun, in contravention to Chapter 41, Section 26, of the Revised Statutes, since no funds were expended and no construction was begun until after August 28, 1957, the town qualifies for the construction aid under Revised Statutes, Chapter 41, Section 237-H. The fact that the town voted the bond issue and the bonds were dated before August 28, 1957, are not the determining factors in the above situation but rather the expenditure of money, commencement of construction and final approval of the plans after August 28, 1957, are the determining factors.

RICHARD A. FOLEY

Assistant Attorney General

October 9, 1961

To: Steven D. Shaw, Administrative Assistant, Executive Department

Re: Associate Judge, Auburn Municipal Court

This will answer your verbal request for the basis of the judge of the Auburn Municipal Court appointing an associate judge of said court.

The charter of the Auburn Municipal Court was revised in 1915, Private and Special Laws, Chapter 194. Section 4 of the charter was amended by Private and Special laws of 1955, Chapter 124, section 2, and reads as follows:

"The recorder of said court shall be a citizen of said Auburn and a member of the bar of the county of Androscoggin, and shall be ap-

pointed by the Governor, by and with the advice and consent of the Council, for a term of 4 years; and he shall be sworn, and give bond to the county as required by law. In case of the absence of said recorder from court, or should a vacancy occur in the office of recorder, the judge may appoint a recorder, pro tempore, who shall be sworn by said judge, and act during such absence, or until such vacancy be filled. Said recorder shall receive an annual salary of $2,250 and an annual allowance of $1,400 for clerk hire, to be paid to him in monthly payments from the treasury of the county of Androscoggin."

As you can see from the second sentence of section 4, when a vacancy occurs in the office of recorder, the judge may appoint a recorder pro tempore who shall act during such absence or until such vacancy be filled.

In the Public Laws of 1959, Chapter 42, we find — "From and after the effective date of this act the title 'recorder' of any municipal court shall be 'associate judge' of the said municipal court, provided said recorder is an attorney at law."

By virtue of the Auburn Municipal Court charter and the above-quoted provision of the statutes, it appears that the judge of the Auburn Municipal Court has the authority to appoint an associate judge after a vacancy had occurred in that office by the death of the associate judge and the further fact that the vacancy had not been filled by gubernatorial appointment.

GEORGE C. WEST

Deputy Attorney General

October 11, 1961

To: Governor John H. Reed

Re: Councillor District, Re Apportionment and Continuation of

Reference is made to your memo of October 10 in which you refer to Chapter 109, Resolves 1951. "Resolve, Dividing the State into Executive Councillor Districts." You further state: "It would appear, after reviewing the content of the Resolve, that the districts therein created would cease to exist after December 31, 1962." You have asked the following questions:

1. Is the observation made in the first paragraph substantially correct?

Answer: Yes. This Resolve provides in part — "That for the years 1953 to and including the year 1962, the state is hereby divided into 7 councillor districts, . . . " Very definitely this Resolve extends only to the end of the year 1962 so that the effect of this Resolve expires December 31, 1962.

2. If the answer to Question Number 1 is in the affirmative, would you kindly elaborate, for my information, on the representation status of the Executive Councillors providing that legislative action is not taken to continue the Executive Councillor Districts or recreate these or other Districts?

Answer: An examination of the Public Laws or Revised Statutes discloses that there are no provisions for the distribution of Executive Councillors throughout the state.

The Constitution of Maine, Article V, Part Second, Section 2, provides that the Councillors shall be chosen biennially on the first Wednesday of January by

joint ballot of the Senators and Representatives in convention, and further provides that vacancies which shall afterwards happen shall be filled by the Governor with the advice and consent of the Council from the same District in which the vacancy occurred and the oath of office shall be administered by the Governor, said Councillor to hold office until the next convening of the legislature. The Constitution then provides — " . . . but not more than one counsellor shall be elected or appointed from any district prescribed for the election of senators; . . . "

The term of office of a Councillor expires at midnight following the first Wednesday of January. *Opinion of the Justices,* 70 Me. 570. If no legislative action is taken to continue the Executive Councillor Districts or recreate other Districts, the legislature in joint convention on the first Wednesday of January may choose Councillors provided that no Senatorial District shall have more than one Councillor. In other words, 7 of the 16 Senatorial Districts would be entitled to a Councillor.

3. If it is the desire of the Legislature to provide for the continuation of the provisions of Chapter 109, Resolves 1951, would you kindly advise me as to how, you believe, this could best be accomplished?

Answer: This office believes that the 7 Councillor Districts should be set forth in the Revised Statutes, Chapter 11, which relates to the Executive Department and the Council. If this is done, it will not be necessary for someone to remember every 10 years to present a Resolve to the legislature. Normally, there would be no one person who would have this procedure of apportionment by Resolve on his calendar 10 years hence.

It would probably be advisable to have a Resolve setting forth the years in which each county within a Councillor District is to be entitled to a Councillor. It would be most difficult to word this matter in the Revised Statutes, and would be a method of assuring the small counties in a District of proportional representation. Even if a legislature forgot to make this apportionment after a ten-year period, at least the Councillor District would have its proper representation.

In any event, it would appear advisable and probably necessary that some action relative to Councillor Districts be taken at the coming special session. It would be legally correct to enact a Resolve in the form of Chapter 109, Resolves of 1951, if the legislature does not wish to add a section to Chapter 11 setting forth the Councillor Districts.

GEORGE C. WEST

Deputy Attorney General

October 18, 1961

To: Asa Gordon, Coordinator of Maine School District Commission

Re: Application for the Formation of a School Administrative District by Superintending School Committee

This is in answer to your request for an opinion relative to the application for the formation of a school administrative district under Section 111-F of Chapter 41 of the Revised Statutes, when a community school district proposes to

form a school administrative district under Chapter 41, Section 111-F, subsection IV.

The question is whether or not the superintending school committee of the community school district should make the recommendation to the Maine School District Commission for the formation of the School Administrative District or whether the towns within the community school district who no longer have superintending school committees should elect new superintending school committees for the purpose of recommending the formation of the School Administrative District.

It is our opinion since the superintending school committee of the community school district is the body responsible under the law for the education of the children within the community school district and the superintending school committees of the various towns are not in existence and have no responsibility, the proper agency to make the recommendation is the superintending school committee of the community school district.

RICHARD A. FOLEY
Assistant Attorney General

October 24, 1961

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

Re: Bond-Mortgage Swaps

Your memo of October 6 has asked a question relative to the swapping, by banks, of bonds for FHA or VA mortgages and how this transaction shall be carried on the books of the bank.

The typical situation seems to involve a swap at current market price, usually below the par value figure and at a time when the market value of the bonds is below the actual cost of the bonds to the bank.

The question is whether the mortgages shall be entered on the bank's records at their current market value or at their par or face value.

The Revised Statutes, 1954, Chapter 59, section 19-J, II, provides in part:

> "No item of assets shall be entered on the books of the bank at a figure in excess of its *actual cost* to the bank; . . . " (Emphasis supplied)

This language seems to be very definite, clear cut, and not susceptible of any ambiguous meaning. Any asset purchased or obtained by the bank must be carried on its books at no more than its *cost* to the bank. The matter of *value* does not enter the picture. The bank's records must reflect the *cost* to the bank. The asset may have a *value* in excess of the *cost* but the latter is the figure to be carried on the books of the bank.

In the event a bank swaps bonds for mortgages worth an equivalent amount, at the current market price, that figure represents the *cost* of the mortgages and is the figure to be carried on the books of the bank.

This is confirmed by the next clause following that quoted above, which reads:

> "nor shall the book value of any such item be thereafter increased,

except upon the written authorization of the Bank Commissioner, or . . . . . "

This clause differentiates between *cost* and *book value*. When circumstance requires, the Bank Commissioner may approve the increased *book value* to be entered upon the records, but until that time the asset shall be carried at its *cost* figure.

We feel that a careful reading of sections 19-J, I, III, and second paragraph of IV, bears out this opinion as to the method of recording such swaps on the books of the bank. By these provisions a bank is to record its financial transactions so as to accurately and promptly reflect its condition and earnings.

GEORGE C. WEST

Deputy Attorney General

October 24, 1961

To: Irl E. Withee, Deputy Commissioner of Banks and Banking

Re: Proposed Program of Cambridge Consultants, Inc.

We have your request for an opinion dated October 19, 1961 with regard to the proposed program of Cambridge Consultants, Inc. This program would make available to Maine industry additional banking services. The proposed services will be taken up in the order in which they were presented to us.

1. It is not a violation of the banking law in a program by which a registered bank places racks containing bank-by-mail materials in or on the company premises.

2. It is not a violation of the banking law for a bank to make such materials available to a company through specified personnel within that company.

3. It is not a violation of the banking law for banks to give preferred rates for loans and other bank services to long-term employees.

4. It is not a violation of the banking law for a bank to give financial counseling to company employees either at the employee's home, at the bank, or via the telephone.

5. It is not a violation of the banking law for company employees to serve as "plan advisers" whose function would be to answer questions about the plan.

6. It is not a violation of the banking law for the company to be authorized by the employee to make payroll deductions for transmittal to the bank.

7. We do not at this time feel that we can approve a service by which the bank would take over payroll functions of the company. This office feels that a more thorough study of this question would be warranted before any conclusion can be drawn. For this reason, we neither approve nor disapprove of this proposal.

8. It is not a violation of the banking law for a bank to give away an inexpensive item to each employee opening an account.

An opinion with regard to item No. 7 above will be issued as soon as the necessary research has been done.

THOMAS W. TAVENNER

Assistant Attorney General

October 24, 1961

To: Leslie G. Hilton, Examiner III Banks and Banking

Re: Articles of Incorporation of Waterville Savings and Loan Association

We have your request of September 26 for an opinion with regard to the capital stock of the Waterville Savings and Loan Association.

As we understand your question you have asked: 1) Whether or not the limitation placed upon the capital stock of this association has automatically been removed by the provisions of Chapter 59, Revised Statutes as amended by the 100th Maine Legislature. 2) If the answer to question number 1 is in the negative, what procedure must be followed by the Waterville Savings and Loan Association in order to remove the capital stock restriction.

We have examined the amended statutes relating to savings and loan associations and have determined that these provisions permit associations to adopt or amend charters so as to eliminate any limitation whatsoever upon the amount of their capital stock. We have found nothing, however, which would indicate a legislative intent to make such elimination of limitation mandatory. Section 157-Z-36, states that associations established prior to the enactment of this new legislation shall enjoy all the privileges and be subject to all the requirements imposed upon an association organized subsequent to the enactment of this legislation. The difficulty is, however, that nowhere in this new act is there any requirement that an association have unlimited capital stock. Therefore, it is our opinion that this new legislation allows an association to adopt a charter which contains no limits with regard to capital stock, but does not impose any requirement forbidding such a limitation. For this reason, the charter of the Waterville Savings and Loan Association is not automatically amended by Revised Statutes, Chapter 59.

The second question which you ask is what steps must be taken by the Waterville Savings and Loan Association in light of the negative answer which we have given to your first question. As the Bank Commissioner under the provisions of this new legislation has no power to approve or in any way affect amendments to charters of savings and loan associations, there is no necessity or opportunity for action by the State in this matter. For this reason, and because we are limited by law so that we may give advice and opinions only to the Governor and Council, the respective branches of the legislature, and to department heads on questions of law that affect the State, we feel that the method by which the Waterville Savings and Loan Association must amend its charter should be left to the determination of the attorneys for that association.

It is our conclusion, therefore, that the limitation contained in the charter of the Waterville Savings and Loan Association is not eliminated automatically by Revised Statutes, Chapter 59, sections 157-A through 157-Z-36.

THOMAS W. TAVENNER

Assistant Attorney General

October 25, 1961

Robert P. Brown
Superintendent of Schools
School Administrative District #13
Bingham, Maine

Dear Mr. Brown:

This is in answer to your letter of October 13, 1961.

I have consulted with Kermit S. Nickerson with the Department of Education and he exhibited to me a letter dated October 4, 1961, answering the question which you propose relative to the exclusion of married students. I am in agreement with the reasoning of Mr. Nickerson's letter that under the law, marriage is not a reason for excluding a student from school.

Very sincerely yours,

RICHARD A. FOLEY
Assistant Attorney General

October 25, 1961

Honorable Welden W. Hanson
Bradford, Maine

Dear Representative Hanson:

This is in answer to your letter of October 14, 1961, relating to the Bradford School District.

Under Private & Special Laws of 1961, Chapter 82, Section 3, a vacancy caused by the resignation of a trustee of the school district is filled by appointment by the municipal officers of the town. We interpret this to mean that the selectmen of the town must appoint offices presently vacant by reason of resignation.

Since the trustees of the school district are appointed by the selectmen and since the trustees report annually to the selectmen as to financial affairs of the district, I am of the opinion that the selectmen should not appoint one of their own members as a trustee of the district.

Very sincerely yours,

RICHARD A. FOLEY
Assistant Attorney General

October 25, 1961

To: Earle R. Hayes, Executive Secretary of Maine State Retirement System

Re: Adjustments in Retirement Benefits for National Guard Service

Reference is made to your memo of October 19 concerning adjustments in retirement benefits made to those persons already retired who should have received prior service credits for Maine National Guard service.

I would call your attention to Revised Statutes, Chapter 63-A, section 13, subsection VIII, which provides in the last two sentences:

"The board of trustees, upon discovery of any error in any record

of the system, shall, as far as practicable, correct such record. If any such error results in the receipt from such system by any member or beneficiary of more or less than he would have been entitled to receive had the records been correct, payments shall, as far as practicable, be adjusted in such manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid."

It is my opinion that the failure of the trustees of the retirement system to give prior service credits for Maine National Guard service constitutes an error by the trustees.

Therefore, adjustments in the benefit amount presently being paid to State employees and/or teachers who did not receive, at point of original retirement, credit for National Guard service should now be made, together with retroactive payments to the date of original retirement.

Adjustments should also be made in the case of payments to a beneficiary of a deceased retirant who should have originally been credited with this service.

GEORGE C. WEST

Deputy Attorney General

October 31, 1961

To: Earle Hayes, Executive Secretary of Maine State Retirement System

Re: Status of "E.R.A." Service

Reference is made to your memo of September 18, 1961. You have asked this office to give the Board of Trustees of the Retirement System an opinion as to whether or not prior service (P.L. 1955, C. 417 § 1) credits toward retirement may be allowed to State employees who are members of the Retirement System for services rendered to the Emergency Relief Administration.

This same question was referred to the Attorney General's office in 1948 and at that time Ralph W. Farris, Sr., Attorney General, ruled that employment by the Emergency Relief Administration was not State employment and, therefore, prior service credits toward retirement were not allowable for such employment. At the moment, I am not prepared to overturn the opinion rendered by Mr. Farris.

I am not sure that what you request is truly a legal question or legal interpretation. The law is very clear that if an individual now in State employ and a member of the Retirement System was employed by the State prior to the beginning of the present Retirement System, he is entitled to prior service credits for such employment. The question of whether such employment was by the State is a question of fact which ultimately must be decided by the Board of Trustees.

It is up to the employee seeking this credit to satisfy the Board of Trustees with proper evidence that his employment by the Emergency Relief Administration was State employment. It might be well to mention four basic criteria which must be met in order for the Board of Trustees to determine that employment was by the State. The items which are set forth may not be the only ones which the Board of Trustees believe are necessary to support a claim of employment by the State. The Board of Trustees may require additional criteria as their discretion.

The four basic criteria which are essential in proving State employment are as follows:

1. The individual was employed in the usual manner by which State employees were hired at the time in question.
2. The employee performed a function for the State.
3. The pay of the employee was received through usual State pay procedures.
4. The funds from which the employee's salary was paid should be State funds or at least partially from that source.

If the Board of Trustees is satisfied that the employee's prior employment meets these four criteria, the Board of Trustees may give him prior service credits. If the employee's employment does not meet these criteria, then he was not an employee of the State and is not entitled to prior service credits.

GEORGE C. WEST
Deputy Attorney General

November 10, 1961

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

Re: In-plant banking services

We have your request of October 31 for an opinion in regard to in-plant banking services proposed by Cambridge Consultants, Inc. We understand that you want our opinion as to the legality of a Maine bank conducting services for a corporate client, which services would include taking care of payroll obligations and other clerical assistance made possible through the use of various computors and other machines in the possession of the bank.

We have examined the law with regard to this matter and find that it is now an established principle that a banking corporation may act as an agent, broker or bailee if the exercise of such a function in a particular case and manner may be taken to be legitimately and incidentally connected with the transaction of the banking business.

It is, therefore, our opinion that the services proposed by Cambridge Consultants, Inc. in item number 7 of their original letter to you would be perfectly legal and proper when conducted by a properly licensed Maine banking institution.

THOMAS W. TAVENNER
Assistant Attorney General

November 22, 1961

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Use of School Property at Loring Air Force Base for Sunday School Purposes

This department has been requested to render an opinion relative to the use of school property located on Loring Air Force Base for so-called Sunday School purposes. The situation appears to be as follows: Public buildings owned by the

federal government located on a federal reservation are presently being used as school facilities under the direction of the school committee of the Town of Limestone. The school committee operates the schools under a use and occupancy permit issued by the federal government to the school committee of the Town of Limestone but title to the building remains in the federal government. The pertinent sections of the permit issued by the federal government are as follows:

"1. That the Agency (Limestone School Committee) shall conduct in such facilities an education program for children residing on Loring Air Force Base as a part of the Agency's school system in accordance with the laws of the State of Maine."

"3. That the Agency (Limestone School Committee) shall use the Property during the term of this permit for the purpose described above, subject to such reasonable rules and regulations relative to ingress, egress, security, and non-school use as may be prescribed by the Secretary of the Air Force or the Officer in charge of the installation with the approval of the Commissioner of Education." (Words in parenthesis supplied)

The federal government at this time wants to use the school property for Sunday School instruction not during regular school hours. If the federal government interprets "non-school use" as used in paragraph 3 recited above to mean a reservation of uses for the purpose of Sunday School instruction not during regular class hours, we have no quarrel with such an interpretation. Since title to the building remains in the federal government and the school committee of Limestone has use and occupancy for limited purposes, the federal government can make such uses of the building as it deems necessary.

RICHARD A. FOLEY

Assistant Attorney General

November 27, 1961

To: Ralph L. Langille, Chief Inspector of Boilers, Labor and Industry

Re: Boilers in Buildings used for Schools for Religious Instruction

You have apparently asked several questions relative to buildings used by religious groups for the purpose of religious instruction. I will try to break these down and answer each as it appears. Before I answer each question it may be advisable to set forth certain generalities that govern the individual situations covered in your memo.

Chapter 30, section 72 as amended by Public Laws of 1955, Chapter 404, section 2, reads in part:

"Each steam boiler used or proposed to be used within this State and all hot water supply and hot water heating boilers located in schoolhouses and all boilers owned by municipalities, except boilers exempt under the provisions of section 78, etc."

Thus it appears that each steam boiler wherever situated is subject to inspection. (Of course, steam boilers exempted under section 78 are not subject to inspection.) Therefore, we are not concerned with whether a building is a schoolhouse or not if the building is heated by a steam boiler.

We are left, therefore, with "hot water supply and hot water heating boilers located in schoolhouses." We must note that the statute says "located in schoolhouses" not "located in buildings used for school purposes." The next step is to define a "schoolhouse" as used in this statute.

This has been done by the legislature in Chapter 404, P.L. 1955, as follows:

> "The term 'schoolhouse' as used in this chapter shall include, but shall not be limited to, any structure used by schools or colleges, public or private, for the purpose of housing classrooms, gymnasiums, auditoriums, or dormitories."

The key words in this definition are "any structure used by schools and colleges." In other words, the test or standard to be applied to a building is whether the building is "used by schools and colleges." Apparently the legislature felt that the test or standard to be used should be *who* used the building not necessarily *for what* it was used.

Applying this test or standard to the questions asked we come up with the following conclusions:

Question: Are hot water supply and hot water heating boilers located in buildings used in entirety as "day schools" for religious instruction *only* subject to inspection under Chapter 30?

Answer: A building used as a so-called "day school" exclusively for religious instruction is not a "schoolhouse" within the statutory definition. A building thus used is really a church building.

It follows from this that buildings used on a partial basis for classes in religious instruction *only* are not schoolhouses within the statutory definition.

It appears that the last sentence of our opinion of December 3, 1953, was not materially changed by section 1, Chapter 404, P.L. 1955 in defining "schoolhouses."

GEORGE C. WEST

Deputy Attorney General

November 27, 1961

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Subsidy Payable to Towns and Community School District in Former School Administrative District #2

This is in answer to your request for an opinion relating to the payment of state subsidy to the towns of Perham, Washburn and Wade as well as the community school district composed of the towns of Castle Hill, Chapman and Mapleton as successors to School Administrative District No. 2 which was officially dissolved on September 25, 1961.

Since School Administrative District No. 2 is no longer a legal entity, the remaining one-third payment of the subsidy payable in December of 1961 cannot be paid to the school administrative district. The question arises whether or not the remaining one-third payment of the subsidy may be paid to the towns and community school district formerly comprising School Administrative District No. 2.

Section 237-D, Chapter 41, R. S. 1954, provides in part as follows:

> "The foundation program allowance for each administrative unit,

except community school districts, which do not offer education 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 subtracted 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 this section."

The above information is filed with the Commissioner of Education and on the basis of that information, state subsidy is paid. The above information is available from School Administrative District No. 2 for the two preceding years, but is not available from the towns and community school district comprising the school administrative district.

School Administrative District No. 2 earned the subsidy on the basis of the average daily membership of the pupils attending school in the district, as well as expenditures for tuition, pupil transportation and board. The expenditures by the school administrative district for tuition, pupil transportation and board were derived from the taxes from the various towns comprising the district. The tax burden to each town within the district is apportioned in accordance with state valuation, see section 111-L of Chapter 41.

It is our conclusion that the one-third subsidy payable to the district may be apportioned among the towns and community school district comprising the former school administrative district in proportion as their state valuation bears to the total state valuation of all the participating municipalities in the former district.

Since the district is no longer an entity, however, the 10 per cent bonus payable to a school administrative district under setcion 237-G of chapter 41 should not be included within the subsidy to be apportioned to the various towns comprising the former School Administrative District No. 2.

RICHARD A. FOLEY

Assistant Attorney General

November 27, 1961

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Subsidy on Capital Expenditures

This is in answer to your request for an opinion as to whether or not school district construction may be used as a basis for construction aid under Revised Statutes, Chapter 41, Section 237-H, where funds for the district school construction were obtained through a federal grant-in-aid.

United States Code, Title 20, Sections 236 through 240, provides for federal grant-in-aid to areas impacted with federal employees.

R. S. 1954, c. 41, § 237-H provides in part as follows:

"To provide further incentive for the establishment of larger school administrative districts, the commissioner shall allocate state financial assistance to School Administrative Districts on school construction approved subsequent to the formation of such districts, . . . "

Section 237-H goes on to provide that if the district has contributed money to defray all or part of the cost of capital outlay construction, the commissioner shall determine the amount of subsidy payable to the district for this expenditure.

From the above section it is clear that the subsidy is paid on the construction and there is no requirement that the source of the funds would preclude state aid on such construction. Under the federal law the grant-in-aid to the school district becomes the property of the district for their use for educational purposes and our state subsidy law does not require that we look beyond the expenditure of the funds by the school district for the construction. It is our conclusion that state construction aid is payable even though the funds used for the construction may have been received through a federal grant-in-aid.

RICHARD A. FOLEY
Assistant Attorney General

November 27, 1961

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Union Superintendent of Schools, Apportionment of Salary

This is in answer to your request for an opinion interpreting the provisions of Section 79 of Chapter 41, Revised Statutes of 1954. Section 79 provides in part as follows:

". . . Said joint committee shall determine the relative amount of service to be performed by the superintendent in each town, including the minimum number of visits to be made each term to each school, fix his salary, apportion the amounts thereof to be paid by the several towns. . . . Said joint committee, at the time of its organization, or as soon thereafter as possible, and whenever a vacancy shall occur, shall, *subject to the conditions hereinafter provided,* choose by ballot a superintendent of schools for a term of not more than 5 years and the term for which a superintendent is elected shall, in all cases, end on the 30th day of June of the year in which the contract expires. . . The election of a superintendent of schools, as herein provided, shall not be effective unless said election shall be approved by the superintending school committee of the town in the said union having a majority of the teachers in the towns comprising the union and paying not less than 1/2 of the salary aforesaid, exclusive of any sums paid by the state for the purpose. . . " (Emphasis supplied)

You inquire whether or not the proviso that the superintending school committee of the town having a majority of the teachers in the towns comprising the union relates to the election of the superintendent only or both the election of the superintendent as well as the services to be performed, number of visits to

each school fixing the salary and apportioning the amounts of the salaries to the several towns.

It is our opinion that the proviso relates only to the election of the superintendent and not to his other duties.

RICHARD A. FOLEY
Assistant Attorney General

November 28, 1961

To: Joseph J. Devitt, Chief, Bureau of Secondary Education

Re: School Principals, Responsibilities of

You have inquired whether or not a principal may permit a law enforcement officer to question a student who is a minor on the school premises relative to the commission of a crime.

Two situations are presented — first, where the student is a witness to the crime and second, where the student is accused of a crime.

There would be no violation of a statute by the principal to permit a law enforcement officer to question a student who may have witnessed a crime on the school premises nor is there any law forbidding a principal to permit law enforcement officers to question a student who is accused of a crime when the student is under the immediate charge of the principal.

Whether or not there would be any civil liability on the part of a principal for permitting the law enforcement officers to question a student accused of a crime, this office gives no opinion. The relationship of principal to his pupils is in the nature of in loco parentis. The teacher is the substitute for the parent, see *Brooks v. Jacobs,* 139 Me. 371. But this relationship appears to be for educational purposes only and if the law enforcement officers request an opportunity to question a student who is a minor when that student is accused of a crime, the safest course to follow would be to inform the parent immediately of the request, and request the law enforcement officials to defer questioning until the arrival of the parent.

RICHARD A. FOLEY
Assistant Attorney General

November 29, 1961

To: Ransford M. Smith, Chief Examination Division of Personnel

Re: Interpretation of Chapter 192, Public Laws of 1955

The following interpretation is given for the provisions of Chapter 63, § 17 II, of the Revised Statutes of 1954, and Chapter 192, Public Laws of 1955. For the purposes of clarity, the two provisions are broken down as follows:

Chapter 63, § 17 II-A. This provision allows all veterans who have a service connected disability of greater than 0% a ten-point veteran's preference. The Veterans' Administration has three types of preference certificates they issue. They are as follows:

1. A certificate stating that the Veterans' Administration is unable to

furnish a preference certificate which implies that there is no degree of disability.

2. A certificate entitled "Present Existence of Disability for Preference Purposes." This certificate implies that for preference purposes the veteran has greater than 0% but less than 10% service connected disability. The veteran does not receive any compensation and the only practical purpose of this certificate is to enable the veteran to have the ten-point preference, whereas he is not entitled to compensation which he would receive with a 10% service connected disability.
3. A certificate entitled "Receipt of Compensation" or "Entitlement to Receive Compensation." The purpose of this certificate is to show that the veteran is receiving at least 10% compensation for a service connected disability or that he is entitled to receive the same compensation but for one reason or another has declined receipt of it. In either instance, the veteran still falls within the category of those receiving at least 10% compensation.

Chapter 192, Public Laws of 1955, entitled "An Act Permitting Reopening of Examinations for State Employment by Disabled Veterans." The provisions of this act permit a veteran to reopen an open competitive examination if he has a service connected disability to a compensable degree. The intent of the legislature in this matter is closely akin to that of the federal government and permits only those veterans who have at least a 10% service connected disability the privilege of reopening an open competitive examination.

The two provisions are clearly consistent in that the first provision gives *all* veterans with a disability rating of more than 0%, a ten-point preference; whereas the laws of 1955 extend a further privilege to only those veterans with a disability rating of 10% or greater.

Therefore, the words found in the Public Laws of 1955, Chapter 192, *"to a compensable degree"* clearly mean that the veteran must not only have a service connected disability, but must have at least a 10% disability rating to be considered a *compensable* disability.

WAYNE B. HOLLINGSWORTH

Assistant Attorney General

November 30, 1961

To: Governor John H. Reed

Re: Legislative Finance Officer

In your letter of November 30, 1961, you state:

> "Upon the election of a Governor in the November General Election, and prior to the convening of the next Legislature, meetings or hearings are conducted by the incoming Governor, with representatives of the various departments in which the anticipated needs of the departments, for the forthcoming biennium, are projected. As a result of these meetings or hearings the Governor prepares his recommendations to be made to the incoming Legislature."

You now ask:

> "In your opinion, will sub-section XV-B of the proposed Act au-

thorize or direct the proposed Legislative Finance Officer to participate or attend the meetings or hearings conducted by the Governor or members of his staff?"

The language in the proposed law states that among the duties of the proposed Legislative Finance Officer shall be:

"B. To examine all requests for appropriations made by the various executive agencies of State Government and *attend any hearings necessary to obtain complete information;*" (Emphasis ours)

In order to answer your question it is necessary to determine if the meetings or hearings held by the Governor-elect with department heads are "hearings" within the meaning of the proposed legislation.

"Hearing presupposes formal proceeding upon notice with adversary parties and with issues on which evidence may be adduced by both parties and in which all have a right to be heard, as respects whether investigations provided for in Securities Exchange Act were hearings. Securities Exchange Act of 1934, sec. 21 (a-c, e), 15 U.S.C.A. sec. 78 u (a-c, e). In re Securities and Exchange Commission, C.C.A. N.Y. 84 F 2d 316, 318."

"There are at least three essential elements of a common-law 'hearing.' The right to seasonably know the charges or claims preferred; the right to meet such charges or claims by competent evidence; and the right to be heard by counsel upon the probative force of the evidence adduced by both sides, and upon the law applicable thereto. Wisconsin Telephone Co. v. Public Service Commission, 287 N.W. 122, 133, 135, 138, 143. 232 Wis. 274."

A reading of these definitions of "hearing" indicates that one essential element of a "hearing" is that there be "adversary parties." A "hearing" therefore should have at least two opposing parties presenting opposite sides of a story to a third party for a decision. (Of course, one party may refuse or decline to present evidence.)

The type of meeting or hearing described in your letter fails to meet the criteria of the definition of a "hearing" hereinbefore set forth. Actually, it is an informal meeting of a department head and a Governor-elect to provide the latter with budget figures; to discuss them; and to give the Governor-elect necessary information on which he can make budget estimates. There is no "adversary proceeding" involved.

It is, therefore, concluded that such meetings are not "hearings" as that word is used in proposed R. S. Chapter 10, sec. 26, sub-sec. XV-B.

Therefore, the Legislative Finance Officer has no duty or right to attend such meetings.

GEORGE C. WEST

Deputy Attorney General

December 1, 1961

To: Austin H. Wilkins, Commissioner of Forestry

Re: Arborist Law — P.L. 1957, c. 169; P.L. 1961, c. 336.

We have your request of October 30, 1961, for our opinion with regard to

certain problems which have arisen under the newly enacted arborist law. We will take up your questions in the order in which they are presented.

R.S. 1954, c. 36:

Section 66 — You have asked us whether or not an unlicensed person can do work on trees owned by a relative, friend or neighbor with or without compensation. It is our opinion that this new law limits an unlicensed person to work on trees on his own premises or on the property of his regular employer. Any other work, whether gratuitous or for compensation, done for any other person would be a violation of this law.

Section 67, paragraph 2 — You have asked whether or not the power of the board to prescribe all rules and regulations governing examinations is limited to rules as to the type of examination given and the question coverage. It is our opinion that this paragraph limits the board to prescribing rules and regulations governing examinations and liability insurance and that the board cannot under this section make regulations governing who shall be required to take examinations, who shall be licensed or any other substantive matters.

Section 67, paragraph 7 — You ask whether the phrase "during the course of their employment" would exempt public utility employees from the provisions of this law while they are working on the trees of a private individual after utility company hours. It is our opinion that this particular phrase is intended to limit this exception to public utility employees when and only when they are working for the public utility company by which they are employed. They would not be exempt when working after hours for a private individual.

Section 67, paragraph 2 — You have asked us whether the power of the board to promulgate regulations with regard to liability insurance would include public liability insurance, employer's liability insurance and workmen's compensation insurance. We feel that the board under this section has the power to regulate only public liability insurance. This is because workmen's compensation insurance is regulated by statute and cannot be altered in any way by individual board regulations. We are not certain what is meant by the term "employer's liability insurance" but we assume that it is similar to workmen's compensation insurance and would, therefore, not be subject to regulation by the board.

THOMAS W. TAVENNER

Assistant Attorney General

December 1, 1961

To: Austin H. Wilkins, Commissioner of Forestry

Re: District Court Law (P.L. 1961, c. 386) — Taking of Violators by Fire Wardens to Court having Jurisdiction

We have your letter of October 11, 1961, requesting our opinion as to whether or not the new District Court Law gives your fire wardens authority to take violators to the nearest court in all instances, or if you operate as previously within the county in which the violation occurs. The new District Court Law will not change your procedure at all except that each district will constitute one jurisdictional area.

These districts can, and in many cases do, overlap county lines. Therefore,

in certain instances your wardens may be able to take a violator to a closer court than is now possible. We would like to emphasize, however, that the violator must still be taken to the district court for the district in which the violation occurs even though that court may not be the nearest court.

THOMAS W. TAVENNER

Assistant Attorney General

December 1, 1961

To: Governor John H. Reed

Re: Election Date of Primary Election and Voting on Educational Television Bond Issue

In answer to your questions:

"1. Can the Legislature legally establish the date of the Primary Election as the date for voting on the Educational Television Bond Issue?"

Answer: Yes. However, the wordage of the referendum section of the bill should conform to Section 14, Article IX of the Constitution, that is ". . . at a special election to be held on the 3rd Monday of June, 1962 . . ."

in place of

". . . at the state-wide election to be held on the 3rd Monday of June . . ."

"2. If the answer to the first question is in the affirmative, should notification of the referendum question be contained in the warrant for the Primary Election, or should a separate warrant issue?"

Answer: A separate warrant should issue.

FRANK E. HANCOCK

Attorney General

December 6, 1961

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

Re: Trading Stamps

We have your request of September 27, 1961, for an opinion with regard to the legality of the issuance of trading stamps on purchases including fluid milk. As we understand this problem, certain grocery stores doing business in Maine in areas designated by the Maine Milk Commission as natural marketing areas are offering coupons in the form of trading stamps with either the direct sale of fluid milk or cream or for a total purchase which purchase includes some milk or cream. We understand that you are requesting an opinion with regard only to sales for which the minimum legal price is the price set by the retailer. If the net price of the product after the discount has been deducted is still in excess of the legal minimum price, then the discount is, of course, perfectly legal. For this reason, we will limit our opinion to instances in which the net cost of the milk and cream to the purchaser is below the scheduled minimum retail price established by the Maine Milk Commission.

We have been unable to discover any cases dealing directly with this question and will, therefore, make an analogy between the problem here under discussion and alleged violations of various "fair trade" acts.

Section 4, chapter 33, Revised Statutes of 1954, as amended, reads in part:

> "It shall be unlawful for any person to engage in any practice destructive of the scheduled minimum prices for milk established under the provisions of this chapter for any market, including but not limited to any discount, rebate, gratuity, advertising allowance or combination price for milk with any other commodity. . . "

This section prohibits any discount which is destructive of the scheduled minimum price for milk established under the provisions of this chapter. It is our opinion that any discount, rebate, gratuity, advertising allowance or combination price would be illegal if it resulted in the sale of milk below the minimum price. This would be the case even though the practice did not totally destroy said minimum price. It is our opinion that the Legislature in using the words which it did intended to protect the minimum price from even the slightest reduction though that reduction did not destroy the control program entirely.

We now turn to the question of whether or not the issuance of trading stamps on purchases of milk constitutes an illegal practice under the Milk Control Law. The claim has been made that this practice is not illegal as it is a discount for cash rather than a trade discount. It should be noted at the inception that the statute does not differentiate between a trade and a cash discount.

The various states which have considered the question of whether trading stamps are actually discounts have reached no uniform conclusion. The states of Pennsylvania and California have determined that trading stamps are a discount for cash and are thus not destructive of the established minimum prices.

Bristol-Myers v. Lit Bros. Inc., 336 Pa. 81, 6 A. 2d 843 (1939); *Food and Grocery Bureau of Southern California v. Garfield,* 20 Cal. 2d 228, 125 P. 2d 3 (1942). The states of Massachusetts and New York on the other hand have held that the giving of stamps constitutes a discount and it makes no difference what form this discount takes or what name it is given.

Bristol-Myers Company v. Picker, 302 N. Y. 61, 96 N. E. 2d 177, 22 A. L. R. 1203 (1950); *Colgate-Palmolive Co. v. Max Dichter & Sons, Inc.,* 142 F. Supp. 545 (D. Mass. 1956); *Colgate-Palmolive Company v. Elm Farm Foods Co.,* 148 N. E. 2d 861 (Mass. 1958). Of particular interest is the *Elm Farm* Case which was handed down by the Massachusetts Supreme Judicial Court. The question raised in that case was whether or not trading stamp plans violated the minimum price set for certain articles under the Massachusetts Fair Trade Law. (G. L. Mass. c. 93, §§ 14A to 14D) Justice Spaulding speaking for a unanimous court quoted the decision in *Bristol-Myers Co. v. Picker,* supra, and made the following statement:

> "We lay to one side the difficulty we have in seeing how stores which sell almost exclusively for cash can give the customer a cash discount for doing what he has to do anyway. We think there is a more fundamental answer. As Judge Froessel said, speaking for the majority of the court, in *Bristol-Myers Co. v. Picker,* 302 N. Y. 61, at page 68, 96 N. E. 2d 177, at page 160, 'No matter how one puts it, the consumer who is accorded a cash discount in reality pays that much less for the article which he purchases, and this is none the less true because

the return is by way of merchandise rather than coin which may purchase merchandise. When defendants sold plaintiff's products at fair trade prices, and as part of the same transaction gave their customers cash register receipts having a redemption value of 2 1/2% of such fair trade prices, they, in effect, sold plaintiff's products at 2 1/2% less than the prices fixed. I can see no distinction between returning to the customer a credit memorandum of 2 1/2% and giving him a cash register receipt. And whether the discount is small or large makes no difference — the statute forbids both.' The force and logic of this reasoning impress us as unanswerable. We recognize that other courts have come to a different conclusion, but the reasoning on which their decisions are based does not persuade us. There is no magic in the words 'cash discount.' When subjected to analysis they are merely a euphemism for what is in reality a price cut."

We have considered cases both pro and con and have determined that the issuance of trading stamps does constitute a discount which is unlawful under the Maine State Milk Control Law.

THOMAS W. TAVENNER

Assistant Attorney General

December 7, 1961

To: Lawrence Stuart, Director of Park Commission

Re: Passenger Tramway Safety Board re Inspections of Ski Tows, etc.

We have your request for an opinion with regard to the effective date of the various provisions contained in the Act creating a Passenger Tramway Safety Board, Chapter 325, Public Laws 1961. As we understand the problem, the Board wishes an opinion as to when they must begin the performance of the various functions delegated to them under the terms of the above Act.

The declared policy of this Act is to protect the citizens and visitors of the State of Maine from unnecessary mechanical hazards in the operation of ski tows, etc., and to insure that reasonable design and construction are used. Because of this primary function there can be no lapse of diligent inspection. The problem is, of course, that the Board is empowered to make rules and regulations under section 7 of the Act and these rules and regulations can be made only after due consideration and then 14 days notice.

Quite clearly, these regulations will not be ready for use during the early part of the 1961-62 skiing season. It is the duty of the Board, nevertheless, to conduct inspections under section 9 in order to determine whether or not the construction and methods used by the various aerial tramway operators are sufficient to insure the safety of the public. This is a continuing duty and cannot be suspended. The Board must act immediately to set up some inspection system. As soon as reasonably possible thereafter, the Board should promulgate regulations and should create the forms necessary to enable the various operators to register under the provisions of sections 13 and 14.

THOMAS W. TAVENNER

Assistant Attorney General

December 7, 1961

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

Re: Circumvention of borrowing limitation on industrial banks

Reference is made to your memo of October 18, 1961, concerning the use of a certificate of investment by an industrial bank to correct a statutory violation of borrowing in excess of its capital, surplus and undivided profits. The section in question, R. S. 1954, Chapter 59, § 206, IV, reads:

> "Sec. 206. Prohibitions. No industrial bank shall: IV. Be at any time indebted for borrowed money to an amount in excess of its capital, surplus and undivided profits, except that by vote of a majority of its entire board of directors or executive committee setting forth the reasons therefor, and upon receiving the written consent of the bank commissioner thereto, it may borrow money to redeem its certificates of investment or prevent loss by sale of assets, and may rediscount notes, or pledge bonds, notes or other securities as collateral therefor. Copies of all votes authorizing such excess borrowing shall be promptly forwarded by the secretary to the bank commissioner. Rediscount shall be considered as borrowed money for the purpose of this subsection."

An industrial bank borrowed a sum of money from its parent company. The loan to it was in excess of its capital, surplus and undivided profits. The bank now seeks to correct this violation by issuing a certificate of investment to its creditor. The proposed certificate reads as follows:

"INVESTMENT CERTIFICATE NO. 1
of
COMMERCIAL CREDIT PLAN, INCORPORATED

"This is to certify that COMMERCIAL CREDIT COMPANY (a Delaware corporation) is the owner of Investment Certificate No. 1 of COMMERCIAL CREDIT PLAN, INCORPORATED, herein called Issuer (a Maine corporation).

"The principal amount of this Investment Certificate No. 1 is $200,000.00.

"This Investment Certificate shall bear interest at the rate of 5 1/4% per annum, payable monthly on the first day of each month, beginning ...., 1961.

"Issuer may redeem this Investment Certificate, in whole or in part, without prior notice to the holder hereof.

"This Certificate is transferable only upon the books of Issuer upon presentation with proper endorsement thereon.

"In witness whereof Issuer has caused this Investment Certificate to be signed by duly authorized officers this 10th day of October, 1961.

COMMERCIAL CREDIT PLAN, INCORPORATED

By /S/ J. M. Harris
Vice President

ATTEST:
S/ C. D. Winter
Secretary

The legislature has very clearly spelled out the limit up to which an industrial bank may borrow. It has also spelled out with equal clarity the exception to this limitation upon its borrowing capacity. There can be no question that the legislature intended that an industrial bank cannot owe more than the total of its capital, surplus and undivided profits with the exception noted.

The issuance of a certificate of investment covering the loan cannot cure this violation. The certificate of investment appears to be an instrument which simply acknowledges the debt but does not extinguish it. The bank still owes money in excess of its capital, surplus and undivided profits. As long as the certificate of investment is outstanding and unreduced to the limit allowed by Chapter 59, § 206, IV, the bank is in violation of that statute.

There appear to be three ways to remedy this situation. The first would be for the bank to increase its capital. The second would be to work out a system of reducing the loan from the parent company until it is down to the statutory limit. The third would be a combination of the first two.

Admittedly any of these three methods will take time. None of them can be worked out at once. It does seem necessary, however, that the bank take affirmative steps to remedy situation.

GEORGE C. WEST

Deputy Attorney General

December 12, 1961

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Foundation Subsidy Aid for S. A. D. #1

This is in answer to your request for an opinion whether or not S. A. D. #1 forfeits the 10% bonus provided in section 237-G, chapter 41, if the district fails within four years of its formation to provide a pre-primary program.

Sec. 237-G provides in part:

> "In the event that the School Administrative District, within 4 years of the time of its formation, fails to provide the following, the additional bonus payable under section 237-G shall not be paid the district thereafter until such time as such provisions are made:
>
> "I. A program which includes pre-primary or kindergarten through grade 12;"

You inquire whether the addition of the towns of Castle Hill, Chapman or Mapleton to S. A. D. #1 under the provisions of Section 111-P of chapter 41 is a "formation" of a new district within the meaning of section 237-G which would cause the four year period to commence anew.

It is my opinion that the addition of a municipality under section 111-P, supra, is not a "formation" of a district.

RICHARD A. FOLEY

Assistant Attorney General

December 19, 1961

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

Re: Borrowing Money for Purchase of School Busses

This is in answer to your memorandum inquiring whether or not a school administrative district has power to borrow money under the provisions of Chapter 41, § 111-K, the last two paragraphs for the purpose of purchasing school busses.

The fourth paragraph of § 111-K provides as follows:

> "If the Board of School Directors deems it advisable to issue bonds or notes and the amount of the issue does not exceed 1% of the last preceding state valuation of all the participating towns in the district, the directors may call a district meeting to approve the issuance of said *bonds or notes as provided in this section* or they may proceed as follows: When the Board of School Directors of the district determine that bonds or notes for capital outlay purposes shall be issued in an amount not to exceed 1% of the total of the last preceding state valuation of all the participating towns, they shall pass a resolution to that effect, setting forth the amount of the proposed issue and the purpose or purposes for which the proceeds will be used." (Emphasis supplied)

The reference to "bonds or notes as provided in this section" underlined above refers to the authority of the directors to issue bonds or notes for capital outlay purposes as defined in Section 237-H. The definition of "capital outlay purposes" contained in Section 237-H refers only to construction of school buildings and not to acquisition of busses.

Under Section 111-K, first paragraph, the directors could issue a note for current operating expenses for the district to be repaid within one year. The purchase of a bus would appear to be a current operating expense of the district, see Section 111-N, the last sentence.

It is our conclusion, therefore, that the Board of Directors could not issue a note for more than one year for the purchase of the busses but there is nothing to prohibit the directors from entering into a conditional sales contract for more than one year so long as the conditional sales contract does not have a note appended to it which runs for more than a year.

RICHARD A. FOLEY

Assistant Attorney General

December 20, 1961

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

Re: Move of M.E.S.C. Offices — Bid No. 62-477

In answer to your memo of December 18th last we reiterate our position with respect to M. G. Morisette & Sons, Inc.

There seems to be no question that the low bidder, M. G. Morisette & Sons, Inc., cannot perform the services for which it bid because it does not have sufficient transportation authority to do so. It is not, therefore, in our opinion the

lowest *responsible* bidder as required by Revised Statutes 1954, ch. 15-A, § 39, VII.

Item #21 of the conditions and instructions to bidders on the back of the "Request for Bids" does not apply to the situation at hand. It reads "No contract may be assigned, sublet or transferred without the written consent of the State Purchasing Agent." There is no contract between M. G. Morisette & Sons, Inc. and the State of Maine. A contract implies the acceptance by the State of the bid of a responsible bidder. There is no contract to assign, sublet or transfer here.

We advise you to reject the bid of M. G. Morisette & Sons, Inc.

FRANK E. HANCOCK

Attorney General

December 21, 1961

To: Lloyd K. Allen, Commissioner of Economic Development

Re: Non-Profit Corporation re New England States Committee on World's Fair

The New England States Committee on the World's Fair has suggested forming a non-profit corporation under Massachusetts law for the purpose of handling funds of the six states appropriated for planning and/or erecting exhibits of each state at the New York World's Fair, 1964-65.

Question: You have asked if you as an individual or as Commissioner have a right to become a member of the corporation.

Answer: You as an individual may become a member of such a corporation. As long as a corporation does not have interests incompatible with your office you may be a member of such corporation. In fact, the only way you can be a member of a corporation is as an individual. It is not possible for the Commissioner of the Department of Economic Development to be a member of a corporation. The Commissioner is a title not a person and a title cannot be a member of a corporation. Such member must be a person. So it would have to be Lloyd K. Allen who would be the member.

Question: May the Governor and/or the DED pay over to such a corporation the funds appropriated by Chapter 221, Private and Special Laws, 1961?

Answer: No. Under the provisions of section 2 of the Act the Governor or his designee (DED) in carrying out the objectives of the Act "shall cooperate with the Governors of the other New England States, or their designees, and with the New England Council in such manner as appears in the best interests of the State . . ."

It is clear that the Maine legislature expects the Governor, or his designee, to work with like people from the other New England States and with the New England Council. No mention is made or even hinted that a third legal entity shall be injected into the picture. A non-profit corporation would be a new legal entity not contemplated by our legislature.

We, therefore, conclude that if such a corporation is formed the Governor, or his designee, has no authority to pay over any of the appropriation made by Chapter 221, Private and Special Laws, 1961, to said corporation.

We suggest that you follow the Act strictly and literally. It would appear that such a course would keep administrative costs at a minimum and allow a greater percentage of appropriated funds to be used for the purposes set forth in the Act.

GEORGE C. WEST

Deputy Attorney General

December 22, 1961

To: Maynard F. Marsh, Chief Warden, Inland Fisheries and Game

Re: Beaver Trappers and Landowner's Consent

You have asked by your memo of December 20, 1961, concerning the effect of Chapter 65, Public Laws 1961.

This chapter repealed the first sentence of the third paragraph of section 119 of Chapter 37 of the Revised Statutes. This sentence formerly read:

> "During such open season beaver may be trapped without the consent of the landowner in unorganized territory, and only with the consent of the landowner in organized territory."

This sentence constituted an exception to the general law on trapping as set forth in the second sentence of Chapter 37, section 70.

> "No person shall trap on or in any organized or incorporated place, or in any unorganized place on the cultivated or pasture area of land that is used for agricultural purposes, and on which land there is an occupied dwelling, or within 200 yards of any occupied dwelling, without first obtaining the written consent of the owner or occupant of the land on which said trap is to be set."

The exception, relating to beaver trapping, having been removed, the general law applies. A close reading of the general law as set forth in section 70 is less restrictive than seems from a hasty reading.

In order to require written consent the land must be 1) cultivated or, 2) pasture area used for agricultural purposes plus 3) an occupied dwelling on the land, or the trap must be within 200 yards of an occupied dwelling. Furthermore, the written consent may be obtained from either the owner or the occupant of the land.

Section 70, Chapter 37, does apply to beaver trapping. It is a general law and applies to trapping of any animal.

GEORGE C. WEST

Deputy Attorney General

December 27, 1961

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Eligibility for a War Orphan Scholarship

You have inquired whether or not a war orphan whose father was killed in World War II is eligible for war orphan aid when the child's mother subsequently marries and the husband adopts the son.

Revised Statutes, Chapter 41, Section 136, defines orphan of a veteran as follows:

> "Sec. 136. *'Orphan of veteran,' defined.* For the purposes of administering the provisions of sections 136 to 139, inclusive, an orphan of a veteran shall be defined as a child not under 16 and not over 22 years of age whose father served in the military or naval forces of the United States during World War I, World War II or the Korean Campaign and was killed in action or died from a service connected disability as a result of such service. War orphans, whose fathers entered the service from Maine or who have resided in the state for 5 years immediately preceding application for aid under the provisions of said sections and which children have graduated from high school and are attending a vocational school or an educational institution of collegiate grade, shall be eligible for benefits provided under said sections."

It is our opinion that the right to state aid vesting in the child of the veteran is not divested by the subsequent marriage of the mother and adoption of the son. The qualifications for the aid are those stated in Section 136, supra, and those qualifications contain no proviso relating to remarriage and subsequent adoption of the war orphan.

RICHARD A. FOLEY

Assistant Attorney General

January 2, 1962

To: Doris M. St. Pierre, Secretary of Real Estate Commission

Re: Recommendations of applicant for Broker's License

This is in answer to your request for an opinion interpreting the language contained in Revised Statutes of 1954, Chapter 84, Section 2-A, subsection II-C.

Section 2-A, subsection II-C, supra, provides in part:

> ". . . If applicant cannot procure such recommendations for the reason that he has not resided within the county for a period of 3 years, he may furnish similar recommendations from 3 persons with like qualifications from any county where the applicant has resided within the 3 years prior to the filing of his application. . ."

I will answer your question by citing an example. An applicant resided in County A during 1959, County B in 1960 and in County C during 1961. In 1962 he applies for a real estate broker's license. The applicant may present the recommendations required of persons resident in any of the counties in which the applicant has resided within the last 3 years prior to filing his application. Thus an application with recommendations from persons in either County A, B or C would be proper.

I would like to point out that the 3 year requirement on recommendations is not a resident requirement. The resident requirement of an applicant is one year as provided in Revised Statutes, Chapter 84, Section 2-A, subsection I-B.

RICHARD A. FOLEY

Assistant Attorney General

January 9, 1962

To: Governor John H. Reed

Re: Emergency Interim Successors to Legislature, Administering Oath to

You have asked if the Governor may administer the oath to the emergency interim successors to legislators.

Revised Statutes, chapter 10, section 8-H, provides that "each emergency interim successor shall take the oath required for the legislator to whose powers and duties he is designated to succeed."

The law is silent as to who shall administer this oath. The Constitution of Maine, Article IX, section 1, prescribes the form of oath required to be taken by senators and representatives. It also provides:

> "The oaths or affirmations shall be taken and subscribed. . . . . by the senators and representatives before the Governor and Council. . . "

The constitution having provided that the oath by senators and representatives be taken before the Governor and council it would follow that the emergency interim successors to the senators and representatives may have their oath taken before the Governor and council.

GEORGE C. WEST

Deputy Attorney General

January 9, 1962

To: Madge E. Ames, Director Women & Child Labor Division of Labor & Industry Department

Re: Coverage of counter waiters and waitresses under Minimum Wage Law

We have your memo of January 4, 1962, asking for an interpretation of Revised Statutes, chapter 30, section 132-B, III, C.

Originally this section read:

> "III. 'Employee' any individual employed or permitted to work by an employer but shall not include;
>
> C. Any individual employed as a waiter, waitress or service employee who receives the major portion of his remuneration in the form of gratuities;"

Section 3, chapter 277, P.L. 1961, amended this section to read in part:

> "III. 'Employee' any individual employed or permitted to work by an employer but the following individuals shall be exempt from section 132-A to 132-J except as provided in section 132-A-1:
>
> C. Any individual employed as a waiter, waitress, car hop, not to include counter waiters or waitresses, or those whose tips are required to be divided with others; . . . . . "

We interpret this portion of section 132-B, III, C, as if it read:

> "C. Any individual employed as a waiter, waitress, or car hop except counter waiters, waitresses and those waiters, waitresses or car hops whose tips are required to be divided with others;"

Counter waiters and waitresses are subject to the minimum wage law.

Waiters, waitresses and car hops whose tips are required to be divided with others are also subject to the minimum wage law.

GEORGE C. WEST

Deputy Attorney General

January 9, 1962

To: Earle R. Hayes, Executive Secretary of Maine State Retirement System

Re: Status Under Retirement Law of Certain Commissioned Officers

Reference is made to your memo of December 6, 1961. You are faced with the problem of certain former State employees who have remained in the armed forces since induction or enlistment during World War II. You ask the question whether commissioned officers are entitled to retirement credits since August 28, 1957, being the effective date of Chapter 26, Public Laws of 1957. This chapter reads as follows:

> "No such credits shall be allowed to count toward a state retirement benefit beyond the period of first enlistment or induction into the said armed forces unless the individual involved is compelled to continue service under some mandatory provision."

An amendment to the Personnel Law, Chapter 25, Public Laws of 1957, reads substantially the same.

It therefore follows that a person in the Armed Forces is not entitled to retirement credits after August 28, 1957, unless the individual can present conclusive evidence to the Board of Trustees that such individual was "*compelled* to continue service under some mandatory provision" of the Selective Service Act or any extension or amendment thereof.

GEORGE C. WEST

Deputy Attorney General

January 12, 1962

To: Maine Employment Security Commission

Re: Area Redevelopment Act Program

You have submitted a verbal request relative to the present effectiveness of the opinion of December 31, 1956 by James Glynn Frost, Deputy Attorney General, as applied to a new federal program known as the Area Redevelopment Act Program. The Federal Government has asked whether or not the bond of the Treasurer of the State covers funds transmitted to the State by the Federal Government under this Act.

This office confirms the opinion by James Glynn Frost, former Deputy Attorney General, dated December 31, 1956, and advises that this opinion covers the additional funds coming to the State through the new federal program. It is the opinion of this office that the bond of the State Treasurer does cover the funds received under the provisions of the Area Redevelopment Act Program. I

might state that since the opinion of December 31, 1956, the Treasurer's bond has been increased from $150,000 to $500,000.

GEORGE C. WEST

Deputy Attorney General

January 15, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Status of Leavitt Institute for Participation under Federal Programs

You have inquired as to the status of Leavitt Institute as a public school so that the institute may qualify for federal funds under the National Defense Education Act of 1958.

Under the National Defense Education Act of 1958 (U.S.C., Title 20, Sections 401 to 589) federal funds are administered under the auspices of a state plan approved by the United States Commissioner of Education. The state plan is drawn up by the State Board of Education. U. S. C., Title 20, § 443(a) authorizes the expenditure of federal funds under the state plan for acquisition of laboratory and other special scientific equipment, textbooks in languages, sciences and mathematics suitable for use "in public elementary or secondary schools or both."

The question proposed is whether Leavitt Institute qualifies as a "public secondary school" under § 443(a), supra.

In an opinion of this office dated February 12, 1952, it was indicated that if a joint board was formed (now authorized under R. S. 1954, c. 41, § 105), combined with a tuition contract between the town of Turner and Leavitt Institute then the academy would qualify as a public school for the purposes of the receipt of federal funds. There is presently a tuition contract between the town and Leavitt Institute but no joint board exists.

The suggestion has been made that since the superintending school committee of Turner is ex officio the executive committee of Leavitt Institute, then this arrangement could substitute for a joint board. Under Article VI, eleventh paragraph of the by-laws of Leavitt Institute, the executive committee has the duties of making rules governing the admission of pupils, fixing the amount of tuition of non-resident pupils, employing a principal and teachers and fixing the salaries and keeping the buildings in ordinary repair. The actions of the executive committee are not subject to the approval of the Board of Trustees.

I do not find, however, that the executive committee has the authority to prescribe the curriculum of Leavitt Institute. The power to prescribe the course of study is a primary function of a superintending school committee in supervision of a public school. One of the duties of a joint committee under chapter 41, § 105, is to "arrange the course of study of the academy."

The trustees of Leavitt Institute were incorporated by special legislative charter, Private and Special Laws of 1901, Chapter 257. The trustees were granted the power to make by-laws and were intrusted "with all the privileges and powers incident to similar corporations." Article VI of the by-laws provides in part that the trustees shall have the general management of the affairs of the corporation and of Leavitt Institute.

Since the executive committee is not specifically vested with the control of the curriculum, the board of trustees retains that control by virtue of the charter and the by-laws above referred to.

It is my opinion that the present arrangement of the superintending school committee acting ex officio as the executive committee is not a substitute for the joint committee authorized under section 105 of chapter 41.

The existence of a joint committee, a tuition contract between the town and the institute, as well as the requirements under chapter 41, sections 125 through 129, that the academy make reports to the Commissioner of Education, is subject to the State Board of Education regulations, and is subject to audit by the Commissioner of Education when receiving tuition payments is sufficient to warrant a conclusion that an academy would qualify as a "public school" under the National Defense Education Act of 1958.

I do not find under the National Defense Education Act of 1958 that a determination by a state that a particular type of school is a public school for the purpose of federal aid is binding upon the United States Commissioner of Education. I would suggest, therefore, that you consult with the United States Commissioner of Education as to whether or not he will concur with this opinion.

RICHARD A. FOLEY

Assistant Attorney General

January 16, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Tax-Sheltered Annuities for Teachers

This is in answer to several questions you propose in relation to Section 403(b) of the Internal Revenue Code authorizing certain tax benefits to public school employees under contracts of annuity insurance.

Answer to Question I(a): Section 163 of Chapter 60, Revised Statutes of 1954, authorizes the state, any county, city, town or other quasi-municipal corporation to "contract with any such (insurance) company granting annuities or pensions for the pensioning of such employees and, for such purposes, may agree to pay part or all of the premiums or charges for carrying such contract. . ."

It is my opinion that towns, cities and school districts are authorized to enter into *group* annuity contracts for the benefit of teachers.

Under the Internal Revenue Law the premiums for the annuity must be paid by the employer and are not considered a part of the gross taxable income of the employee. Such annuity premiums would not be a part of the teacher's salary and would not be includable in the cost of the foundation program under Section 237-C-II of Chapter 41, R. S. 1954.

Answer to Question I(b): This question is answered in I(a) above except that Section 163 of Chapter 60, supra, authorizes group annuity contracts and not contracts of annuity between employer and the insurance company for the benefit of an individual teacher.

Answer to Question I(c): An amendment to Section 237-C of Chapter 41, R. S. 1954, would be necessary to include such annuity premiums as part of the foundation program for subsidy.

Answer to Question I(d): If the teacher's salary is reduced by an amount equal to the annuity premium payment by the employer, the resulting reduced gross salary may, in some cases, fall below the teacher's minimum salary schedule as provided in Section 237-A of Chapter 41, R. S. 1954. Said section would have to be amended if the intention is to include the annuity premiums as part of the salary paid to the teachers for the purpose of the minimum salary schedule.

Answer to Question I(e)-(1): Under Section 24 of Chapter 63-A, R. S. 1954, the annual compensation of the teacher determines the maximum amount of the group life insurance available to that teacher. If it is intended to include within the meaning of the term "annual compensation" the annuity premiums paid by the employer, then an amendment would be necessary to the said section.

Answer to Question I(e)-(2): Section 1 of Chapter 63-A, R. S. 1954, defines "earnable compensation" for the purposes of the Maine State Retirement System as actual compensation including maintenance, if any. The earnable compensation determines the amount of contribution made by the employee to the retirement fund and the retirement benefit payable to the employee. The definition of earnable compensation does not include annuity premiums paid by the employer. The Maine State Retirement law would, therefore, have to be amended if the intent is to include the annuity premiums paid by the employer as part of the earnable compensation for retirement purposes.

Answer to Question I(f): This question has been answered in I(c) above.

Answer to Question II: I hesitate to recommend any change in the standard form of teacher contract until there is considerable consultation with the Internal Revenue as to their requirements relating to the tax-sheltered annuity plans. Any change in the standard form of teacher contract should be made only after consultation with the Maine Municipal Association, Maine Teachers' Association and the Department of Education.

RICHARD A. FOLEY

Assistant Attorney General

January 16, 1962

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

Re: Size of Herring taken from Canadian Waters

We have your request for an opinion with regard to the interpretation of Revised Statutes, chapter 37-A, section 34, as amended. As we understand the problem, the question is whether this section of the law forbids any person from having in his possession herring of less than 4 inches in length, whether or not these herring were taken in Maine territorial waters. The applicable section of the law is as follows:

> "Sec. 34. Size of Herring. It is unlawful for any person, firm or corporation to take from the coastal waters of Maine, to sell, to offer for sale, to purchase, to possess, to ship, to transport, or to have in possession herring which are less than 4 inches long, overall length measured from one extreme to the other, except as provided in this section."

You have asked us specifically whether the statutory language quoted above forbids the use in Maine of herring under 4 inches in length which have been

taken in Canadian waters and shipped into Maine for processing. It should be noted that the phrase "from the coastal waters of Maine" modifies the prohibitions contained in this section. For this reason, it is our opinion that Section 34 affects only those herring taken in the territorial waters of this State, and that therefore, herring caught in Canada are not subject to this section even though they might not be of the legal size.

THOMAS W. TAVENNER

Assistant Attorney General

January 17, 1962

To: Philip R. Gingrow, Examiner, Banks and Banking

Re: Issuance of Small Loan License to Superior Finance Co.

Reference is made to your memo of January 10, 1962. I am not going to recite the facts as contained in your memo.

You ask the question: "1. Did this act of incorporation become null and void at the end of 2 years because they had not obtained a license to engage in the business of making loans of $2,500 or less?"

Answer: No. The mere failing to obtain a license to engage in the business of making the loans does not in and of itself constitute a failure to commence actual business. There are other facts which would be necessary to determine whether or not the particular finance company had commenced actual business within two years of September 12, 1959.

Question: "2. If your reply to question 1 is in the negative, should this Department issue the aforementioned license or must we have proof that they have commenced actual business under their charter in some other manner? What other actions by this corporation could we accept as proof of their having commenced actual business under their charter?"

Answer: I would not recommend the issuing of the license at the present time. You should have proved that they have commenced actual business in some other manner. You will note that under the purposes listed in their act of incorporation is the provision "to borrow money and secure the payment thereof by pledging its assets or any part thereof;" You should inquire into whether or not they have borrowed any money.

In addition to this, there are other facts which should be examined:

1. Has the corporation held legal directors or stockholders meetings?
2. Has the corporation regularly elected officers?
3. Has the corporation rented office space by lease or otherwise?
4. Has the corporation hired personnel, paid them wages, made Social Security reports and other reports necessary relative to hiring personnel?
5. Has the corporation regularly filed federal income tax returns?
6. Has the corporation purchased furniture, office equipment and other items necessary to the operation of an office or business?

It is not possible to say that any one of these items or any particular combination of these items would in and of themselves constitute the commencing of business, but an examination of the whole picture as to what this corporation has done since September 12, 1959, is necessary to determine whether or not it

has actually commenced business within two years from the above-mentioned date.

I would be glad to examine with you the information which you acquire relative to this corporation's activities since September 12, 1959 to determine whether or not it has commenced actual business under its charter.

GEORGE C. WEST

Deputy Attorney General

January 18, 1962

To: Frederick N. Allen, Chairman of Public Utilities Commission

Re: PUC Identification Plates for Interstate Motor Carriers

Reference is made to your memo of January 17, 1962. You have asked if the Public Utilities Commission can authorize the issuance of floater plates to an interstate carrier authorized to do business in Maine in lieu of the present distinguishing plates.

An examination of chapter 48 reveals that the answer to this problem is contained in sections 24 and 25 II.

Section 24 provides in part:

> " . . . . every person, firm or corporation transporting freight or merchandise for hire by motor vehicle . . . . between points within and points without the state . . . . is required to obtain a permit for such operation from the commission."

This section refers to interstate motor vehicle carriers and further provides that —

> "such permits shall issue as a matter of right upon compliance with such regulations and payment of fees."

The two important matters in this section in relation to your question are:

1. The permit issues to the "person, firm or corporation," not to a vehicle or vehicles.

2. The "person, firm or corporation" must pay a fee.

Nothing is contained in this section concerning plates for individual vehicles.

We turn now to section 25 II which provides in part:

> "Each application for a . . . . permit shall be accompanied by a fee of $25. . . . "

In the usual course of procedure the "person, firm or corporation" now has a permit upon payment of a $25 fee. Reading further in section 25 II we find:

> "Distinguishing plates . . . . shall be prescribed and furnished by the commission for, and shall be displayed under rules to be prescribed by the commission at all times, on each motor vehicle, trailer and semi-trailer."

Thus we find that the commission, by its regulations shall:

1. Prescribe and furnish "distinguishing plates."
2. Provide for manner and method of display of such plates on "each motor vehicle, trailer and semi-trailer."

Inasmuch as the type of plate issued and the manner and method of displaying such plates is regulated by the commission, we see no reason why the commission cannot amend its regulations to provide for issuance of floater plates to interstate carriers.

GEORGE C. WEST

Deputy Attorney General

January 23, 1962

To: Ober C. Vaughan, Director of Personnel

Re: State Employee as political candidate

We have your request for an opinion with regard to whether or not State employees can be members of the State Legislature if granted leaves of absence in order to attend the sessions of that legislature. We understand that your original request for an opinion would involve a determination of whether any State employee could ever run for an elective office. As this question must be determined on an individual basis, we are limiting our opinion to the situation to which a State employee desires to run for the State Legislature.

We would call your attention to an opinion issued by this office on May 29, 1956 to the effect that no State employee, as a member of the executive branch of State government, could carry out the duties of a member of the legislature and that no State employee could be given leave to attend the annual session of the legislature or any special session thereof. We have examined this question anew, but can find no reason why this opinion should be altered.

It is, therefore, our opinion that no State employee can run for or be elected to the State Legislature whether or not he has been granted a leave of absence by his department.

THOMAS W. TAVENNER

Assistant Attorney General

January 29, 1962

To: Steven D. Shaw, Administrative Assistant, Executive Department

Re: Incompatibility of Office

We have your request of January 6, 1962, for our opinion as to whether a member of the State Board of Examiners of Funeral Directors and Embalmers could at the same time hold the office of member of the Governor's Executive Council.

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

> "Persons disqualified. Not to be appointed to any office."
>
> "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 (justices of the peace and notaries public excepted) shall be counsellors. And no

counsellor shall be appointed to any office during the time, for which he shall have been elected."

It is the opinion of this office that the position of member of the State Board of Examiners and Funeral Directors and Embalmers is a civil office within the meaning of the above constitutional provision. For this reason, this office is incompatible with the office of executive counsellor and the same person cannot constitutionally hold both offices at the same time.

THOMAS W. TAVENNER

Assistant Attorney General

January 30, 1962

To: Philip R. Gingrow, Examiner, Banks and Banking

Re: Issuance of Small Loan License to Superior Finance Co.

Since my memo of January 17th you have furnished information concerning the Superior Finance Co. This information would indicate that the Superior Finance Co. did commence actual business under its charter within two years from the effective date of the legislature granting the charter.

It is a well recognized principle of law that the courts frown upon forfeitures of corporate franchises. The main object is to preserve a charter, not destroy it, and it should be preserved unless there is a plain abuse of power by which the corporation fails and wilfully neglects to fulfill the design and purposes of its organization.

This corporation was organized in 1959, has held several meetings, has borrowed $600, has purchased a corporate seal and corporate records books.

It would appear, therefore, that the corporation did commence business within the two-year period.

GEORGE C. WEST

Deputy Attorney General

January 31, 1962

To: Doris M. St. Pierre, Secretary, Real Estate Commission

Re: Meaning of "Fixed and Definite Place of Business"

This is in answer to your request for an opinion inquiring whether there is any conflict between the requirement of Section 7 of Chapter 84, Revised Statutes of 1954, that every real estate broker "shall maintain a fixed and definite place of business in this state" and the definition of a real estate broker under Section 2, paragraph I, as any person "who . . . sells . . . real estate . . . as a whole or partial vocation."

It is my opinion that the above requirements do not conflict. A real estate broker may elect to sell real estate on a part time basis. The provision that the broker must maintain a fixed and definite place of business does not require that the place of business be open to the general public during regular business hours.

A real estate broker's home may be his place of business if in fact he maintains an office in his home where he conducts his real estate business.

RICHARD A. FOLEY

Assistant Attorney General

February 8, 1962

To: Lloyd K. Allen, Commissioner of Economic Development

Re: Jacobs Pay Plan, Seniority provisions of

We have your request of January 18, 1962, for an opinion as to whether or not the seniority provisions of the Jacobs Pay Plan were adopted by the 100th Legislature and if you should consider these seniority pay increases as part of your budget planning for the coming biennium.

Chapter 199 of the Private & Special Laws of 1961 provides for an allocation for a pay plan which pay plan must be approved by the State Personnel Board. Section 5 of this same chapter indicates that the intent of the 100th Legislature was to adjust the compensation of the state salary plan to reflect competitive wages as indicated in the compensation plan dated October 1960. Although the intent as expressed in Section 5 would indicate that the Jacobs Plan had been adopted in full, the limitation of Section 1 providing that such plan must be approved by the State Personnel Board, being a specific rather than a general provision, is controlling. The State Personnel Board has never adopted the seniority provisions of the Jacobs Pay Plan. This is because the 100th Legislature did not appropriate the money necessary to effectuate this section of the plan. For this reason it is our opinion that the seniority provision of the Jacobs Plan has never been put into effect and that you should not consider these seniority pay increases as part of the budget planning for the next biennium.

THOMAS W. TAVENNER

Assistant Attorney General

February 8, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Snow Plowing of School Driveways

This is in answer to your questions relative to the responsibility for plowing the snow from school property.

Question No. 1: "Is it the duty of a municipality to plow the driveways giving access to school buildings?"

Answer: Revised Statutes of 1954, Chapter 41, § 54, describes the duties of the superintending school committee and school directors.

Paragraph I of Section 54 provides:

> "The management of the schools and the custody and care, including repairs and insurance on school buildings, of all school property in their administrative units."

If the driveways leading up to the school buildings of the public schools are

public streets, then it is the responsibility of the municipality to plow such streets.

Question No. 2: "Is the school committee authorized to expend funds for plowing or to reimburse a town or city for such service?"

Answer: The school committee is authorized to expend funds for plowing but only of school property. If the town does the plowing of the school property, they have no right to reimbursement since it is public property of the town.

Question No. 3: "Would there be any difference in the answers to the above questions if a school were operated by an administrative district?"

Answer: The answer to question No. 2 above would be different in that the directors of a school administrative district could reimburse the town for plowing the school property such as playgrounds, parking lots, driveways owned by the district but not public streets leading up to the school property.

RICHARD A. FOLEY

Assistant Attorney General

February 14, 1962

To: Scott K. Higgins, Director of Aeronautics Commission

Re: Control of Structures Near Airports — L. D. #418

You have asked our interpretation of the language contained in Section 3, Paragraph I, of L.D. #418, "An Act Relating to Control of Structures Near Airports," which bill was referred to the Legislative Research Committee by the 100th Legislature.

> "Sec. 3. Limitation on structure. Until a permit therefor has been issued by the commission, no person shall erect, add to the height of or replace any structure:
>
> "I. Near airports. Within an area lying 1500 feet on either side of the extended center line of a runway or landing strip for a distance of 2 miles from the nearest boundary of any approved airport which will result in a structure extending to a height of more than 150 feet above the level of such runway or landing strip; nor, within that portion of such areas that is within a distance of 3,000 feet from such nearest boundary, that will result in a structure extending higher than a height above the level of such runway or landing strip determined by the ratio of one foot vertically to every 20 feet horizontally measured from such nearest boundary.
>
> "II. Height. At any other place within the State which will result in a structure extending more than 500 feet above the highest point of land within a one-mile radius from such structure."

The first part of Paragraph I specifies a restriction of structural height of 150 feet within an approach and landing zone of a width of 3000 feet, the center line of which is the center of the runway or landing strip, and a length or distance of 2 miles from a designated airport boundary. The second part of Paragraph I, after the semi-colon, refers to the first part of Paragraph I by the language "nor, within that portion of *such areas . . .* " (Emphasis ours) indicating that the 3000 foot distance is within the area of the aforementioned approach and landing

zone. It does not include all surrounding areas within a distance of 3000 feet from the nearest boundary.

FRANK E. HANCOCK

Attorney General

February 14, 1962

To: Lawrence Stuart, Director of Park Commission

Re: Registration Fee for Municipal Ski Tow

We have your request for an opinion as to whether or not the Town of Millinocket must pay the customary registration fee for its municipal ski tow. Under the terms of Chapter 325, Public Laws of 1961, the Passenger Tramway Safety Board is empowered to establish annual fees not in excess of $300 to accompany each application for registration. The question has arisen as to whether or not a municipality must pay this fee for a municipally owned ski tow.

Under the provisions of Revised Statutes, Chapter 91-A, Section 10, all municipalities are exempted from taxation on their property and polls. This exemption covers only taxes and is not applicable to fees for services rendered to the municipality. A fee is defined as "A charge fixed by law for services of public officers or for use of a privilege under control of government." (Black's Law Dictionary, Fourth Edition, Page 740). A tax on the other hand, is "A pecuniary burden laid upon individuals or property to support the government . . . ." (Black's Law Dictionary, Fourth Edition, Page 1628).

It is our opinion that the fee assessed by the Passenger Tramway Safety Board is not a tax and that, therefore, the Town of Millinocket must pay said fee in making its application for a license to operate a ski tow.

THOMAS W. TAVENNER

Assistant Attorney General

February 21, 1962

To: Laurence F. Decker, Chief Engineer, Inland Fisheries and Game

Re: N. E. Tel. & Tel. Co. request for a Right of Way to cross State property.

We have your request of February 19, 1962, for an opinion as to what type of instrument should be executed in order to grant to the New England Telephone and Telegraph Company an easement over state-owned land in the Town of New Gloucester.

An easement is a right in the owner of one parcel of land to use the land of another for a specific purpose, *Black's Law Dictionary,* 4th ed., p. 599. Therefore, an easement is an interest in real property. The real property of the State of Maine can be transferred only by authority of the state legislature, R. S., c. 16, § 85. Therefore, the Department of Inland Fisheries and Game has no right to give to any person an easement over state property.

A license is "Permission or authority to do a particular act or series of acts on land of another without possessing any estate or interest therein." *Black's Law*

Dictionary, 4th ed., p. 1068. As a license does not in any way convey the lands of the state, it can be granted by a state department without specific legislative approval. We, therefore, recommend that the Department of Inland Fisheries and Game execute a license giving the aforementioned company the right to perform the acts in question.

We are enclosing such a limited license for your approval.

THOMAS W. TAVENNER

Assistant Attorney General

February 21, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Contracts and Joint Committees Between Towns and Academies

This is in answer to your two questions relating to Section 105, Chapter 41, Revised Statutes of 1954.

"1. Has an academy the right to contract with the superintending school committee of more than one administrative unit to provide secondary school education?"

Answer: I find nothing in Section 105 of Chapter 41 which would prevent an academy to contract with the superintending school committees of more than one town for secondary education.

"2. If a town contracts with more than one administrative unit may a joint committee be formed with more than one town? If this is legally possible, would such joint committee be formed as a separate committee with each unit or a joint committee comprising all units and the trustees?"

Answer: I find nothing in Section 105, Chapter 41, which would prevent the formation of a joint committee consisting of the superintending school committee of Town A, the superintending school committee of Town B and an equal number of trustees of the academy.

RICHARD A. FOLEY

Assistant Attorney General

February 23, 1962

To: Earle R. Hayes, Executive Secretary of Maine State Retirement System

Re: Status under State Retirement System of Retired State Police Officer

Reference is made to your memorandum of February 13, 1962, asking about the status of state police officers who might retire under the provisions of Chapter 15, section 22, and then seek employment with the State or as a public school teacher. It is assumed you are concerned with the status of such persons relative to retirement rights under the Maine State Retirement System.

Chapter 63-A, section 3, I, provides:

"The membership of the retirement system shall be as set forth following:

I. Any person who shall become an *employee* shall become a member of the retirement system as a condition of employment and shall not

be entitled to receive any retirement allowance under any other retirement provisions supported wholly or in part by the state, anything to the contrary notwithstanding:" (Emphasis supplied)

The word "employee" is defined in section 1 as follows:

" 'Employee' shall mean any regular classified or unclassified officer or employee in a department, including teachers in the state teachers' colleges and normal schools, and for the purposes of this chapter, teachers in the public schools, *but shall not include . . . nor shall it include* any member of the state police who is now *entitled* to retirement benefits under the provisions of sections 22 and 23 of chapter 15." (Emphasis supplied)

The clear meaning of the definition of "employee" as used in Chapter 63-A, section 1, is that it does not include a state police officer *entitled* to retirement benefits under Chapter 15, sections 22 and 23. Therefore, if such a person should accept employment in another state department or as a teacher, he would not be an "employee" so far as the retirement law is concerned.

In other words, even though he may become employed by the state or as a teacher, he could not join the Maine State Retirement System. As far as the trustees of the State Retirement System is concerned, such a person is not an "employee" and the trustees cannot exercise any control whatever over the retirement benefits of such person.

GEORGE C. WEST

Deputy Attorney General

February 26, 1962

To: Paul A. MacDonald, Secretary of State

Re: Pardon Petition re Conviction twice of Driving Under the Influence

I have your letter of February 19, 1962, transmitting a request for an opinion from the Governor and Executive Council.

The facts are as follows:

A man has been convicted twice of driving under the influence of intoxicating liquor; the first conviction became final on January 26, 1954, and his second on August 11, 1959.

Under the provisions of Section 150 of Chapter 22 of the Revised Statutes he is not eligible for a hearing on the question of restoration by the Secretary of State until August 11, 1962. He sought a pardon of his 1959 offense so as to make him eligible for an operator's license at this time. The Governor and Council were willing to remit the penalty only as to loss of license in connection with the August 1959 conviction on condition that the petitioner be granted a license to operate motor vehicles in conjunction with his employment during working days only. This restriction to continue for a period to be determined by the Secretary of State.

Question: The question, based on these facts, is:

May the Governor, with the advice and consent of the Council, remit a loss of license only, without a pardon as to the conviction upon which the loss of license was based?

Answer: No.

The power to pardon is contained in our Constitution, Article V, Part First, section 11, and 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, execept 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. Such power to grant reprieves, commutations and pardons shall include offenses of juvenile delinquency. 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."

The words in this section of the Constitution which might be interpreted to allow an affirmative answer to the question are "to remit, after conviction, all forfeitures and penalties" and "reprieves, commutations and pardons."

Our court in *Lord v. State,* 37 Me. 179, has said:

> "The terms 'fine' and 'penalty' signify a mulct for an ommission to comply with some requirement of law; or for a positive infraction of law; . . ."
>
> "A 'forfeiture' is a penalty by which one loses his *rights and interest in his property,* 'forfeit' being defined as to lose, or lose the right to, by some error, fault, offense, or crime, or to subject, *as property* to forfeiture or confiscation." *State v. Cowen,* 3 N. W. 2d 176 (Iowa). (Emphasis supplied)
>
> "A 'penalty' is punishment inflicted by law for its violation by act or omission, and although penalty and forfeiture are generally used as synonyms *'forfeiture' is usually taking of money or goods,* thereby making forfeiture, as general rule, a penalty, even though penalty is not necessarily forfeiture." *In re Thrift Packing Co.,* 100 F. Supp. 907.

In *Steves v. Robie,* 139 Me. 359, at 363, the court said:

> ". . . Registration (Motor Vehicle) is for the purpose of exercising such control and the certificate of registration constitutes a license to operate in accordance with such conditions as are imposed. *Such license is a privilege and in no sense a contract or property."* (Emphasis supplied.)

It follows from these definitions that the words "forfeitures and penalties" used in the particular section of the Constitution does not reach the suspension or revocation of an operator's license. They refer solely to the judgment or sentence imposed upon a conviction of a crime.

The word "reprieves" is defined as follows:

> "A reprieve, from the French word 'reprendre,' to take back, is the withdrawing of a *sentence* for an interval of time, whereby the execution is suspended. It is merely the postponement of the execution of a *sentence* for a definite time, or to a day certain. It does not and cannot defeat the ultimate execution of the *judgment of the court,* but merely delays it temporarily." 39 Am. Jur. 524. (Emphasis supplied.)

The word "commutation" is defined as follows:

"A commutation of sentence is the change of punishment to which a person is *sentenced* to less severe punishment, — substitution of a less for a greater punishment, — by authority of law, and may be imposed upon the convict without his acceptance, and against his consent." 39 Am. Jur. 524. (Emphasis supplied.)

The word "pardon" is defined as follows:

"A pardon is a *remission of guilt* and a declaration of record by the authorized authority that a particular individual is to be relieved from the legal consequences of a particular crime." *Territory v. Richardson,* 60 P. 244 (Okla.). (Emphasis supplied.)

It can be readily seen that the words "reprieves, commutations and pardons" apply directly to the sentence imposed by the court or to the conviction of a crime. The suspension or revocation of an operator's license is not a sentence imposed by a court and hence is not subject to "reprieves, commutations and pardons."

There is another compelling reason why the Governor with the advice and consent of the Council may not, under the guise of his general pardon power, change the length of a suspension or revocation of an operator's license.

As was said in *Steves v. Robie,* supra.

". . . the right to use the highways for business is not inherent or vested but in the nature of a special privilege which *the State, through the Legislature,* may condition, restrain, extend or prohibit." (Emphasis supplied.)

The legislature, by its enactments, has prescribed conditions under which individuals may legally operate motor vehicles upon the highways of the state. The court has recognized this as a proper function of the legislature. It being a function of the legislative branch the executive branch may not substitute its judgment for that of the Legislature. To allow the executive to do so would be violative of Article III, section 2, of our Constitution.

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

No cases being expressly directed or permitted by the Constitution, as shown before, we must advise that the Governor with the advice and consent of the Council may not remit the loss of license only, without a pardon as to the conviction upon which the loss of license was based.

GEORGE C. WEST

Deputy Attorney General

February 27, 1962

To: Earle R. Hayes, Executive Secretary of Maine State Retirement System

Re: Status of Per Diem Employees under Retirement System

Reference is made to your memo of February 20, 1962, in which you inquire about the retirement status of persons appointed to state offices and reimbursed on a per diem basis.

You mention in your memo that if such persons were on a regular payroll there would be no problem. You state that being paid on a voucher basis seems to preclude them from retirement status. There is no reference in the retirement law to the necessity of an employee being on a payroll in order to have the benefit of the state retirement system.

The actual answer to your query is in the hands of the board of trustees. Revised Statutes, Chapter 63-A, section 3-IV, provides:

> "The board of trustees may, in its discretion, deny the right to become a member to any class of employees. . . . or who are serving on a temporary *or other than per annum basis.*" (Emphasis supplied.)

A similar idea is also expressed in Section 4-IV.

> "The board of trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to 1 year of service, ... "

So the board may deny retirement rights to any *class* of employees who are serving on other than a per annum basis. Per diem employees could be considered such a *class* of employee.

The board must also determine what constitutes a year of service. Therefore, the board has the full responsibility of determining if persons receiving per diem pay are eligible for membership in the retirement system.

GEORGE C. WEST

Deputy Attorney General

February 28, 1962

To: Ober Vaughan, Director of Personnel

Re: Return from Leave Rights — Marie F. Hunter

You ask in your memo of February 20, 1962, if the above should return to state service does she have return from leave rights under section 28, chapter 63.

The above section provides in substance that an employee who has been employed at least 6 months and has attained permanent status and who enters military service, under certain conditions, shall be considered on leave of absence without pay. He shall be considered as in the service of the agency by which employed at time of entry into the military service during such service for pension and seniority rights.

An amendment enacted as Public Law 1957, Chapter 25, added the following sentence to the above section:

> "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."

This amendment became effective August 28, 1957. Therefore, up to August 28, 1957, the above-named individual had retirement, sick leave and vacation rights. The two latter rights would accumulate according to the regulations of the Personnel Department in effect on August 28, 1957. No rights to retirement,

sick leave or vacation accrue after that date. The right to return to state employment in the same department still remains. This latter right must be exercised within 90 days following discharge or retirement from military service.

GEORGE C. WEST

Deputy Attorney General

March 7, 1962

To: Asa Gordon, Coordinator of Maine School District Commission

Re: School Administrative District #3, Legality of Formation

This is in answer to your memorandum of January 22, 1962, proposing certain questions relating to the legality of School Administrative District #3.

Question No. 1: "Is School Administrative District #3 validly organized?"

Answer: Yes. School Administrative District #3 is validly organized under the school administrative district law.

Question No. 2: "If so, are the directors authorized to issue bonds pursuant to the vote taken in March of 1961?"

Answer: Yes.

Question No. 3: "Is this vote effective in authorizing the issuance of these bonds?"

Answer: Yes.

Question No. 4: "Will such bonds be binding obligations on School Administrative District #3?"

Answer: Yes. The bonds will be binding obligations of School Administrative District #3. Litigation pending against the district, *Peavey et al v. Nickerson et al,* will not preclude the issuance and sale of the bonds since the issue in the case now pending in the Superior Court, Waldo County, that is, whether or not the Fourteenth Amendment of the Constitution of the United States requires the Maine School District Commission to give notice and hearing to the inhabitants of the district before issuing the certificate of organization of the district authorized under Section 111-G of Chapter 41, has previously been litigated twice in the courts of this State. The exact issue in question was first litigated in *McGary et al v. Barrows et al,* 156 Me. 250 at page 265; *Elwell et al v. Elwell et al,* 156 Me. 503 at page 506. It is our opinion that the present litigation will not preclude the sale of bonds.

Question No. 5: "Shall we make further payments to School Administrative District #3 as required by sections 236 and 237, chapter 41?"

Answer: Yes. Subsidy may be paid to School Administrative District #3 including construction subsidy under section 237 of chapter 41.

RICHARD A. FOLEY

Assistant Attorney General

March 8, 1962

To: Stanton S. Weed, Director of Motor Vehicle Division, Secretary of State

Re: Registration Fee Requirements of Certain Academies

"Registration of a vehicle used for Driver Education purposes, in the name of Robert W. Traipp Academy of Kittery, Maine, has been held in this office awaiting the fee of $15.00."

"The vehicle was apparently loaned by an automobile dealer to the Academy for driver education purposes."

"Will you please give us, in written form, your interpretation as to the requirement of registration fee in the case of Traipp Academy, also a statement concerning any other schools of this nature which may be operating under the 'joint committee', in relation to payment of registration fees on vehicles used under driver education and on loan from an automobile dealer."

It is the opinion of this office that Traipp Academy does not have to pay the registration fee.

Revised Statutes, Chapter 22, section 13, paragraph 15, provides in part:

> ". . . all motor vehicles loaned by automobile dealers to municipalities for use in driver education in the secondary schools shall be registered but shall be exempt from the provisions of this chapter as to payment of registration fees. . . . "

Revised Statutes, Chapter 41, section 105, provides in part:

> "Such joint committee shall consist of the superintending school committee or school directors of said administrative unit and an equal number of the trustees of the academy. Said joint committee shall be empowered to select and employ the teachers for the academy, to fix salaries, to arrange the course of study, to supervise the instruction and to formulate and enforce proper regulations pertaining to other educational activities of the school."

In this state we have a number of municipalities which do not maintain secondary schools. In some of the municipalities there are academies or private schools that are utilized by the municipalities as secondary schools. The legislature has recognized this fact and has authorized the municipalities to join with the board of trustees in the operation of the educational facilities of the academy.

It is to be noted that a joint committee composed of an equal number of so-called "towns people" and trustees of the academy employ the teachers, fix their salaries and "arrange the course of study" and "supervise the instruction."

It cannot be denied that the joint committee has arranged a course of driver education. The same committee is empowered to "supervise the instruction." It would be absurd to say that the joint committee would arrange a course of driver education and supervise its instruction without having a motor vehicle and having control of said motor vehicle.

It must be concluded that the control of the automobile used for driver education is under the joint committee and not the trustees of the academy. Such being the case, it is reasonable to say that the motor vehicle is in effect loaned to the municipality for driver education use.

GEORGE C. WEST

Deputy Attorney General

March 9, 1962

R. L. Chasse, M. D.
Chairman, Maine State Board of Registration of Medicine
P.O. Box 637
Brunswick, Maine

Dear Dr. Chasse:

We have your request of March 8, 1962 for an opinion with regard to the legal requirements for temporary licensing of doctors planning to practice medicine in Maine as hospital residents in other than State institutions, or doctors who plan to accept positions as camp physicians.

Revised Statutes, Chapter 66, Section 9, limits any such temporary licensure to a physician who is a graduate of a class A medical school or university and is duly registered and licensed in this or any other State. The physician must also meet the requirements of the Board relative to medical education and must be of good reputation. No person can be granted a temporary license under Section 9 if he or she is not duly registered and licensed in one of the United States prior to his or her application for such temporary license.

Very truly yours,

THOMAS W. TAVENNER

Assistant Attorney General

March 12, 1962

To: Philip R. Gingrow, Personal & Consumer Finance Examiner, Banks and Banking

Re: Co-maker Loans by Licensed Small Loan Agencies

We have received your memo of 7 February, 1962, in which you state that the last two sentences of section 217, chapter 59, Revised Statutes of 1954, would seem to prohibit a licensee under sections 210 to 227 from inducing or permitting a present borrower to be a co-maker on a note with another borrower, or a co-maker to become a borrower on his own note.

Section 217 only prohibits this when the intent of or the result of this transaction is to get more than the statutory interest rate. When one signs a note to a finance company, as per the standard form enclosed, he signs as a primary maker regardless of the fact that he may have actually signed as the second person on the note and with the intention of being a surety on the note. It is immaterial which signature appears first, because both the signer and co-signer are primarily responsible, and only as a matter of practice do the finance companies endeavor to collect from the person whose signature appears first. With this in mind the last sentence of section 218, chapter 59, clearly forbids a finance company from having a person sign a standard note carrying the standard statutory interest rate when such signer already has another note outstanding with the same finance company. By so signing, the signer is contracting to pay on two separate loans, each carrying a separate interest rate, which, by the provisions of

the aforementioned section 218, make the second note void. It must be noted, however, that this whole opinion is predicted on the aggregate total of the two notes being in excess of $150. Any combination of loans with an aggregate total of under $150 would not be in violation of this chapter.

You give the following hypothetical, and ask whether the merger clause you suggest would rectify the above situation:

> "A licensee makes a loan to borrower A. Subsequently, borrower B wishes to obtain a loan. The licensee requires borrower B to have a co-maker before he will grant the loan. Borrower B brings borrower A to the licensee's office to be his co-maker. The licensee has both sign a note containing a clause which in effect says that should borrower A be called upon to pay this loan while he still has a loan of his own, the interest on the two loans would be computed as though they were one loan."

By introducing this clause into the note as it is worded you could still be in violation of the aforementioned section 218, in that the signer who already has a loan outstanding is still contracting to pay the second note at the statutory interest rate, regardless of the fact that "if he is called upon to pay" he would pay as if both loans were one. The violation occurs when the contract is made, and not when the co-signer is called upon to pay. This can be rectified, however, by putting in a clause which in effect states that if any of the signers have another loan outstanding with the same company then as to them the interest on both loans shall be determined as if there is only one loan. By doing this you would effectively have made the second or subsequent notes valid in that they would all be figured on the statutory interest rate as if they were one note for the purposes of interest. Introducing such a merger clause into the note would seem to be advisable in that the occasion may arise where a person inadvertently becomes a co-maker while he has his own note outstanding.

WAYNE B. HOLLINGSWORTH

Assistant Attorney General

March 12, 1962

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

Dear Harvey:

In answer to your letter of March 7th to this office as to your duties relative to interim committees:

By statute, Revised Statutes, Chapter 10, § 7, you are the executive officer of the legislature when it is not in session. One of your duties is to approve accounts for payment. This would include accounting of interim committee expenses, etc.

I see no reason why either of the committees referred to cannot hire clerk or secretarial help to carry out their duties. However, such total expense for clerical or secretarial help, plus travel and meal expense, should not exceed $1,000 in either case. If that amount is exceeded then it shall be up to the 101st

Legislature to decide to reimburse or not. No extra funds should be allocated from the present legislative fund.

Very truly yours,

FRANK E. HANCOCK

Attorney General

March 13, 1962

To: Irl E. Withee, Deputy Commissioner, Banks and Banking

Re: Legal Requirements Concerning Savings Passbooks

"A mutual savings bank is considering a payroll savings plan whereby an enrollment card will be signed by the depositor authorizing the employer to deduct a certain amount from the pay each week."

"With the exception of the issuance of a passbook, the savings transactions will be the same as used in the bank's regular savings accounts. The bank will provide quarterly statements to the depositors under the Payroll Savings Plan which will itemize all of the transactions on the account for the quarter. These will be mailed to them at their homes."

The question asked is whether a savings bank must issue a formal passbook to each savings depositor in which to record all transactions on a savings account.

There is no specific provision in the law requiring banks to issue passbooks for savings accounts.

There are several references to passbooks in Chapter 59. Chronologically they are as follows:

1. Sec. 19-G, VII, provides a method for issuing a new passbook when the original is lost. The only significant wording in this section is the following:

> ". . . . the delivery of such duplicate book relieves said savings bank or trust company from all liability on account of the missing original book of deposit."

Probably the liability is that stated in *Sullivan v. Lewiston Institution for Savings,* 56 Me. 507 at 511. Bank officers must use reasonable care and diligence to ascertain that person presenting passbook is the same person named thereon.

2. Sec. 19-H, II, 2, provides that a savings deposit book issued by any savings bank may be used as collateral for a loan.

3. Sec. 19-L, I, provides:

> "The Bank Commissioner, at least once in every 3 years, shall cause the books of the saving depositors in savings banks and in every trust company to be verified by such methods and under such rules as he may prescribe."

4. Sec. 82 is a part of the law relating to liquidation procedures and provides that the treasurer of a savings bank shall enter certain reductions on individual passbooks as they are presented.

These sections of the banking law assume by implication that individual passbooks are issued by all savings banks. Our court in *White v. Cushing,* 88 Me. 339 at 345 said:

> "The order in question was drawn upon a savings bank, and it is common knowledge that all banks in this State have a by-law which all

depositors are required to subscribe to, that 'no money shall be paid to any person without the production of the original book that such payment may be entered therein'."

In the absence of statutes requiring individual passbooks for savings accounts in which each and every transaction is recorded, their issuance is a matter of bank by-laws. Being a matter determined by the by-laws of each bank it follows that a bank may amend its by-laws to provide for the type of statement or passbook suggested for use in the payroll savings plan. Sections 19-D, II, D and 19-E, II, H, provide the methods for amending by-laws.

GEORGE C. WEST

Deputy Attorney General

March 13, 1962

To: Public Utilities Commission

Re: Limestone Electric Company

Attention: Vernon C. Morrison, Engineer

You have asked this office if the town of Limestone may purchase the Limestone Electric Company and provide the service now provided by the Electric Company to towns other than Limestone.

The town of Limestone may not purchase the Limestone Electric Co. without specific authorization from the legislature.

There is no provision in the present charter of the town of Limestone nor in the general law of municipalities that authorizes such an act by a town. Therefore, it is necessary to have a special act of the legislature.

GEORGE C. WEST

Deputy Attorney General

March 14, 1962

To: Henry L. Cranshaw, Controller, Accounts and Control

Re: Deduction of Union Dues

We have your request for an opinion as to whether or not a State employee can authorize your office to deduct Union dues with a request that you forward these dues to his Union officials.

The Governor of the State of Maine is the supreme executive power of the State (Constitution of Maine, Article V, Part First). "Everything pertaining to the executive department of the state is at all times pending before the Governor in his official capacity." *State v. Simon,* 149 Me. 256. The executive council functions to aid the Governor in ordering and directing the affairs of state according to law. (Constitution of Maine, Article V, Part Second, Section 1.) For this reason your office may not unilaterally adopt a policy of permitting the above deductions even when authorized by the individual employee. The decision to grant this authority must rest with the head of the executive department, that is, the Governor and Council.

Therefore, it is our opinion that deductions for Union dues can be made only with the approval of the Governor and Council and upon the subsequent signed authorization of the individual employee.

THOMAS W. TAVENNER

Assistant Attorney General

March 15, 1962

To: David Garceau, Commissioner of Banks and Banking

Re: Investment of Money of Municipality borrowed in anticipation of Taxes

You have asked the question: Can a Maine municipality properly invest in United States Government 90-day bills or other short-term United States securities, the money that municipality borrows in anticipation of taxes?

Chapter 90-A, § 21, directs the use of "reserve funds, trust funds and all permanent funds" as follows:

"I. Deposited in savings banks, trust companies and national banks in the State.

A. The balance at any time in any bank shall not exceed the amount insured by the Federal Deposit Insurance Corporation. (1957, c. 174.)

II. Invested in shares of building and loan or savings and loan associations organized under State law.

III. Invested according to the law governing the investment of the funds of savings banks in section 19-I of chapter 59.

A. For the purpose of this section, the words "deposits of a bank" or their equivalent as used in section 19-I of chapter 59 mean the total assets of the reserve fund, trust fund or other permanent fund being invested, but the limitation concerning the maximum amount which may be invested in a security or type of security under section 19-I applies only to an investment in that security or type of security which exceeds $2,000. (1957, c. 244)"

Section 19-I of chapter 59 refers to government obligations.

We are of the opinion that money borrowed in anticipation of taxes becomes a part of the municipality's general permanent fund and may be invested according to Chapter 90-A, § 21.

It is our understanding that this is becoming fairly general practice throughout the State.

FRANK E. HANCOCK

Attorney General

March 15, 1962

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

Re: Land Damage Board Hearings (c. 23, R.S. 1954, as amended by c. 295, P.L. 1961)

A letter dated March 13, 1962 from the Division Engineer of Region One,

Bureau of Public Roads, has raised a question as to the legality of Land Damage Board hearings held by two members of the Board. In particular, the question is raised as to the legality of such hearings when the chairman, an attorney, is absent.

A hearing held by two members of the Land Damage Board is legal. It is not necessary that one of the two holding a hearing be the chairman, except in the instance where the chairman has been unable to administer the oath to the County Commissioner member.

The last sentence of the third paragraph of section 20-I reads:

> "A majority of the board, being present, may determine all matters; provided, however, the chairman shall resolve all questions of admissibility."

It is very obvious that the law allows two of the three members to "determine all matters." This is a very clear statement that any two members may hold a hearing and decide the amount of the award. If there is a question of admissibility of evidence this is to be determined by the chairman. There is no requirement that the determination of admissibility of evidence be made at the hearing. Such determination may be made after the transcription of the record.

Such practice has some precedent in Maine. In the taking of depositions counsel may object to a question, an answer, or to certain evidence. The objection is noted on the record. When the deposition is offered in court, the justice then rules on the admissibility. So here, the two non-legal members will hear the evidence, objections to be noted in the record, and the chairman when he reviews the record can rule whether or not the evidence is admissible.

The problem of admissible evidence is not too great because of the provisions of the first two sentences of the third paragraph of section 20-I. The only evidence not admissible is that which is "immaterial, irrelevant, and unduly repititious testimony." The determination of these factors is not too difficult.

It should be pointed out that in the last paragraph of section 20-I is the following language:

> "He (county commissioner) shall be sworn by the chairman of the Land Damage Board. . . . "

There is no stated time when this member of the Board must be sworn. The only requirement that can be read into the law is that he be sworn *before* assuming his duties for the particular hearing or hearings on which he will be sitting. Except in cases of emergency, the chairman can arrange to administer the oath to the particular county commissioner at some date prior to the hearing or hearings.

GEORGE C. WEST

Deputy Attorney General

March 16, 1962

To: S. F. Dorrance, Assistant Chief of Division of Animal Industry, Agriculture

Re: Issuing of Spay Certificates to Government Veterinarian

We have your request of March 6, 1962 for an opinion as to whether your office should issue spay certificates to Government Veterinarians whose practice is limited to animals belonging to military personnel and/or their dependants.

Revised Statutes, Chapter 77-A, section 4, exempts Government Veterinarians from the provisions of the veterinary registration act, thereby permitting these veterinarians to practice veterinary medicine so long as that practice does not extend to animals owned by other than military personnel and dependants.

For this reason it is our opinion that your department should issue spay certificates to a Government Veterinarian providing it is clearly understood that these certificates are not to be used in any private practice.

THOMAS W. TAVENNER

Assistant Attorney General

March 23, 1962

To: Colonel Robert Marx, Chief of Maine State Police

Re: Fees for Motor Vehicle Inspection

A question has been raised as to whether the owner of a motor vehicle must pay the $1.00 inspection fee if the person inspecting the motor vehicle refuses to pass the motor vehicle and attach a sticker thereto.

Answer: Yes.

Revised Statutes 1954, chapter 22, section 47, reads as follows:

> "Fee for inspections. The operator of any official inspection station shall conduct the inspection of motor vehicles presented to him for that purpose in accordance with rules and regulations promulgated by the Chief of the State Police, for which he shall receive a fee of $1 for each car inspected, this sum not to include labor or material used in correction of faults in equipment."

It is very clear from this wording that the operator of any official inspection station "shall receive a fee of $1 for each car inspected." Nothing is said in this section about the "sticker." It is the inspection that earns the operator his $1 fee.

Section 45 of the same chapter provides in part:

> "If, at the time of such inspection and before the said vehicle is again operated upon the highway, the condition of said vehicle conforms in each and every respect as required by law, an official sticker as a certificate of inspection furnished by said Chief of the State Police shall be placed in the upper right-hand corner of the windshield or in the center of the windshield back of the rear mirror."

As can be seen from this quotation, the "sticker" is only evidence that "the condition of said vehicle conforms in each and every respect as required by law." The fee of $1 does not buy a sticker. The $1 fee pays for a full and complete inspection whether or not a "sticker" is issued.

GEORGE C. WEST

Deputy Attorney General

March 28, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: School Holidays

This is in answer to your memorandum of March 26, 1962.

As I understand it a school committee voted to keep the schools open on January 1st without in the vote directing the teachers to observe the holiday by appropriate exercises. I am of the opinion that it is not necessary that the school committee direct the teachers to hold appropriate exercises on January 1st since section 154 of Chapter 41 lists the exercises to be held on January 1st should the schools remain open.

It is my opinion, therefore, that the day should not be observed as a legal holiday since the school committee voted to keep the school open on that day.

RICHARD A. FOLEY

Assistant Attorney General

April 2, 1962

To: Joseph T. Edgar, Deputy Secretary of State

Re: Voting Rights of Public Assistance Recipients

A question has arisen relative to the right to vote of a person who has received supplies from a municipality within a three-month period immediately preceding an election. Particular attention is focused upon the cases of persons receiving Aid to Dependent Children, Old Age Assistance, Aid to the Blind and Aid to the Disabled, who have these grants supplemented by assistance from the welfare funds of the municipality. The four categories enumerated above are generally denominated as public assistance and will be so referred to hereafter.

Our Constitution, Article II, section 1, provides:

> "Every citizen of the United States of the age of twenty-one years and upwards, excepting paupers and . . . shall be an elector for governor . . . .

Early in our state the question arose as to who was a pauper under this provision of the State Constitution. Our court in reply to questions submitted by the House of Representatives on March 28, 1831, said:

> " . . . a man is to be considered a pauper so long as he receives supplies, as such, from the town where he resides, but no longer. Some limit must be fixed, for some must have been intended; and as residence in a particular town for three months next preceding an election authorizes a citizen of the United States to be an elector of state officers in that town, we are of opinion that such a person cannot constitutionally be considered as an excepted pauper, unless within that term, he shall have been directly or indirectly furnished with supplies, as such, from or under the sanction of the overseers of the poor of such town." *Opinion of the Justices,* 7 Maine 497 at 499.

This Opinion of the Justices stated the law of Maine relative to the definition of a pauper and the right to vote. This definition consists of two parts (1) de-

fining a pauper (2) defining a pauper in relation to the constitutional right to vote.

Part (1) defining a pauper has been changed from time to time by legislation. Persons who would be paupers under this definition have now in some instances been declared not to be paupers by acts of the legislature. One large segment so declared not to be paupers, though receiving aid or supplies, are the recipients of public assistance.

The Revised Statutes, Chapter 25, section 236, provides in part:

> "The receipt of aid to dependent children shall not pauperize the recipient or the relative with whom the child is living and the receipt of general relief by such recipient or relative with whom the child is living, made necessary by the presence of the child in the family, shall not be considered to be pauper support."

Also, Chapter 25, section 282, reads in part:

> "The receipt of old age assistance shall not pauperize the recipient thereof, and the receipt of general relief by such recipient shall not be considered to be pauper support."

The same wording is found in Chapter 25, section 309, relative to aid to the blind and section 319-R relative to aid to the disabled.

So, for many years it has been accepted that recipients of public assistance, even though their grants may have been supplemented by general relief from the municipality, are not paupers and are eligible to vote in any election.

Part (2) defining a pauper in relation to the constitutional right to vote has remained unchanged until in 1961 the legislature revised the election laws. In section 1, the following definition is found:

> " 'Pauper' means a person who has been directly or indirectly furnished supplies by a municipality within 3 months of any election at which he seeks to vote." (The second sentence, not quoted, has no bearing on this matter.)

Consequently, we now have an act of the legislature which in effect simply restates the law of the state as enunciated by the court in *Opinion of the Justices,* 7 Maine 497 at 499:

> "Amendments by implication, like repeals by implication, are not favored and will not be upheld in doubtful cases. *The Legislature will not be held to have changed the law it did not have under consideration when enacting a later law, unless the terms of the subsequent act are so inconsistent with the provisions of the prior law that they cannot stand together.* Sutherland Statutory Construction, Third edition, Section 1913. This principal has been recognized by our court in *Starbird v. Brown,* 84 Me. 238 and *Mace v. Cushman,* 45 Me. 250 at 260." (Emphasis supplied) *Inman v. Willinski,* 144 Me. 116 at 123.

It cannot be said that the legislature intended to change the law relating to recipients of public assistance. That law was not under consideration when the election law was revised. Nor are the terms of the election law so inconsistent with the provisions of the public assistance laws and the law, as expressed by our court, that they cannot stand together. The definition in the election law is but a legislative enactment of existing law.

> "The legislature is presumed to have in mind the decision of the court. If, therefore, the legislature in the amendment had intended to

change the application of these decisions, ... they would have done so by the use of some apt language rather than to have left their intention to the uncertainty of implication." *Webber v. Granville Chase Co.*, 117 Me. 150 at 152.

It must, therefore, be concluded that recipients of public assistance who receive supplemental supplies or support from municipalities are not paupers within the meaning of Article II of the Constitution, or the definition in section 1 of the election laws.

The definition of paupers in section 1 of the election laws applies only to those persons who have been directly or indirectly furnished supplies by a municipality within three months of any election as their sole means of existence (other than their own work, occasional though it may be).

GEORGE C. WEST

Deputy Attorney General

April 5, 1962

To: Maynard F. Marsh, Chief Warden, Inland Fisheries & Game

Re: Sale of Smelts

You have asked if it is legal to sell and serve fried fresh water smelts at a road-side stand.

Answer: Yes.

The only provision in Chapter 37 relative to the sale of fresh water fish is in section 49. This section provides in part:

> "It shall be unlawful for any person to sell or buy, directly or indirectly, any landlocked salmon, trout, togue, black bass, white perch or pickerel, except that pickerel may be sold in Washington County."

There is no other prohibition against the sale of fresh water fish in our fish and game laws. Therefore, it must follow that the sale of fried fresh water smelts is legal whether at a road-side stand or any other place.

GEORGE C. WEST

Deputy Attorney General

April 9, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Subsidy for Superintendence

This is in answer to your request for an opinion interpreting Revised Statutes of 1954, Chapter 41, section 81, which reads in part as follows:

> ". . . Upon the approval of said certificate by the Commissioner, 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 amount paid by the town,* provided the amount so paid shall not exceed $1,350 for one year for the superintendent of any one town. . . " (Emphasis supplied)

Because of the death of a superintendent, the question has arisen whether or not the monthly amount paid the superintendent should be for that part of the month which the superintendent performed his duties or for the entire month.

It is our opinion that the estate of the superintendent has a valid claim for the entire $112.50 monthly payment and not a prorated amount of that monthly payment.

In passing, I would note that I find no authority for prorating $1,350.00 maximum state payment over a period of twelve months. The law provides for a sum equal to the amount paid by the town. If the town makes monthly payments to the superintendent, the state would match each monthly payment up to the amount of $1,350.00. It may, therefore, only take 2 or 3 monthly payments by the state to reach the maximum amount allowed by the statute.

It appears that prorating over the period of twelve months would be a more reasonable approach to the payment of the $1,350.00 maximum salary, and perhaps your department may want to recommend an amendment of the statute to provide for such proration over the period of twelve months.

RICHARD A. FOLEY

Assistant Attorney General

April 9, 1962

To: Austin Wilkins, Commissioner of Forestry

Re: Kindling Out-of-Door Fires

We have your request of April 5th with regard to our interpretation of Revised Statutes, Chapter 36, section 94-A. We understand that you are asking whether or not a person with a camping trailer or pickup truck can light a camp fire on the land of another without permission of the land owner.

The provisions of section 94-A provide that—"No person shall kindle or use fires on land of another without permission of the owner . . ." This section goes on to include as out-of-door fires, sterno fires in or out of tents and collapsible shelters. This paragraph limits the prohibition of lighting fires while on the land of another to fires which are on the ground or in or out of tents and collapsible shelters. For this reason, any person who kindles a fire while on the land of another is in violation of this section even though that fire be in a camping trailer or pickup truck, so long as that camping trailer or pickup truck is not permanently enclosed but is covered by a tent or collapsible shelter.

This opinion should in no way be construed to prohibit the lighting of such a fire in an enclosed permanent trailer even though that trailer may be situated on the land of another.

THOMAS W. TAVENNER

Assistant Attorney General

April 10, 1962

To: Doris St. Pierre, Secretary, Real Estate Commission

Re: Return of License and Examination Fees

We are in receipt of a letter from a Mr. Harry Reich dated April 7, 1962 in which he requests the return of a $15 broker's license fee and a $20 examination fee. It appears that Mr. Reich decided not to take the examination and to withdraw his application for a broker's license. The Commission agreed to refund the license fee but refused to refund the examination fee. This problem has arisen before and because of the conflict in opinions from this office we have deemed it advisable to answer this question from Mr. Reich.

On August 26, 1955, this office advised the Real Estate Commission that both the examination and license fees should be returned to an applicant who asks to withdraw his application. On November 18, 1960 this office advised the Commission that although the license fee was returnable, the examination fee could not be refunded. We have examined the law relative to this question and have determined that the earlier opinion should control and that both the license fee and the examination fee should be returned to any applicant who has withdrawn his application prior to the taking of his examination. For this reason we are withdrawing our opinion of November 18, 1960.

THOMAS W. TAVENNER

Assistant Attorney General

April 10, 1962

Mr. Edward L. Allen
Board of Pharmacy
8 Harlow Street
Bangor, Maine
Re: Drug Stores Selling Beer

Dear Mr. Allen:

We have your request of April 9th for an opinion as to whether or not the Board can prohibit the sale of beer by and in drug stores in the State of Maine.

Revised Statutes, Chapter 68, section 1, subsection I, provides that the Commissioners of Pharmacy have the power "to make such rules and regulations, not inconsistent with the laws of the State, as may be necessary for the regulation and practice of the profession of pharmacy in the lawful performance of its duties; . . ." Revised Statutes, Chapter 61, section 32, provides that any retail store having a stock in trade of at least $1,000 wholesale value consisting of goods reasonably compatible with a stock of liquor may be granted a malt liquor license by the Maine State Liquor Commission. The merchandise which shall be considered incompatible with the sale of malt liquor is clearly set forth in the above section and in the applicable regulations promulgated by the Liquor Commission. Neither in section 33 nor in the corresponding regulations is the sale of drugs listed as incompatible with the keeping of a stock of malt liquor. For this reason, the Revised Statutes, Chapter 61, section 32, impliedly permits drug

stores to apply for and receive a license for the sale and distribution of malt liquor.

As stated earlier, the Commissioners of Pharmacy have the power to make rules and regulations so long as those rules and regulations are not inconsistent with the laws of the State. If the laws of this State allow drug stores to apply for malt liquor licenses, any regulation promulgated by the Commissioners of Pharmacy which attempts to modify this right would be inconsistent with Chapter 61 and would, therefore, be null and void.

Very truly yours,

THOMAS W. TAVENNER

Assistant Attorney General

April 13, 1962

To: Irl E. Withee, Deputy Commissioner of Banks and Banking

Re: Certificates of Deposits as Legal Investments for Savings Banks

In your memo of April 6, 1962, you ask the following question:

May a savings bank legally invest its funds in certificates of deposit with a commercial bank?

Answer: No.

Chapter 59, section 19-I provides that savings banks may hereafter invest their funds in "securities" as listed. In other words, savings banks may only invest in "securities."

We find that in two Maine cases, *Hatch v. First National Bank of Dexter,* 94 Me. 348, and *Cooper v. Fidelity Trust Co.,* 134 Me. 40, our court has said that a certificate of deposit is in legal effect a negotiable promissory note given by a bank to a depositor.

A negotiable promissory note is not a "security." Therefore, a savings bank may not legally invest its funds in certificates of deposit.

GEORGE C. WEST

Deputy Attorney General

April 13, 1962

To: Austin H. Wilkins, Commissioner of Forestry

Re: Financial responsibility for fire control

We have your request for an opinion as to the financial responsibility of various political subdivisions for the suppression of forest fires. As we understand your question, you are asking our interpretation as to how the costs of fire control are to be divided both before and after the declaration of a state of emergency. This opinion will take into consideration the provisions of R.S., Chapter 12, Section 20, R.S., Chapter 97, Section 60, and the agreement between Civil Defense and the Forest Service signed in 1954 by Commissioner Nutting.

Revised Statutes, Chapter 97, Section 60, provides that each town shall pay

for the cost of fire control up to 2% of the assessed valuation of that town. The State shall then reimburse the town for one half of this limited cost. This Section further provides that the State alone shall be responsible for all of the expense of fire control over and above the 2% town limit. This is the financial procedure set up by the Legislature. It applies without any reference to an emergency and constitutes a duty imposed on the towns of the state by the state legislature. This law cannot be modified by any agreement signed by department heads.

Revised Statutes, Chapter 12, Section 20, provides that a fund be established upon which the Governor can draw in case of emergency. Nowhere in this Chapter are the financial arrangements as set forth above altered or amended.

The agreement between the Civil Defense agency and the Forest Service purports to transfer the financial responsibility for fire control from the towns to the state in case of an emergency. Such a procedure is not specifically authorized under any of the provisions of Chapter 12, and is in direct contradiction to the provisions contained in Chapter 97. For this reason it is our opinion that the provisions of Chapter 97 are controlling and that the towns must share in the costs of fire control as outlined above, even though a state of emergency may have been declared to exist.

THOMAS W. TAVENNER

Assistant Attorney General

April 16, 1962

To: Captain Willard R. Orcutt, Maine State Police

Re: Inspection of Motor Vehicles—"Point of distribution."

Question: Should the point of distribution be construed to mean more than one point, if dealers are involved in buying the vehicle, and until the customer finally purchases the vehicle, or should it be construed to mean only the first dealer to purchase the vehicle and bring it to his place of business.

Answer: The point of distribution should be construed to mean more than one point, dependent upon the circumstances of each sale.

Chapter 22, section 45, provides in part:

> "Every person who is the owner or in control of a motor vehicle registered and operated upon the highways of the State shall submit such vehicles for semiannual inspection as provided for in this section and sections 46 and 47. . . . .
>
> "Said inspection shall not apply to motor vehicles owned and registered in another state nor to new or used motor vehicles being driven by a dealer or holder of a transit registration certificate or their authorized representative from the point of distribution to his place of business.
>
> "No dealer or holder of a transit registration certificate in new or used motor vehicles shall permit any such vehicle owned or controlled by him to be released for operation upon the highways until it has been inspected. . . ."

The problem which is raised concerns the meaning of the phrase "point of distribution" used in the second quoted paragraph above (4th paragraph of section 45).

The paragraph in which this phrase appears was in chapter 19, section 35 of the Revised Statutes 1944, and read:

> "Said inspection shall not apply to motor vehicles owned and registered in another state provided proper proof is shown of an inspection of such motor vehicle within the period of 6 months prior thereto."

At that time most new cars came in by freight or overland carriers. Those coming by freight were towed to the garage. Then custom changed and some dealers went to some "point of distribution" and picked up new cars. They also bought new cars from other dealers and drove the new car to their garage. To cover this practice the legislature in 1951 (chapter 235, § 15) amended this law to read as follows:

> "Said inspection shall not apply to motor vehicles owned and registered in another state nor to new motor vehicles being driven by a dealer or his authorized representative from the point of distribution to his place of business."

In the meantime, the so-called used car business blossomed forth. Instead of new car dealers depending on individuals buying all their used cars they now wholesaled them to used car dealers. Also, used car dealers wholesaled used cars to other used car dealers. This meant the moving of several used cars from one dealer to another. These cars are sold on an "as is" basis with no repairs being made and the buying dealer intending to make necessary repairs before selling to individuals. Many times these cars remained in a dealer's lot beyond the time for the next inspection. This created a problem to the dealers, both of used and new cars. In 1955 the legislature authorized the issuance of the "transit registration certificate."

Consequently, in 1957 this paragraph was amended to read as it does now. The scrivener of the amendment used the easy way out and simply inserted the words "or used" and "or holder of a transit registration certificate." It is obvious that no thought or consideration was given to the succeeding paragraph except to add the words "or holder of a transit registration certificate" into it. No thought was given to the changed meaning, or if the meaning was changed, or if the new amendment could be reasonably interpreted.

We must look at the whole law in order to learn the intent of the legislature. In so doing it must become obvious that the legislature intended to treat used motor vehicles the same as new motor vehicles. Even before the 1957 amendment there was no single "point of distribution" for new cars in the state. There is none today. So it is with used cars.

Therefore, we must conclude that the legislature intended that a motor vehicle dealer, in either new or used motor vehicles, could move motor vehicles, purchased by him for resale, to his place of business from the place of purchase without first having the vehicle inspected.

GEORGE C. WEST

Deputy Attorney General

April 25, 1962

To: Asa Gordon, Coordinator of Maine School District Commission

Re: Election of School Directors

You have inquired whether or not in the formation of a school administrative district a town should vote to elect certain directors as their representatives when voting whether or not to form the district even though a certificate of organization has not issued from the Maine School District Commission.

The Revised Statutes of Maine of 1954, chapter 41, section 111-F, subsection IV, provides in part as follows:

> ". . . the commission shall order the question of the formation of the proposed School Administrative District and *other questions relating thereto* to be submitted to the legal voters of the municipalities which fall within the proposed School Administrative District. . . ." (Emphasis supplied)

One of the articles required to be voted on in this section is as follows:

> "Article : To choose ..... school director(s) to
> Number
> represent the town on the Board of School Directors of School Administrative District No. ."

I am of the opinion that the vote to choose directors should be held at the same time as the vote to see whether or not the town will join the district.

RICHARD A. FOLEY

Assistant Attorney General

May 4, 1962

Mr. John P. Harriman
36 Pitt Street
Portland, Maine

Dear Mr. Harriman:

I have your letter of May 1 confirming the telephone conversation which we had on April 27th. I also have copies of the letters written to you by Horace P. Bond under date of June 19, 1961 and Richard E. Cutting written April 16, 1962.

The Atlantic Sea Run Salmon Commission met at the State House on May 2 so I discussed this matter with them. I also went over the "Right to Know" law and explained its meaning to them. Normally, this office would not give an interpretation of this law to a private citizen as we are limited by law so that we may give advice and opinions only to the Governor and Council, the respective branches of the legislature, and to department heads on questions of law that affect the State. Because of the situation involved here I feel it is only fair to you and your association that I explain our interpretation of this law.

Public Laws of 1959, chapter 219, adds six new sections numbered 36 to 41 to chapter 1 of the Revised Statutes. Section 37 provides that the term "public proceedings" shall mean the transactions of any function affecting any and

all citizens by any administrative or legislative body of the State or any political subdivision of the State, which body is composed of three or more members. Section 38 provides that all public proceedings shall be open to the public and all persons be permitted to attend any meetings of these bodies or agencies and any minutes of such meeting shall be promptly recorded and open to public inspection except as otherwise specifically provided by statute.

Section 40 provides that every citizen of this State shall, during the regular business or meeting hours of all such bodies and on the regular business premises of all such bodies, have the right to inspect all public records including minutes of meetings and to make memoranda abstracts or photographic or photostatic copies of the records or minutes inspected except as otherwise specifically provided by statute.

There can be no doubt that the minutes of any meetings of the Commission are open to public inspection at their regular business premises in Orono. This would include any reports which are presented to and accepted by the Commission by its vote.

This would not include field notes, data, computations or other material made up by employees of the Commission from which reports are made to and accepted by the Commission. This so-called working material, although not necessarily confidential, is not within the framework of the Right to Know law and, therefore, may or may not be released by the Commission as it sees fit.

In this particular case, if there are any minutes of meetings of the Commission or any reports which the Commission has accepted at its meetings which you wish to see, you have the perfect right to inspect those records at their place of business in Orono during regular business hours. There is nothing in this law which requires a body or agency coming under the law to forward this information to anyone unless it so desires.

If you wish to see the working figures, data, notes or other material used by its employees in arriving at conclusions contained in the reports, it is entirely within the discretion of the Commission as to whether or not it will release this information to any person.

I trust that I have explained this law sufficiently so that there can be no misunderstanding as to its meaning.

Very truly yours,

GEORGE C. WEST

Deputy Attorney General

May 15, 1962

To: Orville T. Ranger, Administrative Hearing Officer

Re: Travel Expenses

We have your request of May 15th for an opinion with regard to the following questions:

1. Is the Hearing Officer, under Chapter 20-A, entitled to travel expenses on the days he travels to the State House for routine office work?

2. Is the Hearing Officer, under Chapter 20-A, entitled to travel expenses

when he travels to the State House to conduct hearings or to do other work connected with a particular case?

These points are covered in the Council Order of January 11, 1961, which Council Order purports to give the State Controller instructions with regard to the allowance of expense accounts to State employees. This Council Order points out that no official of the State shall be reimbursed for meals, lodging or travel expenses at his official headquarters or at points within a reasonable distance therefrom, except when a statutory provision expressly provides differently or unless in the opinion of the State Controller the changes are justified as involving less expense to the State or are necessary because of unusual circumstances. An example of an instance in which a statutory provision expressly provides for travel and lodging expenses can be found in Revised Statutes, Chapter 20, section 1. In this section it is specifically stated that the Attorney General shall receive actual expenses incurred in the performance of his official duties while away from his home.

Under section 7 of the Administrative Code (R. S., Chapter 20-A) the Hearing Officer is entitled to actual and necessary expenses in the performance of his duties. It should be noted that there is no mention of expenses incurred while he is away from his home.

It is our opinion that the official headquarters of the Hearing Officer is in Augusta and that the aforementioned Council Order therefore precludes the inclusion of travel expenses by the Hearing Officer to and from Augusta. He would be entitled, however, to travel expenses to and from any other point in the State.

We are enclosing a photostatic copy of the Council Order referred to above.

THOMAS W. TAVENNER

Assistant Attorney General

May 17, 1962

To: Paul A. MacDonald, Secretary of State

Re: Interpretation of Public Laws 1961, Chapter 324

Reference is made to your memo of April 2, 1962. You have asked three questions relative to this law.

Question 1: May a court suspend a nonresident license?

Answer: No.

Chapter 61, § 51-B, states that upon a conviction of knowingly transporting or permitting transportation of intoxicating liquor by a person under 21 years "the court shall *suspend the operator's license,* if any, for a period of 10 days." (Emphasis supplied) This section further provides that the court shall forward to the Secretary of State the license and a record of conviction. The court may recommend a further suspension for an additional period not to exceed 60 days.

The Secretary of State *"shall suspend the license,* or *right to operate,* or *right to obtain a license,* of such person for the recommended period. . . ." (Emphasis supplied)

It is to be noted that the legislature gave the court the right to only "suspend the license" of the violator. A court may only suspend a license over which it has jurisdiction. A Maine court has jurisdiction only over a Maine license. Therefore, a court may not suspend the license of a nonresident.

Question 2: May a nonresident's right to operate in this state be suspended if he does not hold a valid license in this or any other state?

Answer: As to the court "No." As to the Secretary of State, "Yes." The answer to question 1 answers this question so far as the court's authority is concerned. The law is very clear that the Secretary of State shall suspend the "right to operate" of a nonresident.

Question 3: May the right to operate or the right to obtain a license of a resident of this state who does not hold a valid license from this or any other state be suspended?

Answer: As to the court "No." As to the Secretary of State, "Yes." Again the answer to question 1 gives the answer as to the court's authority. The court may only suspend a license. It may not suspend the right to operate or the right to obtain a license. Such action is the function of the Secretary of State.

A question may arise as to the procedure to be followed by the municipal court in the event the violator is a nonresident or has no Maine license.

The wording of the first sentence of § 51-B gives ample authority to the court to forward the record of conviction to the Secretary of State for appropriate action even though the court cannot suspend the violator's license. Note the words "the court shall suspend the operator's license, *if any* . . . " (Emphasis supplied) It seems to follow that if there is no license for the court to suspend, that the record of conviction shall still be forwarded to the Secretary of State for appropriate action.

It is also to be noted that the Secretary of State can only act upon a recommendation by the court. Such recommendation is essential. Without it the Secretary of State can do nothing.

GEORGE C. WEST

Deputy Attorney General

May 21, 1962

To: Maynard F. Marsh, Chief Warden, Inland Fisheries and Game

Re: Micmac Indians

We are in receipt of your memorandum dated April 27, 1962, in which you state that a Micmac Indian from Canada has purchased a resident fishing license in this State on the theory that he is a citizen of North America and no particular state or territory therein, and therefore is entitled to a resident license. As you state in your memorandum, this is absurd.

In order to be considered a resident within the purview of the statutes requiring a fishing and/or hunting license one must be a domiciliary of the State of Maine. Obviously, a Micmac Indian from Canada is not a domiciliary of the State of Maine unless and until he sets up permanent residence in this State with an intent to remain here. The argument advanced that because the Indian is a citizen of North America he can have a resident hunting license in this State is fallacious inasmuch as he is bound by the laws of each State that he enters, just as we as American citizens are. All American citizens can travel without restriction from state to state within the United States. However, each and every one of us is bound by the laws of that particular state that we happen to

enter, and it is obvious that we could not get a resident license in any other state but Maine while still domiciling in Maine, even though temporarily residing in another state. A fortiori, an Indian entering this State from Canada or from another state within the United States is still bound by the laws of this State. In the instant case, the Micmac Indian is domiciled in Canada and is a nonresident of the State of Maine within the purview of the statute.

I call your attention to *State v. Cloud,* 228 N.W. 611; 179 Minn. 180 (1930) for a discussion of Indians, jurisdiction, and hunting and fishing. I also call your attention to *State v. Newell,* 84 Me. 465; 24 A. 943 (1892) in which the court states —

> "Whatever the status of the Indian tribes in the west may be, all the Indians, of whatever tribe, remaining in Massachusetts and Maine, have always been regarded by those States and by the United States as bound by the laws of the State in which they live," quoting *Danzell v. Webquish* 108 Mass. 133, and *Murch v. Tomer,* 21 Me. 535.
> The same rationale would apply to an Indian coming in from Canada.
>
> It also states — "Indeed, the defendant concedes that he is bound by all the laws of the state, except those restricting the freedom of hunting and fishing. As to these restrictive statutes, he contends they must give way as to him before certain Indian treaties named in the report of the cases."

There are no such treaties that would affect the case in issue, and the only statutory provisions covering this problem apply to Penobscot and Passamaquoddy Indians.

I include for your information the following passage in the *Newell Case* which states:

> "Though these Indians are still spoken of as the 'Passamaquoddy Tribe,' and perhaps consider themselves a tribe, they have for many years been without a tribal organization in any political sense. They cannot make war or peace; cannot make treaties; cannot make laws; cannot punish crime; cannot administer even civil justice among themselves. Their political and civil rights can be enforced only in the courts of the state; what tribal organization they may have is for tenure of property and the holding of privileges under the laws of the state. *They are as completely subject to the state as any other inhabitants can be. They cannot now invoke treaties made centuries ago with Indians whose political organization was in full and acknowledged vigor.*" (Emphasis added)

In view of the above, I wholeheartedly agree that these Indians are not entitled to a resident fishing and/or hunting license until they have satisfied the residency requirements of the State of Maine.

WAYNE B. HOLLINGSWORTH

Assistant Attorney General

May 23, 1962

To: Governor John H. Reed

Re: Amendment of Reapportionment Provision of the State Constitution

You have asked this office for its opinion relative to the necessity of a special session of the 100th Legislature to consider an amendment to Article IV, Part First, Section 3, of the Constitution relative to apportionment of the House of Representatives.

It would appear that a special session of the 100th Legislature, even if held immediately, would not affect the composition of the 101st Legislature. If a constitutional amendment were proposed at a special session held in the immediate future, the amendment could not be voted upon by the people until the general election in November, 1962. Normally this amendment would then become effective on the first Wednesday of January, 1963 unless the resolve made it effective at an earlier date. Therefore, it would be impossible to make this amendment effective to reapportion the 101st Legislature.

On the other hand, if the matter is considered by the 101st Legislature and an amendment is proposed, it can be voted upon on the Tuesday following the first Monday of November, 1963. Normally the amendment would be effective on the first Wednesday of January, 1964. The resolve proposing the amendment can, however, carry an earlier effective date.

As soon as the Governor and Council have canvassed the votes and the Governor has proclaimed the ratification of the amendment, he may then call a special session of the legislature for the purpose of reapportioning the House of Representatives in accordance with the new constitutional amendment. This apportionment resolve could be passed as an emergency measure which would be effective upon the signature of the Governor and would be effective in time for candidates to secure signatures and file papers for the primary election in June, 1964.

From the foregoing it is very evident that a special session of the 100th Legislature would be of no advantage in this situation.

GEORGE C. WEST

Deputy Attorney General

May 23, 1962

To: Austin H. Wilkins, Commissioner of Forestry

Re: Powers of Deputy Forest Fire Wardens

We have your request of May 3 for an opinion as to whether or not the chief warden has the authority under the provisions of Revised Statutes, chapter 36, § 103, to delegate to his deputy forest fire wardens the power to arrest violators of the laws relating to forests and forest preservation. We have your additional request for an opinion as to whether or not a deputy forest fire warden has the right to take evidence such as a gasoline fuel stove.

Revised Statutes, chapter 36, § 103, provides in part that each chief forest fire warden "shall have and enjoy the same right as a sheriff to require aid

in executing the duties of his office. . . . . Deputy forest fire wardens shall perform such duties, at such times and under such rules and regulations, as the commissioner, or the chief fire warden of the district with the approval of the commissioner, may prescribe." (Emphasis supplied)

Under the provisions of law quoted above it would appear that the chief forest fire warden in an area may properly delegate any or all of his powers to a deputy warden. This power to delegate, in our opinion, includes the power to authorize the deputy warden or wardens to arrest persons who are in violation of any state law relating to forests and forest preservation. It is our further opinion that each deputy warden can be delegated the power and right to take evidence of violation of laws relating to forests and forest preservation. This delegation can be made in the same manner as the delegation of the power of arrest.

THOMAS W. TAVENNER

Assistant Attorney General

May 24, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Including Federal Aid Under Public Law 874—1950 as a Part of the Foundation Subsidy Program of the State

Chapter 41 of Section 237-D excludes from the total foundation subsidy program, "tuition collections and other school maintenance incidental receipts."

The State Board of Education has ruled that federal aid received under certain sections of Public Laws of 1950, Chapter 874, is not an "incidental receipt" and, therefore, is to be included within the state foundation subsidy program. The Board has also excluded aid received under some sections of said Public Law 874 as an incidental receipt. You now inquire whether or not the State Board of Education has authority to include aid received by a municipality under section 3(c)1 of Public Law Chapter 874, as part of the state foundation program.

The law does not define "school maintenance incidental receipts." The State Board of Education after considerable research has published a list of receipts which it deems to be school maintenance incidental receipts and not includable in the state foundation subsidy program. It is my opinion that the State Board of Education is acting within its authority when it determines which receipts shall be considered as included or excluded under the term "school maintenance incidental receipts."

You have informed me that inclusion within the foundation program of federal aid paid under section 3(c)1 of Public Law 874 would involve a considerable expenditure of state subsidy funds. I would suggest, therefore, that before the State Board includes federal aid paid under section 3(c)1 within the state foundation program, that enabling legislation be enacted either in the form of including such sums for state subsidy in the education budget, or an amendment to section 237-D defining "school maintenance receipts" to include federal aid under Public Law 874.

RICHARD A. FOLEY

Assistant Attorney General

May 25, 1962

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

Re: Calcium Chloride Bids

Through your office the Highway Department requested bids on calcium chloride for the approximate period of June 1, 1962 to April 1, 1963. Five bidders submitted identical bids as to price per ton f.o.b. the stated places in the bid requests.

Of the five bidders one is a Maine corporation having its principal place of business in Maine. The others are foreign corporations. The Maine corporation stated the bid price would be protected against increases to December 31, 1962. This factor eliminates this bidder (Polar Chemical, Inc.) as its bid cannot be considered as a low bid because all other bidders protected against price increases until April 1, 1963.

This leaves four bidders as low. Two of these bidders are foreign corporations, not registered to do business in the state (Pittsburgh Plate Glass Co. and E. & F King Co.). They cannot be considered as in-state bidders.

A third bidder (Allied Chemical Corporation) is a foreign corporation registered to do business in the state. In addition, it has a branch consisting of a plant where tar and asphalt products are manufactured within the state. It thus qualifies as an in-state bidder.

The last bidder (The Chemical Corp.) is a foreign corporation duly registered in Maine. In addition, it has a branch, consisting of storage, warehouse and office facilities in this state. It thus qualifies as an in-state bidder.

On this statement of facts you ask if you may award the bid to the in-state bidders that agreed to furnish calcium chloride at the bid price until April 1, 1963, namely, The Chemical Corp. and Allied Chemical Corp.

The pertinent provision of the statute is chapter 15-A, § 39, subsections VIII and IX.

> "VIII. Tie bids shall be resolved on the basis of factors deemed by the state purchasing agent to serve the best interest of the state or by the drawing of lots, provided that price, quality, availability and other factors being equal, contracts or purchases shall be awarded to the in-state bidder or to bidder offering commodities produced or manufactured in the State of Maine, and services rendered by Maine bidders;
>
> "IX. The phrase 'in-state bidder' shall be held to mean one having its principal place of business, or a branch thereof, located in Maine."

You have here a tie bid. You have three choices under section 39,—(1) resolve on the basis of factors deemed by you to serve the best interests of the state, (2) draw lots, or (3) price, quality, availability and other factors being equal, contracts or purchases *shall* be awarded to the in-state bidder.

You having determined that price, quality, availability and other factors are equal, "contracts or purchases *shall* be awarded to the in-state bidder." You are, therefore, correct in awarding the bid to the low in-state bidders, The Chemical Corp. and Allied Chemical Corporation.

GEORGE C. WEST

Deputy Attorney General

June 5, 1962

To: Colonel Robert Marx, Chief of Maine State Police

Re: Appointment of State Police officer as a private detective

In answer to your inquiry of May 31, 1962 relative to appointment of a State Police officer as a private detective, we believe there would be a conflict of interest.

Private detectives are licensed by the Governor with the advice of the Council. They are issued commissions and must qualify as do other appointed officers. We believe this type of office would be in conflict with the provision in Chapter 15, Section 3, that members of the State Police "shall hold no other office during this term of service."

FRANK E. HANCOCK

Attorney General

June 8, 1962

To: Madge E. Ames, Labor and Industry

Re: Application of Section 53, Chapter 30, R.S. 1954, as amended, to waitresses

Reference is made to your memo of June 7, 1962. In your memo you ask the following question:

Must a restaurant owner pay waitresses some compensation under the provisions of Chapter 30, section 53?

The question is answered in the affirmative. The pertinent provisions of this section read:

> "No person, firm or corporation shall require or permit any person as a condition of securing or retaining employment to work without monetary compensation . . . ."

It is very obvious that this section shows the intent of the legislature that no one may hire an employee except for monetary compensation. This monetary compensation must be paid by the employer. The employer cannot hire a person and depend upon the generosity of customers to supply wages to his employees. Such an arrangement would not constitute monetary compensation between the employer and employee.

GEORGE C. WEST

Deputy Attorney General

June 12, 1962

To: Joseph Edgar, Deputy Secretary of State

Re: Campaign Expenses—Liability Incurred

The Campaign Reports Committee has asked this office to give an interpretation or definition of "liability incurred" as used in R. S., c. 3-A, sections 172 and 173-III.

"Liability" as used in these two sections should be interpreted as a "debt."

A definition would be "any obligation of a candidate or committee for services rendered by request of a candidate or committee for which a bill has been received but not fully paid." The word "services" includes radio and television time, advertising and all other items which a candidate or committee purchases.

GEORGE C. WEST

Deputy Attorney General

June 14, 1962

To: Paul A. MacDonald, Secretary of State

Re: Mileage for the Executive Council

The question asked is stated in the following language:

"I have been requested by the Executive Council to make inquiry of you as to whether the provision of Section 31, Chapter 16 of the Revised Statutes, as amended by Chapter 415 of the Public Laws of 1957 relating to automobile travel by State Employees applies to members of the Executive Council."

Chapter 11, § 3, covers the pay and expenses of the executive council. This section provides that from January to adjournment of the legislature the council members shall receive the same compensation and travel as representatives to the legislature. The second sentence provides that at other sessions of the council the members shall receive $20 for each session *"and actual expenses."*

Section 44, Chapter 15-A (formerly § 31, chap. 16) as enacted by chapter 340, § 1, Public Laws 1957, provides that the state shall pay for the use of privately owned automobile for travel by employees of the state not more than 8c per mile for the first 5,000 miles and 6c per mile after 5,000 miles traveled in each fiscal year.

The latter section does not say that the figures paid for travel by employees are "actual expenses." The statute merely says that the state will pay not more than those amounts.

The Executive Council members are to receive "actual expenses" hence they are not bound by the provisions of section 44, chapter 15-A.

GEORGE C. WEST

Deputy Attorney General

June 20, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Religious Instruction in Public Schools

This is in answer to your inquiry as to the legality of the rental or lease of a public building to a particular religious denomination for use outside of regular school hours.

It appears that the previous opinions of this office, which you referred to in your memorandum, do not rule directly on the question of leasing a public building to a religious denomination before or after regular school hours.

There is a split of authority in those states which have considered this prob-

lem. Annotation 79 A.L.R. 2d 1148. In those states which do permit such leasing during non-school hours, the courts indicate that the school board must insure that there is no abuse of discretion. The court stated in *Southside Est. Bapt. Church v. Trustees,* (Florida), 115 So. 2d 697:

> "We, therefore, hold that a Board of Trustees of a Florida School District has the power to exercise a reasonable discretion to permit the use of school buildings during non-school hours for any legal assembly which includes religious meetings, *subject, of course to judicial review* should such discretion be abused to the point that it could be construed as a contribution of public funds in aid of a particular religious group or the promotion or establishment of a particular religion." (Emphasis supplied)

In determining whether or not there has been an abuse of discretion in renting the public building for private use, the courts use various criteria; does the private use of the building interfere with the operation of the school system; is a fair rental paid for the private use; have a majority of the taxpayers in the school district authorized the rental or lease; is the public building available to all denominations; is the use temporary or under a long term lease.

Traditionally in this State the superintending school committee has general management and control of the public schools in its own towns. Section 54 of Chapter 41, Revised Statutes of 1954, prescribes the duties of the superintending school committee as follows:

> "1. The management of the schools and custody and care, including repairs and insurance on school buildings, of all school property in their administrative units."

It is well known that many towns permit use of public buildings for private functions either gratis or under a rental arrangement. I do not find in the case law of this State a prohibition against the lease of a public school prior to or after regular school hours. I do not find a statute in our State which forbids such a lease. Section 147 of Chapter 41 providing for release time during regular school hours for religious instruction does not prohibit such a lease agreement.

The lease agreement does not violate the state or federal constitution. There is no expenditure of public monies to support a particular religious denomination. There is no inculcation of a captive audience of students by a public school teacher during regular school hours of a particular religious doctrine.

The problem is primarily one for a court, i.e. whether or not there has been an abuse of discretion by the town in leasing a public building under authority of Section 54 of Chapter 41, supra.

RICHARD A. FOLEY

Assistant Attorney General

July 10, 1962

To: Paul A. MacDonald, Secretary of State

Re: Vacancy in office of County Commissioner

The facts as stated are that a vacancy has occurred in the office of a county

commissioner four days prior to the primary election in June. Two questions are raised:

(1) Can a person be placed on the ballot for the November election for the office of County Commissioner?

(2) If the answer is in the negative, will the person appointed by the Governor and Council to fill the vacancy serve until January 1, 1965?

Revised Statutes, 1954, Chapter 89, Section 2, provides that the term of office of a county commissioner shall be 6 years, except when one is elected to fill out an unexpired term.

Section 3 of the same chapter reads:

> "When no choice is effected or a vacancy happens in the office of county commissioner by death, resignation or removal from the county, the governor with the advice and consent of the council shall appoint a person to fill the vacancy, who shall hold office until the 1st day of January after another has been chosen to fill the place."

It is obvious from the above section that the governor and council shall first fill the vacancy. At the time this section was enacted over a hundred years ago, the state had annual elections. The section has not been changed since it appeared in the Revised Statutes of 1857.

Section 5 of the same chapter as amended by Public Laws 1959, Chapter 204, Section 30, says "County Commissioners shall be elected on the Tuesday following the first Monday of November in each even-numbered year by the written votes of electors qualified to vote for representatives."

Sections 37 through 50 of Chapter 3-A as enacted by Public Laws 1961, Chapter 360, cover primary nominations and placing a name on the general election ballot by petition. These sections do not govern situations where a vacancy is created just prior to the primary when it is too late to be a primary candidate. Neither do they cover a situation where the vacancy occurs after the primary election.

Section 179 covers vacancies in the *nominated* office of United States Senator, Representative to Congress or Governor at least 60 days before the general election. Section 180 covers vacancies in the same *nominated* offices less than 60 days before the general election.

Section 181 covers vacancies in other offices *nominated* at a primary. Section 186 covers a vacancy in the office of Representative to the Legislature. Section 187 covers a vacancy in the office of State Senator. Section 188 covers a vacancy in the office of Representative to Congress. Section 189 covers a vacancy in the office of United States Senator. Section 190 covers a vacancy in the office of presidential elector.

The above sections are the only ones which deal with placing names on general election ballots when a vacancy exists. Not one of them provides for placing a name of a candidate for county commissioner, or any county office, on the general election ballot where a vacancy is created so close to the primary as to make it impossible to get a name on the primary ballots or after a primary election.

Therefore, it follows that there is no way whereby the vacancy can be filled, by election, at the general election in 1962.

The person appointed by the Governor and confirmed by the Council will serve until January 1, 1965.

GEORGE C. WEST
Deputy Attorney General

August 7, 1962

William W. Dunn, Principal
Kents Hill Preparatory School
Kents Hill, Maine

Dear Sir:

In confirmation of our recent telephone conversations, I am writing to you to clarify the position of this office in relation to the additional fee charged to the parent of a student when the student is resident in a Town which does not maintain a secondary school gains admission to Kents Hill.

The first sentence of section 107, Revised Statutes, chapter 41, provides as follows:

> "Any youth whose parent or guardian maintains a home for his family in any administrative unit which does not support and maintain an approved secondary school may attend any approved secondary school to which he may gain entrance by permission of those having charge thereof."

The next paragraph of section 107 reads as follows:

> "In the case of any youth attending school, *under conditions as provided for in the preceding paragraph,* in schools in which the average daily membership, as reported in the preceding year, is 100 or more students, and the school offers at least 2 occupational courses, the annual tuition shall not exceed . . . . (The legal tuition rate)." (Emphasis ours)

When an Academy accepts students from a Town which does not maintain a secondary school, then the Academy for the purposes of receiving tuition from the sending Town is deemed to be a public school and any additional charge to the parent of such a student in the form of tuition is in contravention of the statute.

Since the legal tuition rate is $463.56 and the average cost per pupil at Kents Hill is $717.56, I can well understand your position in this matter but the law appears to be clear on the subject.

Very truly yours,

RICHARD A. FOLEY
Assistant Attorney General

August 8, 1962

To: Steven D. Shaw, Administrative Assistant, Executive Department

Re: International cooperation

We have your request for an opinion with regard to the limitations imposed upon the Chief Executive of the State of Maine in his negotiations with the

Canadian Government by the terms of Title 18, Section 953, U.S.C.A. (Logan Act). This Section reads as follows:

> "§ 953. *Private correspondence with foreign governments*
>
> Any citizen of the United States, wherever he may be, who, without authority of the United States, directly or indirectly commences or carries on any correspondence or intercourse with any foreign government or any officer or agent thereof, with intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the United States, shall be fined not more than $5,000 or imprisoned not more than three years, or both.
>
> "This section shall not abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sustained from such government or any of its agents or subjects."

After an analysis of the terms of the above Statute, we are of the opinion that it in no way prohibits the Governor of Maine from negotiating directly with Canadian officials, providing the subject of negotiations is not a dispute or controversy between the United States and Canada, and is not aimed at defeating the measures of the United States.

It should be noted that if a final determination by the Justice Department of the United States is required, request for such a determination should be directed to the United States Attorney in Portland. His office will be glad to forward the request to the Justice Department in Washington for final determination.

THOMAS W. TAVENNER

Assistant Attorney General

August 15, 1962

To: John H. Reed, Governor of Maine

Re: Vacancy in Office of President of Senate

We have your request for an opinion with regard to the following question:

> "In the event a vacancy occurs in the office of the President of the Senate, is it mandatory for the Governor to convene the Legislature for the purpose of filling the vacancy?"

The procedure to be followed in the event of a vacancy in the office of Governor is set forth in Article V, Part First, Section 14, of the Constitution of the State of Maine. This section reads as follows:

> "Whenever the office of governor shall become vacant by death, resignation, removal from office or otherwise, the president of the senate shall assume the office of governor until another governor shall be duly qualified; in the event such vacancy occurs not less than 90 days immediately preceding the date of the primaries for nominating candidates to be voted for at the biennial election next succeeding, the president of the senate shall exercise the office of governor until the first Wednesday of January following such biennial election. At such biennial election, a

governor shall be elected to fill the unexpired term created by such vacancy, unless the vacancy shall have occurred less than 90 days immediately preceding the date of, or after, such primaries, in which case the then president of the senate shall fill the unexpired term; and in case of the death, resignation, removal from office or other disqualification of the president of the senate, so exercising the office of governor, the speaker of the house of representatives shall exercise the office, until a president of the senate shall have been chosen; and when the office of governor, president of the senate, and speaker of the house shall become vacant, in the recess of the senate, the person, acting as secretary of state for the time being, shall by proclamation convene the senate, that a president may be chosen to exercise the office of governor. And whenever either the president of the senate, or speaker of the house shall so exercise said office, he shall receive only the compensation of governor, but his duties as president or speaker shall be suspended; and the senate or house, shall fill the vacancy, until his duties as governor shall cease."

The specific problem involved in any discussion of whether or not it is mandatory upon the Governor to take the steps necessary to assure that the office of President of the Senate does not remain vacant hinges upon whether or not the Speaker of the House of Representatives can become Governor if the Governor resigns or becomes incapacitated at a time when there is no President of the Senate. Unfortunately, the constitutional debates make no reference whatever to section 14. We must, therefore, turn for guidance to the general provisions of constitutional and statutory construction. The constitution must be construed so as to guarantee the orderly conduct of government by the people. — *Opinion of the Justices,* 70 Me. 598. It must further be construed so as to permit the purpose expressed therein to be carried out. — *Wakem v. Van Buren,* 137 Me. 134. The constitution must be construed as if it were made yesterday with full knowledge of all present demands and necessities. *Baxter v. Sewerage District,* 146 Me. 215. With regard to both statutory and constitutional construction, our court has held that general intent must prevail and that each statute or constitutional provision must be construed as a whole, harmonizing repugnancies whenever possible. See *Opinion of the Justices,* 6 Me. 437.

With regard to statutory construction see — *Dominion Fertilizer Co. v. White,* 115 Me. 4; Comstock's Case, 129 Me. 471; *State v. Koliche,* 143 Me. 283.

The aforementioned section 14 has, as its only purpose, the guarantee of the continuance of civil government in the State of Maine. It was designed to prevent the office of Governor ever becoming vacant and must be construed so that this purpose is effectuated. Any interpretation of the provisions of this section must be made with this purpose in mind.

If the Governor of the State of Maine were to die or become incapacitated when the office of President of the Senate was vacant, the Speaker of the House of Representatives must become acting Governor. Any other interpretation of this section would lead to the interpretation that in the above circumstance the Speaker of the House could not become Governor and that, therefore, the office of Governor would remain unfilled. Such an interpretation would be repugnant to the intent of section 14. We, therefore, conclude that this must be construed to mean that the line of succession runs from the Governor to the President of the Senate to the Speaker of the House of Representatives. If, under any cir-

cumstances, the Governor and the President of the Senate both become unavailable to exercise the office of Governor, then that office devolves upon the Speaker of the House of Representatives, until a President of the Senate shall be chosen. For this reason we are of the opinion that it is not mandatory for the Governor to convene the Legislature for the purpose of filling the vacancy caused by a resignation in the office of President of the Senate.

As a matter of interest, in August, 1953, the President of the Senate resigned and that office remained vacant until September, 1954.

FRANK E. HANCOCK

Attorney General

August 17, 1962

To: R. W. Macdonald, Chief Engineer, Water Improvement Commission

Re: Classification of Tidal Waters

We have your request of August 14th for an opinion with regard to the extent of the authority of the Water Improvement Commission over tidal waters in the State of Maine.

It is our opinion that the authority of the Water Improvement Commission extends out to the territorial limits of this State. As the authority of the State of Maine extends out three miles to sea from the shore line, the authority of the Commission would extend out a like distance. Specifically, water between an island and the mainland, which water is within three miles of the coastline of the State of Maine, would fall within the jurisdiction of the Water Improvement Commission.

THOMAS W. TAVENNER

Assistant Attorney General

August 17, 1962

Honorable Ralph D. Brooks, Jr.
142 High Street
Portland 3, Maine

Dear Senator Brooks:

The Attorney General has asked me to reply to your letter of August 3rd in which you request an opinion with regard to the propriety of State insurance being placed with a firm which is owned wholly or in part by a member of the State Legislature.

We have examined this problem and have discovered that the same question has been decided by this office several times in the past. On February 18, 1944, Abraham Breitbard, the then Deputy Attorney General, issued an opinion that there was nothing illegal in the members of the State Legislature contracting with the State of Maine. This opinion was based upon a letter received in 1931 from the Chief Justice of the Supreme Judicial Court. As the law in question has not

changed in any material aspect since the time of Mr. Breitbard's opinion, we can see no reason why that opinion should be altered.

It is, therefore, the ruling of this office that there is nothing in the law which would prevent dealings between the State and a member of the State Legislature.

We are enclosing for your information a copy of the opinion rendered by Mr. Breitbard and a copy of the letter from Chief Justice Pattangall.

Very truly yours,

THOMAS W. TAVENNER

Assistant Attorney General

August 23, 1962

To: Doris St. Pierre, Secretary, Real Estate Commission

Re: Definition of Real Estate Broker — Solicitation of Advertising by Corporation

We have your request of August 22 for an opinion regarding the following question:

Does a corporation which solicits advertising with regard to the sale of homes and has brochures and folders printed and sent to all real estate brokers in a given area with regard to the sale of these homes, come within the definition of a real estate broker and thus have to be licensed under the provisions of Revised Statutes, chapter 84?

Under the provisions of Revised Statutes, chapter 84, section 2-A, II, subsection I, the law provides:

> "It shall be unlawful for any person, partnership, association or corporation to act as a real estate broker or real estate salesman, or to advertise or assume to act as such real estate broker or real estate salesman, without a license issued by the commission."

The law further provides in section 2, I, that—

> "A 'real estate broker' is any person, firm, partnership, association or corporation who for a compensation or valuable consideration sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or rents or offers for rent, or lists or offers to list for sale, lease or rent, any real estate or the improvements thereon for others, as a whole or partial vocation."

It should be noted in the latter definition that any corporation which for consideration lists or offers to list for sale any real estate is to be considered a real estate broker and subject to the licensing provisions of chapter 84. In soliciting sellers of real estate to place advertising with it, and in undertaking to have that advertising distributed to real estate brokers, the corporation in question is engaged in "listing" real estate for sale. "Listing" has been defined as an oral agreement to sell real estate to any purchaser procured by a broker for a certain amount of money. *Zeligson v. Hartman-Blair, Inc.,* 135 F. 2d 874-876.

It should be noted that under the contract which is used by Universal Listing, Inc., that corporation agrees to notify all brokers and salesmen of any sale of the property which is being advertised. The contract also requires the seller

to notify Universal Listing as soon as the seller gives an "exclusive" listing to any other broker. It would appear that Universal Listing, Inc. is acting as more than a mere printing house. It is, in effect, the link between the seller and the broker. As such, this corporation is engaged in a business which by definition constitutes the work of a real estate broker. This corporation should, therefore, be licensed and if such license is not procured, will be subject to the penalties provided for in section 12, chapter 84.

THOMAS W. TAVENNER

Assistant Attorney General

August 28, 1962

To: Maynard F. Marsh, Chief Warden, Inland Fisheries & Game

Re: Wild Turkeys

In your memo of August 23, 1962 you ask if wild turkeys are protected by the present Fish and Game laws.

The answer is Yes.

In 1955 the legislature passed section 85-A of chapter 37 which would have provided a 15-day open season on wild turkeys beginning on October 13, 1960. Then in 1959 the legislature repealed this law. At the same time section 88 of chapter 37 was amended by adding the words "hunt, kill or" in the first sentence. This section reads in part:

> "No person shall hunt, kill or have in his possession, living or dead, any wild bird other than a game bird or a migratory game bird. . . . . and for the purpose of this chapter the partridge, grouse and pheasant, only, shall be considered game birds, and the following, only, shall be considered migratory game birds:" (There follows a long list which does not include wild turkeys.)

It is evident that a person may only hunt, kill or have in his possession game birds or migratory game birds, under certain conditions stated in this or other sections.

The prohibition against hunting, killing or having in possession "wild birds" applies to wild turkeys.

GEORGE C. WEST

Deputy Attorney General

August 30, 1962

To: R. W. Macdonald, Chief Engineer, Water Improvement Commission

Re: Waste Discharge to Kennebunk River at Kennebunkport

We have your request of August 16th for an opinion with regard to the discharge of sanitary sewage from a motel of 20 units into the tidal estuary of the Kennebunk River at Kennebunkport.

We understand your question to be whether or not this motel can utilize the existing and grandfathered discharge line from a nearby building to gain entrance

into the estuary. We understand that such a course of action would result in a violation of the classification of this tidal estuary. Revised Statutes, chapter 79, section 4, provides that —

". . . . it shall be unlawful for any person, corporation, municipality or other legal entity to dispose of any sewage, industrial or other waste, either alone or in conjunction with another or others, in such manner as will lower the quality of the said waters, tidal flats, or section thereof, below the minimum requirements of such classification, and notwithstanding any licenses which may have been granted or issued under sections 8, 9, and 10 hereof."

It is our opinion that any person who is responsible for adding sewage to a classified water, which sewage violates the classification thereof, infringes upon the provisions of section 4. The manner in which the sewage in question is disposed of in no way alters the fact of violation. The owner of the motel in question, if he carries through the plan outlined in your memo, will be guilty of a violation of section 4 and his actions taken in this connection can be enjoined under the provisions of Revised Statutes, chapter 79, section 12.

THOMAS W. TAVENNER

Assistant Attorney General

August 30, 1962

To: R. W. Macdonald, Chief Engineer, Water Improvement Commission

Re: Laundry and Laundramat Waste

We have your request of August 14th for an opinion with regard to the following question:

"Should a laundry or laundramat undertaking operation at a site provided with a domestic or sanitary sewer alone acquire a waste discharge license before proceeding?"

Revised Statutes, chapter 79, section 8, provides that no person, firm or corporation shall add any pollution to any natural body of water without first obtaining a license from the Commission. This law covers all sources of pollution whether industrial or domestic and prohibits any person from adding pollution to a natural body of water. It does not, however, affect a polluter whose effluent enters an existing sewer or other disposal system prior to entrance into the body of water.

It is our opinion that no license can be required of any person whose pollution empties into a municipal sewer or other man made water course rather than directly into a natural water course.

THOMAS W. TAVENNER

Assistant Attorney General

September 7, 1962

To: Kermit Nickerson, Deputy Commissioner of Education

Re: Authority to Inspect an Academy

You have inquired whether or not the State Board of Education and the

Commissioner of Education have authority to inspect an academy in this State for the purpose of determining its educational adequacy.

Revised Statutes, chapter 41, section 98, contains ample authority to conduct such an inspection for the purpose of determining whether or not approval to the academy should be granted.

RICHARD A. FOLEY

Assistant Attorney General

September 10, 1962

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

Re: Disability Benefits with Regard to Retirement

You have asked a question relative to the retirement of a person who retired on disability benefits in 1951, a few months later returned to work after age 55, and now is to retire because of age. The question is whether or not the Board can allow the person to repay to the system the amount of disability benefits she received in 1951 and retire under the general retirement provisions at a larger monthly retirement benefit.

The answer is "No."

Chapter 63-A, section 8, provides in part:

> "Should a disability beneficiary be restored to service and should his annual earnable compensation then or at any time thereafter be equal to or greater than his average final compensation at retirement, his retirement allowance shall cease, the beneficiary shall again become a member of the retirement system, and he shall contribute thereafter at the same rate he paid prior to his retirement. Anything in this chapter to the contrary notwithstanding, any prior service certificate on the basis of which his service was computed at the time of his former retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all the service as a member creditable to him at the time of his former retirement; *but should he be restored to membership after attainment of the age of 55, his retirement allowance upon subsequent retirement shall not exceed the sum of the retirement allowance which he was receiving immediately prior to his last restoration to membership and the retirement allowance that may have accrued to him on account of membership service since his last restoration to membership.*" (Emphasis supplied)

This provision of the law is very clear as to the method of determining the amount of retirement benefits available to the person. The law contemplates the possibility of a disability beneficiary being restored to service. Therefore, the Board cannot claim an "error" to be corrected under section 13, subsection VIII or section 19.

GEORGE C. WEST

Deputy Attorney General

September 11, 1962

To: Irl E. Withee, Deputy Commissioner of Banks & Banking

Re: Saving Deposits in Industrial Banks

The Banking Commissioner has asked the question as to the right of industrial banks to accept savings deposits.

The laws relating to industrial banks is contained in Chapter 59, sections 200 to 208, inclusive. Section 205 provides in part:

> "In addition to the powers conferred upon corporations by the general corporation law, every industrial bank shall have the following powers:
>
> I. . . . ; and in addition to receive uniform weekly, semimonthly or monthly installments on its certificates of indebtedness or deposit purchased by the borrower simultaneously with a loan transaction or otherwise, and pledged with the corporation as security for the said loan, with or without an allowance of interest on such installments."

In section 208 is found the following statement:

> " . . . , section 19-L, subsections I and II, . . . shall apply to industrial banks."

Section 19-L, subsection I, provides that the Bank Commissioner

> "once in every 3 years shall cause the books of the saving depositors in savings banks and in every trust company to be verified etc."

It further provides that the Bank Commissioner and his employees shall have access to every part of the savings bank and trust company and to all papers, books, etc. Also that information obtained through such verification is confidential. Subsection II contains nothing relevant to deposits.

The foregoing provisions of the law are the only ones which relate to industrial banks accepting deposits. To better understand these provisions it may be well to quote from the provisions of the law relating to savings banks and trust companies. Section 19-D, II, E, provides in part:

> "II. Every savings bank, subject to the restrictions and limitations contained in this chapter, shall have the following powers:
>
> E. To receive and repay deposits, to lend and invest the same, etc."

Section 90, Chapter 59, provides in part:

> " . . . with power:
>
> I. To receive on deposit, money, coin, bank notes, evidences of debt, accounts of individuals, companies, etc."

The legislature, by the use of different language, has made a distinction between industrial banks, savings banks and trust companies. In the cases of the savings banks and the trust companies the legislature has expressly stated they may "receive deposits" or "receive on deposit." The legislature is not so express and clear in its expression relating to industrial banks. The conclusion must be that the legislative intent was to deny the right to "receive deposits," as such, to industrial banks unless there is some other wording that means the same thing.

This office cannot find any. It seems clear that the law provides that industrial banks may sell its certificates of indebtedness or deposit. (These terms are used synonymously in the law.) The question arises as to whether the purchase of such certificates are savings deposits.

In the case of *Cooper v. Fidelity Trust Co.,* 134 Me. 40 at 49, the court said:

> "We find no provisions in the statutes of this State which compel the conclusion that as a matter of law certificates of deposit in the usual form payable on time or on certain notice represent commercial transactions. In this respect, the statutes of Maine and Massachusetts are different. We concur, however, in the view that, nothing to the contrary appearing, such certificates of deposit, as well as those payable on demand, usually indicate on their face that the deposits for which they were issued were of that character. History places them in that category and common knowledge establishes the classification as the long-prevailing rule of banking. *Pierce v. State National Bank of Boston,* 215 Mass., 18, 101 N.E., 1060; *3 Daniel on Negotiable Instruments* (7th ed.), 2043; *1 Morse on Banks and Banking* (6th ed.), Sec. 297. The issuance of certificates of deposit for savings deposits seems to be of comparatively recent origin, and the exception rather than the rule. We are of opinion that, when, as here, certificates of deposit recite the receipt of deposits without in any way defining their character, it must be presumed that the deposits which they represent were made and accepted as commercial deposits."

Absent legislative authority to accept savings accounts industrial banks may not do so. They may sell certificates of deposit or indebtedness but may not accept saving deposits as commonly known to the general public. Certificates of deposits sold by industrial banks cannot recite characteristics which would indicate an intention to create savings deposits.

GEORGE C. WEST

Deputy Attorney General

September 11, 1962

To: Lawrence Stuart, Director of Park Commission

Re: Application for Federal Funds by State Park Commission

You have asked if the State Park Commission has the legal right to apply for certain Federal funds available for planning purposes.

The State Park Commission has such a legal right. Chapter 36, section 34, VI-A provides as one phase of the Commission's powers and authority:

> "To cooperate with Federal Agencies in the planning, development, maintenance and use of recreational areas;"

It would follow that included in this power and authority is the right to accept Federal funds to carry out the purposes enumerated above.

GEORGE C. WEST

Deputy Attorney General

September 12, 1962

To: Philip R. Gingrow, Banks and Banking

Re: Sale of Fire Insurance by Small Loan Licensees

You have asked our opinion to three questions relating to the sale of fire insurance by small loan licensees covering personal property pledged as collateral by borrowers.

Question 1: May a licensee engaged in the making of loans regulated by sections 210 through 226 of chapter 59 require insurance on household goods or appliances pledged by a borrower as collateral for such loan?

Answer: Yes.

Question 2: May the lender place such fire insurance at the option and voluntary approval of the borrower so long as the borrower has no other valid and collectible insurance to assign to the lender and so long as the lender places such insurance with an agent and company qualified to transact insurance business in the State of Maine and on policy form and rates duly approved by the Insurance Commissioner?

Answer: Yes, with the qualifications set forth in Question 3.

Question 3: If the licensee may under (1) and (2) above, place fire insurance on Household Goods or Appliance collateral, may said licensee be allowed a reasonable Experience Credit Refund (similar to group life or other master policy type earned coverages) premiums, to defray administrative costs such as typing and issuing customers Memorandums of Insurance, mailing, preparation of reports, computations and refunds, etc.?

Answer: No.

Chapter 59, section 218, seems to cover this particular matter. This section provides in part:

> "In addition to the interest herein provided for, no further or other charge or amount whatsoever for any examination, service, brokerage, commission or other thing, or otherwise, shall be directly or indirectly charged, contracted for or received, except lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing or recording in any public office any instrument securing the loan, which fees may be collected when the loan is made, or at any time thereafter. If interest or charges in excess of those permitted by sections 217 and 218 shall be charged, contracted for or received, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, interest or charges whatsoever."

In view of this provision of the law and especially the last sentence, we cannot say that such practice would be permissible. Even if this office believed that experience credit refund premiums were permitted by section 218, we could not sanction this practice. To do so might well jeopardize all loans made with such fire insurance involved if such a situation were ever litigated.

Incidentally, if the legislature should amend section 218 to allow such a practice the Memorandum of Insurance would require amendment. Item 4 of the Memorandum does not correspond with item IV of the Master policy or the

Maine Standard Fire Insurance Policy. Item 5 of the Memorandum should also be clarified.

GEORGE C. WEST

Deputy Attorney General

September 14, 1962

To: Irl E. Withee, Deputy Commissioner of Banks and Banking

Re: Legality of Mortgages Insured by the Maine Industrial Building Authority

You have asked for an opinion relative to restrictions contained in the banking law applicable to trust companies and savings banks as they relate to mortgages insured by the Maine Industrial Building Authority.

Chapter 38-B, section 12, provides:

> "Mortgages insured by the authority of this chapter are made legal investments for all insurance companies, *trust companies,* banks, investment companies, *savings banks,* executors, trustees and other fiduciaries, pension or retirement funds." (Emphasis supplied)

Thus the law provides that trust companies and savings banks may invest in mortgages insured by MIBA. The banking law has sections specifically applicable to trust companies and to savings banks. First, we will examine the law relating to savings banks to determine what, if any, restrictions are applied to savings banks investing in MIBA insured mortgages.

Chapter 59, section 19-H, is the pertinent section relating to loans. Subsection I of this section pertains solely to mortgages. This subsection provides that savings banks may make loans secured by first mortgages of real estate in an amount not exceeding 66 2/3% of its appraisal, but may go to 75% of its appraisal if the note provides for regular monthly payments of interest and principal so as to repay the loan within 25 years or requires full payment within 3 years.

Thus, we have a restriction as to the amount a savings bank may loan on a first mortgage to one person. Does this restriction apply to an MIBA insured mortgage?

Section 19-H, I, C, provides in the first sentence:

> "Without regard to any other provisions of law, savings banks of this State are authorized to *make* or buy and sell *any loan, secured* or unsecured, which is *insured* or guaranteed in any manner in part or in full . . . or *by this State or any instrumentality thereof* . . . . " (Emphasis supplied)

The above provision means that a savings bank may *make* a loan without regard to any restrictions imposed upon the *making* of a loan when the mortgage securing the loan is insured by MIBA. In short, the 66 2/3% or 75% restrictions contained in section 19-H, I, A and B, do not apply to MIBA insured mortgages.

Section 19-H, I, E, provides that a savings bank shall have no more than 66 2/3% of its deposits invested in real estate mortgages; except it may invest up to 80% therein, provided the excess over 66 2/3% of its deposits is invested in real estate mortgages insured by MIBA. This section speaks for itself.

The above are the only restrictions or limitations relative to real estate mortgages held by savings banks.

We now turn to the law relative to trust companies. The only restriction in the law concerning loans by trust companies is contained in section 112. This section provides that no trust company shall loan to any person, firm, etc., amounts in excess of 10% of its total capital, unimpaired surplus and net undivided profits unless secured by collateral of value equal to the excess of said loans above said 10% "and the total amount of loans to any person, firm, business syndicate or corporation shall at no time exceed 20% of said total capital, unimpaired surplus and net undivided profits;"

Section 91 reads exactly the same as section 19-H, I, C, quoted supra. The same interpretation must be made of section 91 as of section 19-H, I, C. Therefore, the 20% limitation of loans to any one person, firm, business syndicate or corporation does not apply to a loan or loans secured by an MIBA insured mortgage.

GEORGE C. WEST

Deputy Attorney General

September 18, 1962

To: Keith L. Crockett, Director, Division of Field Services, Education Department

Re: Reimbursement for Costs of Architects Fees for Developing School Plans

This is in answer to your memorandum of September 11, 1962, in which you propose the following questions:

1. Is the reimbursement for cost of school surveys and school plans mandatory under Section 235?

Answer: Yes.

2. Does Section 237-H supersede Section 235 in relation to the costs for school surveys and school plans with specific reference to school administrative districts and single administrative school units which are eligible for state aid for school construction?

Answer: No.

3. Do Sections 235 and 237-H imply that reimbursements should be made in both instances thus, in a sense, resulting in a double subsidy?

Answer: No. Subsidy under section 237-H is paid upon the cost to the administrative unit of "architectural. . . expenses, plans, specifications, estimates of cost. . . " in construction of a school building. The grant made by the State to an administrative unit under section 235 is not a "cost" to the Administrative Unit under section 237-H and the grant should not be included as "capital outlay" under 237-H.

4. When a single administrative unit becomes a part of a school administrative district, should it receive reimbursement of itself or should the district be reimbursed under Section 235? (It is conceivable that five towns could be formed into a district and each town have a new school built for elementary purposes. Should the district receive up to $2,000 for any two projects or be reimbursed for each project under Section 235?)

Answer: If the school administrative district constructed the schools, then the district only should be reimbursed under section 235 for the cost of the school plans. Because of limitations of funds available under section 235, the Commissioner has ruled that no more than $2,000 will be allocated to an administrative unit for school plans for any one year. Even though the school plans may involve several separate buildings in the administrative unit, the commissioner can properly limit the allocation to the administrative unit of the grant under section 235 based upon the aggregate cost of the school plans rather than considering the plan for each building as a separate plan requiring the allocation of a grant under section 235 for each such plan.

RICHARD A. FOLEY

Assistant Attorney General

September 19, 1962

To: Warren G. Hill, Commissioner of Education

Re: Educational Television Programs

You have inquired whether the Department of Education has the authority under Chapter 121 of the Resolves of 1961 to contract with and pay to T. V. Station WCBB for the transmission of educational television programs under the Department's sponsorship. The resolve provides funds ". . . to produce or contract for educational television programs . . ."; this language clearly authorizes the proposed contract with WCBB.

RICHARD A. FOLEY

Assistant Attorney General

September 21, 1962

To: E. L. Walter, Assistant Executive Secretary, Maine State Retirement System

Re: Payment of Deceased Member's Retirement Account and Group Life Insurance

A member of the retirement system designated his wife as beneficiary for his retirement account. Subsequent to this act a divorce took place. Apparently there were no children. The member died without changing the designated beneficiary.

Question: Who is eligible to receive any retirement benefits available from his retirement account?

Answer: The designated beneficiary.

Chapter 63-A, section 9, provides in part:

> "I. Should a member die any time before attaining eligibility for retirement, one of the following payments shall be made.
>
> A. The amount of his contribution to the members' contribution fund together with not less than 3/4 of the accumulated regular interest, as the board of trustees shall allow, shall be paid to *such person,* if any, as he has nominated by written designation duly acknowledged and filed with the board prior to his death." (Emphasis supplied)

There is no requirement that the *person* nominated by written designation have any specified relationship to the member. Therefore, the divorced wife, being the *person* nominated by written designation of the member is entitled to a refund of the deceased's contributions.

Question: The member also had group life insurance but did not designate a beneficiary. Who may properly claim the group life insurance?

Answer:

Chapter 63, section 24, III, designates the persons eligible to receive the deceased's group life insurance.

1. Designated beneficiary. — There is none.
2. If no designated beneficiary, the widow. — There is none as the couple were divorced prior to the member's death. The divorced wife is not his widow.
3. If none of the above, children. — There are none.
4. If none of the above, the parents. — Parents are deceased.
5. If none of the above, executor or administrator of deceased's estates.
6. If none of the above, next of kin entitled under the laws of domicile of the deceased at time of his death.

The only possible eligibles are #5 and #6. If no executor or administrator is appointed, payment would go to persons qualifying under #6.

An estate may be administered any time within 6 years after death, if there is no will. If the deceased left a will, it may be probated any time within 20 years of the death.

An executor or administrator duly appointed within these time limits would be entitled to payment of the group life insurance. Payment to next of kin, under #6, would not relieve the trustees of responsibility of payment to an executor or administrator.

Therefore, it would be inadvisable for the trustees to pay out any money under the sixth provision of section 24, III, within these time limits.

GEORGE C. WEST

Deputy Attorney General

September 25, 1962

To: Ross Parsons, Deputy State Auditor

Re: Clerk of Courts Naturalization Fees

You have verbally requested an opinion as to whether or not a Clerk of Courts may retain naturalization fees or if they must be turned over to the county treasurer.

The Clerk of Courts does not turn over to the County Treasurer any portion of naturalization fees. Revised Statutes 1954, chapter 89, section 98, reads in part:

> "The clerks of the judicial courts in the several counties shall receive annual salaries as set forth in section 254.
>
> "The salaries of the clerks of the judicial courts shall be in full compensation for the performance of all duties required of clerks including those performed by them as clerks of the supreme judicial court, the superior court and the county commissioners, or by clerks pro

tempore employed by them. . . . They shall account quarterly under oath to the county treasurer for all fees received by them or payable to them by virtue of the office, *except fees collected by them in naturalization proceedings,* specifying the items, and shall pay the whole amount of the same to the treasurers of their respective counties quarterly on the 15th days of January, April, July and October of each year." (Emphasis supplied.)

This section as it appears in Revised Statutes, chapter 89, was repealed and replaced by Public Laws 1959, chapter 372, section 2. There have been no subsequent amendments.

Chapter 89, section 254, sets forth the salaries of all county officers and municipal court judges and recorders. In addition, this section provides in the last paragraph:

> *"After January 1, 1962 all fees and charges of whatever nature,* except charges for the publication of notices required by law, which may be payable to any county officer, *shall be payable by them to the county treasurer for the use and benefit of the county,* but preserving the right of sheriffs and their deputies not on a salary . . . . " (Emphasis supplied.)

This part of section 254 quoted above was enacted by Public Laws 1959, chapter 372, section 7. Thus it appears that sections 98 and 254 were enacted by the legislature in the same bill.

It might appear there is a conflict between sections 98 and 254 as to the Clerk of Courts retaining naturalization fees. However, Title 8, section 1455 of the United States Code provides that the clerk of any naturalization court shall account and pay over to the Attorney General (United States) one-half of all fees up to the sum of $6,000 and all fees in excess of $6,000 collected in naturalization proceedings in any fiscal year. Thus, the Federal law allows the clerk to retain a portion of the fees collected.

Consequently, the provision of section 98 was written carrying out the Federal law. Section 254 must be read with the Federal law in mind. Clerks of Courts may retain their proper share of naturalization fees as set forth in Title 8, section 1455, of the United States Code.

GEORGE C. WEST

Deputy Attorney General

September 27, 1962

To: Richard E. Reed, Executive Secretary, Sardine Council

Re: Replacement of broken glass in premises leased by Maine Sardine Council

In your memo of September 24th you inquire whether the Maine Sardine Council is obligated to replace a plate glass window at its leased building at 114 Exchange Street, Bangor, where the window was broken by a third person.

Responsibility is determined by the terms of the lease, which you state contains a clause that "all glass broken in said premises during this lease to be replaced by said lessee, said glass now being whole." Since no exceptions to the lessee's liability appear in the lease, the Council is obliged to replace at its expense all glass broken from whatever cause. If you should be able to identify the

person who broke the glass, the Council, in almost all circumstances, would be entitled to reimbursement by such person.

LEON V. WALKER, JR.

Assistant Attorney General

September 27, 1962

To: Major General E. W. Heywood, Adjutant General
Re: Plowing and maintenance of road from Blaine Avenue to Airport Building

In order to answer the questions contained in your memo of 12 September, I have examined the records of the County Commissioners and the various deeds by which the State acquired title to the airport property.

The proposed use of the land does not appear in any of the deeds. In 1933 the municipal officers of Augusta petitioned to have so much of Winthrop Street as lies between the westerly line of Blaine Avenue and the westerly line of the Muster Field discontinued, to "permit development of the Muster Field as a commercial airport." On April 17, 1934, the County Commissioners ordered "that said road be discontinued as prayed for in said petition." Petitioners then appealed to the Superior Court with no reason given. In 1936 the appeal was dismissed by agreement.

In view of the above, the answer to your first question is that the Adjutant General does not have responsibility for snow plowing and maintenance of the above-described section of Winthrop Street. In view of this opinion, the second question does not require answer.

Since the State owned the land on both sides of the discontinued section of road, it previously owned the road subject to the public easement, and it is now obligated for snow removal and other necessary maintenance.

LEON V. WALKER, JR.

Assistant Attorney General

October 8, 1962

Paul L. Powers, Esq.
Attorney at Law
Freeport, Maine
Re: Harraseeket Yacht Club

Dear Mr. Powers:

Your letter of October 3, 1962, has been forwarded to me for answer.

In the second paragraph of your correspondence you mentioned that the "property owned by this corporation should be exempt from taxes under our statutes." I presume that the exemptions referred to are those found in Chapter 91-A, section 10.

You will note that Section 10, II, speaks of benevolent and charitable institutions. Benevolent associations are those which are philanthropic, humane, having a desire or purpose to do good to men, according to *Black's Law Dictionary,* 4th Edition. See also the definitions concerning benevolent associations and charitable corporations in the same volume.

Chapter 54 of the Revised Statutes lends no assistance concerning property tax exemption under 91-A.

I call your attention to *Oak Park Club v. Lindheimer,* 369 Ill. 462; 17 N.E. 2d 32, wherein the Court said:

> "The certificate of incorporation which is the controlling evidence of the purpose for which the organization was created, and the other evidence introduced, discloses that the chief permanent, continuous activities of the club, when the taxes in question were extended, were social and recreational in their nature, and these do not constitute a charitable purpose."

In *Oak Park Club,* the corporation sought real estate tax exemption claiming to be a charitable organization. The certificate of incorporation of the club stated that the purpose of the organization was "to promote social intercourse and the general improvement and welfare of its members and of the community." The court said:

> "Civic, educational and charitable activities were and are carried on within the club without any attempt to differentiate those strictly charitable. Assuming that the civic and educational activities are all of a charitable character they have not been shown to be the major functions of the club. The property of a club or other organization, to be exempt from taxation must be used primarily for charitable purposes."

Note that C-1 of II, section 10, Chapter 91-A provides exemption for only those corporations organized and conducted *exclusively* for benevolent and charitable purposes.

I note that the purposes of the above mentioned corporation are "to encourage and promote the sport of boating and the science of seamanship and navigation * * *."

Concerning the matter of profit I call your attention to the following language taken from Oak Park Club:

> "* * * the assessor found the property to be exempt for the year 1936 because the business of the club was not conducted for profit. The fact that no profit is made is not of controlling importance."

See also *Holbert et al. v. Springfield Motor Boat Club,* 342 Ill. App. 685; *Coyne Electrical School v. Paschen,* 12 Ill. 2d 387 and *Appeal of Art Club of Philadelphia,* 327 Pa. 106.

In conclusion, from a reading of the applicable statute and case law, it is my opinion that the purposes of the Harraseeket Yacht Club do not qualify it for exemption under Chapter 91-A of our Revised Statutes.

Although your letter is not intended as an application under Chapter 91-A, often the State Tax Assessor receives correspondence containing language similar to that of the letter referred to my attention. In these instances, I have instructed the State Tax Assessor that it is my opinion such application should be made with the tax assessors on the local level. Section 29 of Chapter 91-A speaks of tax assessors as municipal officers and calls for the filing of a report with the tax assessors.

I am retaining in my records the photostatic copies forwarded with your corsespondence.

I hope that I have been of some assistance to you in this matter. Thank you for your attention.

Yours very truly,

JOHN W. BENOIT

Assistant Attorney General

October 12, 1962

To: Roland M. Berry, State Budget Officer

Re: Use of Budget Estimates

You have asked for an opinion from this office as to the use of budget estimates submitted by department heads to the state budget officer under the provisions of Chapter 15-A. In particular you are concerned with whether your office must make such requests available to (1) the general public and (2) candidates for the general election.

Section 8 of Chapter 15-A, Revised Statutes of 1954, provides in part that:

> "On or before September 1st of the even-numbered years, all departments and other agencies of the state government and corporations and associations receiving or desiring to receive state funds under the provisions of law shall prepare, in the manner prescribed by and on blanks furnished them by the state budget officer, and submit to said officer, estimates of their expenditure requirements for each fiscal year of the ensuing biennium contrasted with the corresponding figures of the last completed fiscal year and the estimated figures for the current fiscal year."

Section 9 provides that the governor-elect or the governor and the state budget officer shall review the budget estimates altering, revising, increasing or decreasing the estimates. The governor or governor-elect shall then direct the state budget officer to prepare a state budget document. The governor shall transmit said budget document to the legislature not later than the close of the second week of the regular legislative session.

Section 5, Subsection I, provides that the bureau of budget shall have the duty and authority:

> "To prepare and submit to the governor-elect, or the governor, biennially, a state budget document in accordance with the provisions set forth in this chapter;"

From a reading of these sections of the statutes it is clear that the legislative intent was that the budget estimates would be submitted to the state budget officer. He would then review them, requesting such further information from department heads and other agencies as he deems necessary. When he has his figures together, he then sits down with the governor-elect or governor, as the case may be, and they in turn review the estimates. They may change the figures in any way they feel necessary. When they have arrived at a satisfactory budget estimate, the budget officer then prepares a budget document and submits it to the governor-elect or governor. The governor transmits this document to the legislature within the appointed time.

That is the procedure outlined by the legislature. It may change the procedure at any time. The law does not authorize the release of budget estimates by the budget officer to the general public or to candidates for office.

GEORGE C. WEST

Deputy Attorney General

October 18, 1962

To: Charles G. H. Evans, Economic Development

Re: Copyright on Norman Rockwell Illustrations

In your memorandum of October 8, 1962, you have asked for the procedure which should be followed in obtaining copyrights on certain drawings of Norman Rockwell being purchased by your department. You explained to us that your department has entered into a contract with Ad Media, Inc., through its president, Mr. Jack Havey, whereby Ad Media, Inc. will supply four original drawings by Norman Rockwell dealing with the Maine scene. The artist understands that these will be used by your department to publicize the State. Mr. Jack Havey is in touch with the artist advising him on certain points dealing with the pictures. You mentioned, by way of example, that Rockwell asked whether a scope on a rifle was considered sporting by hunters in this State and whether hunters smoked cigarettes or pipes.

One of the four pictures entitled "Where Friendship Begins" has already been delivered to the State. It is my understanding that prior to the signing of a contract with Ad Media, Inc., the first picture, "Where Friendship Begins", was shown prominently on page 1 of the May, 1962, issue of the Maine Stater, the official paper of the Maine State Employees' Association. The MSEA has advised me that this issue was distributed to both members of the association and to non-members. The circulation of that issue was indicated to be between nine and ten thousand. The issue containing "Where Friendship Begins" carries no notice of copyright.

On September 29, 1962, the Daily Kennebec Journal printed its 7th Annual Hunting Edition featuring on the cover of that supplement a copy of the drawing "Where Friendship Begins." There was no notice of copyright in that supplement.

On October 4, 1962, the Enterprise carried prominently on page 1 a copy of that picture. The printing in the Daily Kennebec Journal and the Enterprise was authorized by your department and occurred after the contract between Ad Media, Inc. and the State had been entered into. The copy of the picture in the Daily Kennebec Journal and in the Maine Stater has no notice of copyright.

In addition, the artist may have commenced work on the second drawing.

Both statutory and common law copyrights in "Where Friendship Begins" were lost by the publication of the picture in the Maine Stater without notice of copyright. Common law copyright by which the artist can prevent the copying of a picture is lost merely by publication. *Wrench v. Universal Pictures Co.* (D.C.S.D.N.Y. 1952) 104 F. Supp. 374. The much more valuable statutory copyright is lost by publication without the required notice. It has been said that publication without the required notice amounts to a dedication of the work

to the public sufficient to defeat all subsequent efforts at copyright protection. *Universal Films v. Coppernman,* 212 F. 301, (D.C.S.D.N.Y. 1914). For the statutory prohibition see 17 U.S.C. § 8. Because of the size of the distribution of the Maine Stater, the copying of the picture in the May, 1962, issue could not be considered to be a limited publication and thus make possible a copyright. Thus, the State does not have the power to control who copies or under what circumstances the first drawing is copied.

As to the drawings contemplated but not yet in existence, the fact that copyrights have been lost on "Where Friendship Begins" should in no way affect the ability of the State to protect copyrights in these future drawings.

A drawing of the quality of Norman Rockwell's is surely copyrightable if the proper procedure is followed. 17 U.S.C. § 8, provides in subsection (g) for works of art as a registerable work. Under the Rules and Regulations of the Copyright Office, section 202.8, the class of "works of art" includes "works belonging to the fine arts, such as paintings drawings and sculpture." The art which is covered by the copyright laws need not be "fine art."

It is clear that the artist, Norman Rockwell, has the right to copyright his drawings. 17 U.S.C. § 9.

What the artist may do himself, he may assign to another person (who is then technically the proprietor of the work). Howell, *The Copyright Law,* 55 (3d 1952); *Harms v. Stern,* 229 F. 42 (2d Cir. 1915); also, *Paige v. Banks,* 80 U.S. 608 (1872). Under the reasoning of these cases, if Ad Media, Inc. purchases the drawings and all rights to them from the artist and in turn transfers all their right, title, and interest to the drawings to the State, the State could copyright the drawings as they were produced, provided of course they had not been previously published without the statutory notice of copyright.

In the absence of a clearly defined agreement between Ad Media, Inc. and the State, the course which I would recommend as being the safest would be to have the artist copyright his drawings as each is produced and then transfer the copyright and drawing to Ad Media, Inc. who would then transfer the copyright and drawing to the State.

Under section 28 of the copyright law any copyright may be assigned. The assignment must be in writing. By case law any conveyance of less than the total interest in a work and its copyright may be considered as a mere license. To prevent the infringement of a copyright, one holding a license must join his licensor in the proceeding. This is a cumbersome procedure and one which can be avoided by clearly indicating in the transfer of the copyright that all the assignor's right, title, and interest is conveyed, and by the avoidance of contradictory language. *Witmark v. Pastime Amusement Co.,* 298 F. 470 (D.C.E.D. So. Car. 1924); *Goldwyn Pictures Co. v. Howell Sales Co.,* 282 F. 9 (2d Cir. 1922).

In order to protect the State, each prior assignment must be recorded in the Patent Office. The assignment must be recorded within three calendar months of execution. Failure to record within the specified time limits will make the recording void against any subsequent purchaser or mortgagee for value, without notice, whose assignment has been recorded. 17 U.S.C. § 30.

PETER G. RICH

Assistant Attorney General

October 25, 1962

To: John R. Dyer, Purchasing Agent

Re: Tires on Trucks Purchased for Highway Department

On June 11, 1962, request for bids to be opened on June 25, 1962 was sent out. On the latter date the bids were opened and a low bid was accepted for item #6. The item was stated as:

"F.O.B. Augusta, Maine: State Highway Garage, 13 only, 1962 Truck, Chassis, Cab and 3 cu.yd. dump body, up to 18,000 GVW, per specification attached and made a part of this bid."

The specification for item #6 consists of a whole page and covers 18 separate parts of the trucks to be supplied. The part of the specification relevant to the matter at hand concerns the tires and is as follows:

"*Tires* — Nylon tube type, 8.25-20 10 PR (Min) front; 8.25-20 10 PR (Min) rear duals; 8.25-20 10 PR spare tire, mounted, under frame carrier (prefer same size tires all around.)"

No other specification relates to the tires and there is nothing in the general conditions and instructions on the back of the bid request form applicable to the situation.

When the successful bidder delivered the trucks it appeared the tires were not a make that is generally used on new trucks. The purchasing agent has raised the question whether or not he can, without specifying such in his specification, expect to receive so-called "manufacturers original equipment" tires on new trucks.

The purchasing agent explains that the phrase "manufacturers original equipment" has a very definite meaning in the trade, has been always received in purchasing motor vehicles, and that specifications have never carried this requirement as it has not been deemed necessary.

The purchasing agent contends that the specification relating to tires was only made to tell the bidder the size, material, and that tubes were to be supplied rather than tubeless. The successful bidder contends that he only has to furnish tires that meet the specifications and that he has done so. There seems to be no question but what the tires furnished do meet the written specifications.

The request for bids, the bid, and the acceptance of the bid by the State, constitute a contract between the State and the successful bidder. If the matter were brought to court, both parties would be bound by the terms of the contract. Parol evidence of the intent of the purchaser would not be admissible to vary the terms of the contract.

We agree with the position of the purchasing agent and do not condone the action of the successful bidder but from a strictly legal point of view we must say that the State has to accept the trucks insofar as the tires are concerned.

We recommend that in the future the specifications clearly indicate that "manufacturers original equipment" is required on all motor vehicles purchased by the State.

GEORGE C. WEST

Deputy Attorney General

October 25, 1962

To: E. L. Newdick, Chairman, Milk Commission

Re: Blend Price Paid to Milk Producers

The minimum price which must be paid by a Maine dealer to a Maine producer for milk handled within the State is based upon the dealer's Class 1 and Class 2 usage during a given period. This combination is called the blend price. Class 1 milk (whole fluid milk) costs the dealer more than Class 2 milk.

Under the current practice when a dealer buys milk from another dealer, the purchasing dealer may treat his purchase as Class 2 usage in computing his blend price and deduct the amount of the purchase from his Class 1 sales. This is done regardless of the ultimate use of the milk. The effect of this practice is to decrease the blend price paid to the purchasing dealer's producers. You would like to know whether the commission may lawfully prevent this practice.

As provided by Revised Statutes, chapter 33, section 4, the Milk Commission has the power to establish and change "after investigation and public hearing, the minimum prices to be paid to producers by dealers for milk received, stored, manufactured, processed, sold, distributed or otherwise handled within the state." Because the blend price is the minimum which can be paid to producers, the Commission has the power to regulate those factors affecting the blend price. The method of reducing the Class 1 usage by the amount of the purchase from another dealer is potentially destructive of the whole pricing structure. Under the authority to establish and change the minimum price paid to producers, the commission may prevent the reduction in Class 1 usage currently occurring, regardless of whether the purchases were from a Maine dealer or out-of-state dealer. A regulation prohibiting the reduction of the Class 1 price by a purchase of milk from an out-of-state dealer would not be viewed as an unlawful regulation of interstate commerce.

PETER G. RICH

Assistant Attorney General

October 26, 1962

Arlyn E. Barnard, Chairman
Maine Highway Safety Committee
218 Middle Street
Portland, Maine

Dear Mr. Barnard:

This will acknowledge receipt of your letter of October 16th inquiring whether the Speed Regulation Board has authority to post separate car-truck speeds.

Revised Statutes, chapter 22, section 113, sets the maximum speeds which are permissible "unless otherwise posted." Subsection F-1 provides "speed of commercial vehicles, registered for over 6,000 pounds, shall be the same as for pleasure vehicles."

Section 113-B provides that the State Highway Commission, Secretary of

State, and the Chief of the State Police acting jointly have authority to restrict the speed of all motor vehicles and to increase the speed of all motor vehicles up to a certain stated limit.

This Board, which is commonly referred to as the Speed Regulation Board, can have no more authority than that granted to it by the legislature. It cannot increase speeds above the limits set by the legislature.

In view of the provision of section 113-F-1, providing that speed of certain commercial vehicles shall be the same as pleasure vehicles, and the fact that the Speed Regulation Board has no definite authority to alter speed limits of various types of motor vehicles, it must follow that the Board cannot set separate speed limits for pleasure vehicles, trucks or buses.

Very truly yours,

GEORGE C. WEST

Deputy Attorney General

October 31, 1962

To: Hayden L. V. Anderson, Executive Director, Division of Professional Services, Department of Education

Re: Bequests to Teachers Colleges

You have asked for our informal opinion relative to an inquiry by Attorney William Linnell concerning the naming of a teachers college or the president of a teachers college trustee for the purpose of administering scholarship grants or other educational bequests or gifts. The authority for accepting such a bequest or gift is contained in chapter 11, section 16 of the Revised Statutes. It is our understanding that under that section the bequest would be turned over to the Treasurer of the State of Maine with the interest applied under the terms of the trust.

I agree with Mr. Linnell that it is highly questionable to make a bequest in trust directly to a teachers college or to a president of a teachers college since there is no clear statutory authority for such a bequest to an agency of the State. I would suggest that we survey the situation and recommend an amendment to chapter 11, section 16, to permit the various agencies of the state to administer a particular bequest in trust.

RICHARD A. FOLEY

Assistant Attorney General

October 31, 1962

To: Joseph T. Edgar, Deputy Secretary of State

Re: Eligibility to Vote Absentee Ballot when in County Jail or Penal Institution

You have asked our opinion as to the eligibility of a registered voter to vote by absentee ballot when that voter is in the county jail on a capias writ for non-support.

Revised Statutes, chapter 3A, section 1, provides that "A person who is serving a sentence in a jail or penal institution is not an absentee voter." The question is whether the person incarcerated is "serving a sentence." There are no Maine cases on point. A California court, after reviewing various dictionary and text writers, concluded that "sentence" is applicable to criminal proceedings, it being the judgment upon which an appeal may be taken. *People v. Lopez,* 110 P. 2d 140. In a Colorado case in point, a sheriff released a debtor from the county jail prior to the year for which he was committed on the basis that the debtor had earned deductions from the time of imprisonment under an act concerning prisoners confined under sentence. The court held that one confined under body execution is not serving a sentence and the sheriff was liable on his bond for the release. *Hershey v. People,* 12 P. 2d 345. (1932). One who is in jail on a civil capias execution or is held pending a criminal trial (there being no bail or the prisoner is unable to raise bail) is not serving a sentence within the meaning of section 1 of chapter 3A.

It should be for the town clerk to determine whether the registered voter who seeks to vote as an "absentee voter" is in jail or penal institution as a result of the actions of a court of criminal jurisdiction which has formally found the accused guilty of the acts of which he had been charged. If the town clerk determines that there is no criminal proceeding involved or that there has not as yet been a criminal judgment rendered against the registered voter, the registered voter held in jail is entitled to vote as an absentee voter.

PETER G. RICH

Assistant Attorney General

November 1, 1962

To: C. Wilder Smith, Deputy Commissioner of Labor and Industry

Re: Bedding and Upholstered Furniture Law

You have presented for our consideration a brochure supplied by a firm selling office furniture to the medical profession and ask whether any of the pieces of furniture described in the brochure fall within the Bedding and Upholstered Furniture Law, Revised Statutes, chapter 30, sections 155 through 165.

Revised Statutes, chapter 30, section 155, II, states that articles of upholstered furniture shall mean "chairs, sofas, studio couches and all furniture in which upholstery or so-called filling or stuffing is used whether attached or not." The examining table, the "physio-therapy" table, and the orthopedic table all have a surface cushioned by what is described as a "poly-foam" cushion covered with U. S. Naugahyde, a synthetic fabric or plastic. The "poly-foam" constitutes a stuffing and brings the articles within the provisions of the statute. The cushion on the "operator's stool" being made and covered by the same materials falls within the definition of "cushion" in section 155, II-A. This article is likewise subject to the provisions of the statute.

All the other articles described in the brochure, not being upholstered, are excluded from the operation of the statute.

PETER G. RICH

Assistant Attorney General

November 2, 1962

To: Major Parker F. Hennessey, Maine State Police

Re: Motor Vehicle Inspection "Released for Operation upon the Highways"

You have asked whether it is necessary for an automobile dealer to remove the current inspection sticker from a car which he has taken in trade prior to road testing the vehicle to determine the necessary repairs and adjustments. The pertinent statute is Revised Statutes, chapter 22, section 45, which states:

> "No dealer or holder of a transit registration certificate in new or used motor vehicles shall permit any such vehicle owned or controlled by him to be released for operation upon the highways until it has been inspected and a proper sticker certifying such inspection placed thereon. If such vehicle bears thereon a certificate showing a prior inspection, the same shall be removed."

When the legislature used the language "released for operation upon the highways" the intention was not that the dealer would have to remove the sticker and inspect the vehicle before taking it upon the road in order to perform additional necessary and proper tests. Rather, the inspection sticker must be replaced prior to demonstration and sale to the customer. In answer to your question, the dealer does not have to remove the current sticker before the vehicle is taken upon the roads for testing.

PETER G. RICH

Assistant Attorney General

November 5, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Copyright Laws in Relation to Television Programs

You have inquired as to the law on the use of excerpts from copyrighted books on educational television programs. I will quote for you a commentary found in *Corpus Juris Secundum,* Volume 18, page 224:

> "§ 105. — *Extracts and Quotations*
>
> "*Reasonable use of extracts or quotations from copyrighted works for a proper purpose is not an infringement.*
>
> "Making extracts, even if they are not acknowledged as such, appearing under all the circumstances of the case, reasonable in quality, number, and length, regard being had to the object with which the extracts are made and to the subjects to which they relate, is a fair and noninfringing use. Thus, it is not necessarily piracy for a reviewer or commentator to make use of extracts or quotations from a copyrighted work for the purpose of fair exposition or reasonable criticism, and considerable license is allowed in such cases, but it is illegitimate to publish extracts to such an extent that the publication may serve as a more or less complete substitute for the work from which they are borrowed, as excessive quotation is an infringement. If so much is taken that the value of the original is sensibly diminished, or the labors of the author

are substantially or to an injurious extent appropriated, that is sufficient in law to constitute a piracy."

I believe this quotation answers your question relative to copyright law.

RICHARD A. FOLEY
Assistant Attorney General

November 6, 1962

To: Austin H. Wilkins, Commissioner of Forestry

Re: Deputizing Filling Station Operator to Check Christmas Tree Shipments

This is in answer to your memorandum inquiring whether or not deputy fire wardens appointed under the provisions of chapter 36, section 103, may enforce the provisions of the Christmas Tree Law, so-called, that is chapter 36, section 67-A through 67-J, inclusive. Under section 67-I of the Christmas Tree Law state forestry department personnel may make inspections, investigations and arrests for violations of the Christmas Tree Law.

It is clear that under chapter 36, section 103, deputy fire wardens are state forestry department personnel.

The answer to your memorandum is therefore that a deputy fire warden may enforce the Christmas Tree Law when so assigned by the Commissioner of Forestry.

RICHARD A. FOLEY
Assistant Attorney General

November 8, 1962

To: Maynard F. Marsh, Chief Warden, Inland Fisheries and Game

Re: Application of so-called Artificial Light Law to Closed Season on Deer

You have asked if the law relative to use of artificial lights applies (1) to an area permanently closed to deer hunting and (2) to an area closed to deer hunting even though the season may be open in another part of the State.

This law does not apply in each case. Revised Statutes of 1954, chapter 37, section 97-A, reads:

> "The use of artificial lights between 1/2 hour after sunset and 1/2 hour before sunrise to illuminate, jack, locate, attempt to locate or show up wild birds or animals shall be unlawful *during open season on deer,* except as provided in section 94, and section 113, subsection IV." (Emphasis supplied).

You will note that the use of artificial lights for certain purposes is prohibited "during open season on deer." The phrase "open season" has a definite meaning in the statute. Section 38 provides —

> "The words 'open season' mean the time during which it shall be lawful to take animals, birds and fish as specified and limited by law."

Hence, an "open season on deer" is that time during the year when deer may legally be taken in any designated area. Section 91 sets forth the "open season on deer." This section also provides —

"There shall be a continual closed season on deer on the Island of Mount Desert. . . "

A reading of the whole section reveals that the "open season on deer" is a staggered time, according to certain zones or areas in the States.

Section 97-A only applies "during open season on deer" so it cannot apply to times and areas when or where it is not "open season on deer."

GEORGE C. WEST

Deputy Attorney General

November 8, 1962

To: Maine Sardine Council

Re: Purchase of Maine Sardines by Council for Sale in Foreign Market

You made an oral request for an opinion as to whether or not it is legal for the Maine Sardine Council to use its funds to buy sardines from packers in Maine to sell at a loss in foreign markets to promote Maine sardines in such markets.

After a careful study of the law this office is of the opinion that such a plan is not legal under the present law. Such action would not be "merchandising and advertising" Maine sardines, being a purpose for which the sardine tax money may be used.

It will be necessary to amend chapter 16, section 267, in order to do what you have suggested.

GEORGE C. WEST

Deputy Attorney General

November 8, 1962

To: R. W. Macdonald, Chief Engineer, Water Improvement Commission

Re: License to Discharge Sewage into or near Sebago Lake

You have asked two questions regarding the licensing of sewage discharge into or in the vicinity of a body of water of an "A" classification.

Question 1. May the Water Improvement Commission lawfully license the discharge of fully treated sewage directly into Sebago Lake? This lake, the water supply of the city of Portland, has an "A" classification.

Answer: The law is that "there shall be no discharge of sewage or other wastes into water of this ('A') classification." R. S., chapter 79, section 2. There is a great possibility of harm to those who depend upon waters of the "A" classification for their drinking supply in the event of failure (accidental or otherwise) to adequately treat the sewage. There is no differentiation in the law between treated and untreated sewage. Therefore, you may not license the discharge of sewage directly into Sebago Lake.

Question 2. May the Water Improvement Commission lawfully license the discharge of fully treated sewage into a wet weather water course having a "B-2"

classification at a point some 2000 feet above the juncture of the water course and Sebago Lake?

Answer: R. S., chapter 79, section 2, does not distinguish between direct and indirect discharge of sewage into a body of water holding an "A" classification. The discharge of sewage is prohibited whether it flows directly or indirectly into Sebago Lake. The question which you must determine is whether or not the point of discharge is sufficiently removed from the juncture of the water course and Sebago Lake so that as a matter of fact the sewage will not flow into the lake. If the point of discharge and the juncture of the two bodies of water are so close that sewage (whether treated or not) flows into Sebago Lake, you may not, as a matter of law, license the discharge.

Furthermore, in order to grant a license the commission must find that the "discharge will not increase the pollution of *any* stream, river, pond, lake or other body of water . . . so as to violate the prohibition of section 4 . . ." R. S., chapter 79, section 9, I. (Emphasis supplied). Treated sewage would not lower the classification of the water course below its "B-2" classification. With the water course flowing into a body of water holding an "A" classification, the Commission must further find that the discharge would not increase the pollution of Sebago Lake. If the Commission finds, as a fact, that the discharge would increase the pollution of the lake, then the application for license must be rejected.

PETER G. RICH
Assistant Attorney General

November 14, 1962

Honorable Clyde A. Hichborn
La Grange
Maine (RFD to Medford)

Dear Mr. Hichborn:

You have asked the question, "Is a school superintendent of a school union considered a State employee and, therefore, ineligible to hold a seat in the Maine Senate?"

Our answer is "No."

The authority for the election and discharge of school union superintendents by the joint committee of the towns comprising the union is clearly set forth in Revised Statutes, Chapter 41, Section 79. The contract is between the joint committee and the superintendent. A superintendent is considered an "employee" under the Maine State Retirement System Law only for the purposes of that act.

Very truly yours,
FRANK E. HANCOCK
Attorney General

November 15, 1962

To: Robert Doyle, State Geologist, Maine Mining Bureau
Re: Renewal of Claims

You have asked the question of whether the Mining Bureau may refuse to accept the renewal of a claim if the claim is not being worked in such a manner as will reveal the geological characteristics of the land claimed.

Revised Statutes, chapter 39-B, Section 4, VII, governs the renewal of claims. The application for renewal must be accompanied by an affidavit that during the period about to expire investigatory work has been performed on the claim to the extent of not less than 200 manhours or $500 worth of work. Section 4, VII, then states that:

> "The work done shall be described in the affidavit and shall include any work which tends to reveal such characteristics of the material sought as length, width, depth, thickness, tonnage, and mineral or metal content."

The affidavit must contain this information in order for the Mining Bureau to lawfully grant renewal of the claim. In those cases where it is not clear whether the work tends to reveal the required information about the land claimed, the Mining Bureau must exercise its judgment as to whether there is substantial compliance with the statutory requirement. Should the Bureau determine that the work described in the affidavit does not meet the requirements set forth in section 4, VII, the Bureau may not lawfully grant a renewal of the claim.

PETER G. RICH

Assistant Attorney General

November 15, 1962

Edward L. Allen, Ph. G.
Secretary
Commission of Pharmacy
8 Harlow Street
Bangor, Maine

Dear Mr. Allen:

In your letter of November 8, 1962, you have asked whether the Board of Commissioners of Pharmacy may lawfully license as a pharmacist an individual who does not have a college degree but who has been registered in New Hampshire since 1940. In answering your question it is assumed that the man in question was not registered at an earlier date in any other state.

The pertinent statutory provisions are found in Revised Statutes, chapter 681, section 6, which reads in part:

> "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."

New Hampshire now requires that a pharmacist have a degree from a college of pharmacy in order to be registered in that state. New Hampshire Revised Statutes, chapter 318, section 18. That which is critical is not what New Hampshire now requires of its applicants, but rather that the applicant meet the standards of Maine at the time he is seeking reciprocity. If this were not the case,

then your board would be allowed to admit those who could not meet the qualifications set for original applicants today merely because the foreign state had recently passed requirements equal to this state.

Section 6 of chapter 68 of our Revised Statutes requires each individual (not already registered) who seeks registration as a pharmacist to present to the board satisfactory evidence on three things: 1) graduation from some regularly incorporated college of pharmacy; 2) employment in an apothecary store for one year; 3) competency for the business. Graduation from a pharmaceutical college is an integral part of the statutory criteria for fitness established for original Maine applicants. It is, therefore, part of the degree of competency which must be shown by an applicant registered in a foreign state. Accordingly, the Board may not lawfully license the individual registered in a foreign state in 1940 who does not possess a degree from a college of pharmacy.

Sincerely,

PETER G. RICH

Assistant Attorney General

November 26, 1962

To: Lawrence Stuart, Secretary, Passenger Tramway Safety Board

Re: Registration of Small Rope Tow Operation

You have asked for an opinion as to whether the Passenger Tramway Safety Board may lawfully compel the registration of a small rope tow operation when that tow is owned by several people for the use of the owners and their friends. The size of the tow is not known but it is not a substantial one.

R. S., chapter 35-A, section 13, provides that "no passenger tramway shall be operated in this state, unless the operator thereof has been registered by the board." Section 2, IV, of chapter 35-A defines "operator" as any person who "owns or controls the operation of a passenger tramway." A rope tow is included in the definition of a passenger tramway, section 2, V.

Regardless of the size of the operation, the rope tow must be licensed by the board before it can be operated. The reasons for this are well stated in the declaration of policy which forms the first section of the passenger tramway safety law, chapter 35-A:

> "It shall be the policy of the State of Maine to protect its citizens and visitors from unnecessary mechanical hazards in the operation of ski tows, lifts and tramways, to ensure that reasonable design and construction are used, that accepted safety devices and sufficient personnel are provided for, and that periodic inspections and adjustments are made which are deemed essential to the safe operation of ski tows, ski lifts and passenger tramways."

PETER G. RICH

Assistant Attorney General

November 27, 1962

To: Paul A. MacDonald, Secretary of State

Re: Time Limit for Requesting Recount

You have asked for an interpretation of the time limit stated in Chapter 3-A, Section 127, relative to recounts. This section, in the first sentence, provides:

> "On the written application of a candidate in any election within 10 days after copies of the tabulation are made available to the candidates, the Secretary of State shall permit him or his counsel to recount the ballots under proper protective regulations."

When are the tabulations made available to candidates?

What is the time limit within which a recount may be asked?

These are the two questions that have to be answered.

Section 122 provides that "within 15 days after an election the Secretary of State shall tabulate the election returns and submit the tabulation to the Governor and Council." In subsection III of this section it requires the Secretary of State to have "copies of the tabulation printed and made available to the public."

Section 131 provides in part:

> "The Governor and Council shall review the tabulation of the vote. . . . and determine. . . . the persons to whom the Governor shall issue certificates of election or notices of apparent election except. . . . "

Referring back to Chapter 122, subsection III, the tabulations are "available" to the public as soon as they are printed and delivered to the Secretary of State's office by the printer. There is no requirement that he distribute them to all persons constituting "the public."

There is no requirement that the Secretary of State distribute the tabulation of votes to the candidates. So it would follow that the tabulations are "available" to the candidates when the Governor and Council have completed their review of the tabulation.

The time limit for requesting a recount expires 10 days after the Governor and Council complete their review of the tabulation of votes.

In 1962 the Governor and Council completed their review of the tabulation of votes on November 21. The 10 days expire on December 3, 1962. That is because the 10th day falls on Saturday. Chapter 3-A, section 3, provides that when the date on which an act must be performed falls on Saturday, the act shall be performed on the next following business day.

GEORGE C. WEST
Deputy Attorney General

November 28, 1962

Mrs. Alice B. Mann
Acting Executive Secretary
State Board of Barbers
Vickery Hill Building
Augusta, Maine

Dear Mrs. Mann:

We have your note in which you ask several questions relating to the licensing of an apprentice barber. The questions and our answers are as follows:

Question: May the Board of Barbers continue to license as an apprentice barber an individual who has twice failed the barber examination? This individual qualified for the two previous examinations by serving the statutory eighteen month apprenticeship.

Answer: The Board may continue to license this individual as an apprentice barber. There is no statutory provision which would prevent the Board from issuing an apprentice license. An apprentice barber qualifies for an apprentice license by: 1) commencing apprenticeship with a registered barber, and 2) by filing the necessary information with the Board. Revised Statutes, Chapter 25, section 230-I.

It is mandatory upon every apprentice barber after eighteen months of apprenticeship to apply for the barber examination. To any applicant qualifying to take the examination, the Board *may* issue a permit to practice barbering pending the results of the examination. It is not mandatory that the Board issue the permit. It should be noted that the permit to practice barbering pending the results of the examination is a different right than the apprentice license, although the applicant is to be considered as an apprentice. Section 230-J.

After two failures of the barber examination, the law does not permit the Board to issue a renewal of the permit to practice barbering pending the results of the examination, Section 230-J. There is no mention of any restriction on the continued issuance of an apprentice license. Such a restriction cannot be read into the law.

Question: May the Board of Barbers lawfully issue a renewal of a permit to practice barbering pending the results of the examination to an applicant for examination who has twice failed the examination?

Answer: Revised Statutes, Chapter 25, section 230-J, does not permit the renewal of a permit to practice barbering after the second consecutive failure of the examination.

You have asked several questions as to the procedure which should be followed to revoke an apprentice license in the event the licensed individual is not lawfully entitled to the license because of two failures of the barber examination. In view of our answer to your first question there is no need to answer these questions.

Sincerely,

PETER G. RICH

Assistant Attorney General

November 28, 1962

To: Ober C. Vaughan, Director of Personnel

Re: Personnel Board, Membership of

We have your request for an opinion as to who may be elected to be the fifth member of the Personnel Board. Revised Statutes, Chapter 63, section 3, provides as follows:

> "The 5th member of the board shall be elected by the other 4 members of the board from department heads for a 2-year term, and until their successors are elected and qualified."

Listed below are the departments and their heads who would qualify for membership on the Personnel Board.

DEPARTMENT	HEAD
Adjutant General	Adjutant General
Agriculture	Commissioner
Attorney General	Attorney General
Audit	State Auditor
Banks and Banking	Commissioner
Civil Defense and Public Safety	Director
Division of Veterans Affairs	Director
Economic Development	Commissioner
Education	Commissioner
Employment Security Commission	Chairman
Finance and Administration	Commissioner
Inland Fisheries and Game	Commissioner
Forestry	Commissioner
Health and Welfare	Commissioner
Highway Commission	Chairman
Industrial Accident Commission	Chairman
Insurance	Commissioner
Labor and Industry	Commissioner
Library	State Librarian
Liquor Commission	Chairman
Mental Health and Corrections	Commissioner
Public Utilities Commission	Chairman
Sea and Shore Fisheries	Commissioner
State Police	Chief
Secretary of State	Secretary of State
Treasury Department	State Treasurer

PETER G. RICH

Assistant Attorney General

December 5, 1962

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

Re: Transfer of Credits — Subsec. VIII of Sec. 17 of Chapter 63-A, R.S.

The factual situation is as follows:

An employee of a state department and member of the Maine State Retirement System left state service on March 1, 1946. He immediately became employed by the Maine Turnpike Authority. He did not withdraw his contributions to the Retirement System upon termination of his service as a state employee. On September 1, 1952, the Maine Turnpike Authority affiliated with Maine State Retirement System as a participating local district. The employee, on the same date, rejoined the Maine Retirement System as an employee of the Turnpike Authority. The Turnpike Authority did pick up what is commonly called "Prior Service Credits" for this employee so as to make coverage retroactive to his employment on March 1, 1946.

The question raised is whether or not the credits acquired in state employment to March 1, 1946 can be transferred to the Turnpike Authority so that the employee has coverage continuous from time of first state employment to the present.

Answer: Yes.

First it is necessary to examine the law as it was on March 1, 1946 to determine the status of the employee when he left state employment. R.S. 1944, chapter 60, section 8, provides in part:

> "Should a member cease to be an employee except by death or by retirement under the provisions of this chapter, he shall be paid the amount of his contributions, together with such interest thereon, not less than 3/4 of accumulated regular interest, as the board of trustees shall allow;"

Apparently on March 1, 1946, when the employee transferred to the Turnpike Authority, the trustees of the Retirement System should have made a refund of his contributions. They did not do this but allowed him to leave his contribution in the fund. Does this action of the trustees in any way affect the employee's rights?

To answer this question it is necessary to examine the law on September 1, 1952, and see how it affects the employee's rights. R.S. 1954, chapter 64, section 17, II, covers the rights of employees of participating local districts to membership in the retirement system upon the district first joining the system. This provision read the same on September 1, 1952.

> "Membership in the retirement system shall be optional with employees in the service of a participating local district on the date when participation of the local district begins, and any employee then in service who elects to join the retirement system within 4 years thereafter shall be entitled to a prior service certificate covering such periods of previous service as shall be certified by the participating local district as creditable prior service rendered to such local district, or to the state, for which the participating local district is willing to make accrued liability contributions."

The facts show that the employee elected to join the system, and the Turnpike Authority did accept his prior service from March 1, 1946, and did pay the required sum into the system. The failure of the trustees of the system to pay back the employee's contributions does not adversely affect his right. His act of rejoining the system cured the error. If he had not rejoined the system a much different result might be reached.

In your memo you mention section 17, VIII, as being a determining factor in this case. It should be pointed out that this particular subsection was first enacted in 1955 when the retirement law was completely rewritten. It was not in effect when this employee left state service in 1946, nor in 1952 when he reaffiliated with the retirement system. As we have consistently pointed out, a new law has no retroactive effect, unless specifically stated. This subsection can only have effect from August 20, 1955.

GEORGE C. WEST

Deputy Attorney General

December 10, 1962

To: Irl E. Withee, Deputy Bank Commissioner

Re: Legality of Certain Investments

You have asked if certain bonds and serial notes issued by three out-of-state churches may be legally purchased by Maine savings banks.

The answer to the general question is in the affirmative.

Beyond this is the additional question as to whether these bonds and notes are loans to religious associations or investments in securities. If they are the former, there is no stated limitation in the amount to be held by a savings bank. If they are the latter, there are definite limitations on the amount that a savings bank may purchase.

Chapter 59, section 19-H, provides in part:

> "Savings banks may hereafter invest their funds in *loans* to individuals, partnerships and corporations, . . ." (Emphasis supplied).

Chapter 59, section 19-I, provides in part:

> "Savings banks may hereafter invest their funds in *securities,* in addition to loans authorized under the provisions of section 19-H, . . ." (Emphasis supplied).

The legislature, by its wording in these two sections, has clearly indicated there is a difference between *loans* and *securities.*

A loan is defined as "an act of lending; a lending." Securities are defined as "an evidence of debt or of property, as a bond, stock certificate or other instrument."

Thus, a loan may be called a personal transaction between two persons, the lender and the borrower. It may be secured or unsecured. No other person or agency need be involved.

A security, on the other hand, is a paper or some evidence of indebtedness, generally, issued for sale to the general public. Such securities are usually in the form of bonds, notes, stock certificates, etc.

From an examination of the material submitted with your question it is concluded that the bonds and notes are securities. Hence, they come under the provisions of section 19-I.

GEORGE C. WEST

Deputy Attorney General

December 20, 1962

Honorable Irenee Cyr
Member, House of Representatives
5 Forest Avenue
Fort Kent, Maine

Dear Sir:

This is in answer to your letter of December 13, 1962. I understand your question to be whether or not the municipal officers can include on the ballot for the formation of a school administrative district an article calling for the

election of directors of the proposed district. Section 111-F, paragraph IV, provides that:

> ". . . the question of the formation of the proposed school administrative district and *other questions relating thereto* to be submitted to the legal voters of the municipalities which fall within the proposed school administrative district. . . ."

One of the articles required in paragraph IV is to choose school directors to represent the town on the Board of Directors. It is my opinion that the law clearly requires that the directors be chosen when the town votes on whether or not to join the school administrative district.

Very sincerely yours,

RICHARD A. FOLEY

Assistant Attorney General

December 21, 1962

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

Re: Disposal of Used Textbooks

This is in answer to your memorandum of November 29, 1962, inquiring as to the procedure to be used in disposing of used school textbooks to a charitable organization to be shipped to the Philippines for use in their schools.

The best procedure in this case would be for the school committee to vote authorization for the gift of such used school books to the charitable organization and to send the vote to the municipal officers or city council with the request that they concur in the vote of the school committee.

In this way, both the superintendent of schools and the school committee would be protected against any possible charge of illegal disposition of school property.

RICHARD A. FOLEY

Assistant Attorney General

December 21, 1962

Honorable T. Tarpy Schulten
Woolwich
Maine

Dear Tarpy:

I am enclosing a copy of two different opinions rendered by this office on the question of conflict of interests as a member of the Executive Council.

We have examined both opinions and the act creating the Committee on Educational Television. We believe that the reasons advanced and the conclusions reached in each of the opinions equally apply to a member of that Committee.

We, therefore, conclude that a member of the Executive Council cannot at the same time be a member of the Committee on Educational Television.

Sincerely yours,

GEORGE C. WEST

Deputy Attorney General

December 27, 1962

To: Warren G. Hill, Secretary, Maine School District Commission

Re: School Administrative District No. 17

This is in answer to your memorandum of December 21, 1962. You ask whether or not School Administrative District No. 17 through its board of directors has incurred outstanding indebtedness for capital outlay purposes within the meaning of section 111-P of chapter 41, Revised Statutes of 1954, as amended.

It is clear that the participating municipalities of School Administrative District No. 17, Norway and Paris, voted in the affirmative to authorize a bond issue in the amount of $1,050,000.00 for the construction of a new secondary school in the district and the board of directors made a finding to that effect in the minutes of their meeting of December 17, 1962. The directors of School Administrative District No. 17 at their December 17, 1962, meeting also voted to issue a promissory note in the amount of $60,000.00 in anticipation of the sale of bonds for the purchase of the Oxford County Fairgrounds as the site for a new school. Such a note in anticipation of the sale of bonds is authorized under section 111-K of chapter 41, Revised Statutes of 1954, as amended. The vote of the directors of School Administrative District No. 17 authorized the note to be signed by the treasurer of the district and countersigned by the chairman of the board of directors. It is apparent from the affidavits of the treasurer and the chairman of the board of School Administrative District No. 17 that the note was in fact executed and delivered to the Norway National Bank.

Section 111-P of chapter 41, Revised Statutes of 1954, as amended, provides in part as follows:

> ". . . No such vote on a petition for dissolution shall be permitted while such School Administrative District shall have outstanding indebtedness. Outstanding indebtedness is defined as bonds or notes for capital outlay purposes issued by the school directors pursuant to approval thereof in a district meeting of such School Administrative District, . . ."

Based upon the evidence presented to the Commission by the board of directors of the district, it is clear that School Administrative District No. 17 has issued a note for capital outlay purposes, that is, purchase of a school site (See section 237-H of chapter 41 defining "capital outlay purposes" as the cost of acquisition of land for school construction.). Since there is in fact outstanding indebtedness in the District, the vote on the petition shall not be permitted as provided by law.

I am of the opinion, therefore, that any votes on a petition for dissolution

in either the town of Norway or the town of Paris would be a nullity and could not be the basis for instituting a vote on dissolution in the District.

RICHARD A. FOLEY

Assistant Attorney General

December 28, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education
Re: Transportation of Students in Privately-Owned Vehicles

Your memorandum of November 16, 1962, is answered below.

The memorandum states that a request has been made of your department to provide information concerning the liability of teachers and school officials when transporting pupils to school-connected, extra-curricular activities in privately-owned automobiles. You state that you have discussed this matter with the Insurance Department and that that Department advised you to secure an opinion from this office.

We are in accord with the suggestions advanced by your memorandum:

1. That schools should require any person transporting students to school-sponsored affairs to provide proof of liability insurance up to a fixed amount, and

2. That the administrative unit or school provide additional extended coverage similar to that provided by the State of Maine for drivers of automobiles who are reimbursed for travel on state business.

Finally, we concur with you in your recommendation that the administrative unit or school carry adequate insurance protection on driver education vehicles when those which are used for the transportation of teachers and pupils to school-sponsored affairs.

Assistant Attorney General Albert Guy is assigned to the Insurance Department; any requests for opinions concerning matters of insurance may be directed to him through administrators in that Department.

Thank you for your attention.

JOHN W. BENOIT, JR.

Assistant Attorney General

December 28, 1962

To: Walter B. Steele, Jr., Executive Secretary, Maine Milk Commission
Re: Licensing of Foreign Corporation to sell milk within the State of Maine

Your memorandum of December 19, 1962, is answered below.

The Commission has inquired whether a foreign corporation not authorized to do business in this state pursuant to section 128 of chapter 53 of our Revised Statutes of 1954 shall be granted a license pursuant to the Maine Milk Commission Law.

The application for the license by the corporation should not be considered as "doing business" in this state.

> "The mere obtaining of a license, to do business in a state is not equivalent to 'doing business' therein. Hoopeston Canning Co. v. Pink, 24 N.Y.S. 2d 312, 323." Words and Phrases, "Doing Business."

Section 128 of chapter 53 of our Revised Statutes of 1954 requires that a foreign corporation, before transacting business here, file certain incorporation papers with our secretary of state.

> "Every such foreign corporation, before transacting business in this state, shall file with the secretary of state a copy of its charter or certificate of incorporation, . . ."

A request by the Commission that such foreign corporation comply with the laws pertaining to such corporations is not discriminatory and, therefore, is not in violation of the constitution of the federal government requiring that equal privileges be available to the citizens in the several states.

Compliance with the provisions relative to foreign corporations would expose to the Commission the foreign corporation's "purposes" for existence, thereby informing the Commission whether the foreign business is authorized to do those acts for which it desires to become licensed.

A direction to the applicant that he satisfy reasonable "conditions precedent" (comply with a provision of law) have been upheld as follows:

> ". . . License laws may also, as a condition to carrying on a trade or business, and considering its character, require the following: the registration of licenses; the obtaining of permits in certain cases; . . ."
> 33 Am. Jur., "Licenses" § 52 at p. 372.

The conclusion must be that the Commission's request that a foreign corporation comply with registration requirements existing in our laws relating to business corporations as a condition precedent to securing the Commission's license is not improper.

JOHN W. BENOIT, JR.

Assistant Attorney General

Statistics For The Years 1961-1962

MAINE CRIMINAL STATISTICS FOR THE YEARS BEGINNING NOVEMBER 1, 1961 AND ENDING NOVEMBER 1, 1962

The following pages contain the criminal statistics for the years beginning November 1, 1961 and ending November 1, 1962.

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) Pleas of Guilty by Defendant.

(f) Includes convicted on plea of nolo contendere.

(g) Under sentence to fine only some 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.

1961

1961 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	3095	75	871	204	1901	119	849	68	628	396
Arson	8	1	1	—	6	1	—	—	1	5
Assault & Battery	190	7	70	17	91	12	23	1	42	30
Assault w. Intent to kill	14	—	4	1	9	—	—	—	6	3
Breaking, Entering & Larceny	495	2	162	18	308	7	2	—	154	157
Drunken Driving	405	22	56	32	286	31	235	33	26	1
Embezzlement	26	—	16	1	9	—	—	—	5	4
Escape	35	1	6	7	21	1	—	—	18	3
Forgery, etc	233	1	69	19	142	3	1	—	79	64
Intoxication	123	1	36	6	80	1	50	9	18	3
Larceny	167	3	47	10	107	3	9	—	64	34
Liquor Offenses	34	—	9	4	21	—	15	—	4	2
Manslaughter	14	3	2	1	8	3	—	—	5	3
Motor Vehicle	728	12	207	44	458	19	395	10	41	19
Murder	4	1	—	—	2	1 1*	—	—	3	—
Night Hunting	108	9	19	4	76	9	66	10	—	—
Non-Support	26	1	6	2	17	1	3	—	6	8
Rape	28	2	9	2	11	6	—	—	14	1
Robbery	33	—	8	5	17	3	—	—	18	2
Sex Offenses	128	4	25	11	83	7	2	3	68	13
Miscellaneous	296	5	119	20	149	2* 8	48	2	56	46

*N.G. (3) by reason of Insanity

1961 ARSON — INDICTMENTS AND APPEALS

Totals	8	1	1	—	6	1	—	—	1	5
Aroostook	1	—	—	—	1	—	—	—	—	1
Cumberland	1	—	—	—	1	—	—	—	—	1
Hancock	2	1	1	—	—	1	—	—	—	—
Kennebec	1	—	—	—	1	—	—	—	—	1
Penobscot	2	—	—	—	2	—	—	—	—	2
Somerset	1	—	—	—	1	—	—	—	1	—

1961 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	190	7	70	17	91	12	23	1	42	30
Androscoggin	15	1	7	1	6	1	1	1	1	3
Aroostook	15	—	3	5	7	—	2	—	2	3
Cumberland	16	—	8	2	5	1	1	—	3	2
Franklin	13	—	6	—	6	1	1	—	4	2
Hancock	4	—	—	—	4	—	2	—	2	—
Kennebec	10	1	1	1	7	1	3	—	1	3
Knox	8	1	1	4	2	1	—	—	2	—
Lincoln	10	1	5	—	3	2	—	—	1	3
Oxford	9	—	3	—	6	—	—	—	3	3
Penobscot	25	—	6	4	13	2	5	—	5	5
Piscataquis	1	—	—	—	1	—	—	—	—	1
Sagadahoc	2	—	—	—	2	—	—	—	1	1
Somerset	12	1	7	—	4	1	1	—	2	1
Waldo	8	—	3	—	5	—	1	—	3	1
Washington	9	1	3	—	5	1	2	—	3	—
York	33	1	17	—	15	1	4	—	9	2

1961 ASSAULT WITH INTENT TO KILL — INDICTMENTS AND APPEALS

Totals	14	—	4	1	9	—	—	—	6	3
Androscoggin	2	—	—	—	2	—	—	—	1	1
Cumberland	2	—	1	—	1	—	—	—	1	—
Kennebec	2	—	1	—	1	—	—	—	—	1
Lincoln	1	—	—	1	—	—	—	—	—	—
Penobscot	1	—	1	—	—	—	—	—	—	—
Sagadahoc	1	—	1	—	—	—	—	—	—	—
Waldo	2	—	—	—	2	—	—	—	1	1
Washington	1	—	—	—	1	—	—	—	1	—
York	2	—	—	—	2	—	—	—	2	—

1961 BREAKING, ENTERING & 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	495	2	162	18	308	7	2	—	154	157
Androscoggin	39	1	15	—	23	1	—	—	16	7
Aroostook	35	—	8	—	27	—	—	—	18	9
Cumberland	70	—	11	—	57	2	—	—	28	31
Franklin	7	—	3	—	4	—	—	—	—	4
Hancock	7	—	2	—	5	—	—	—	1	4
Kennebec	40	—	9	1	30	—	—	—	16	14
Knox	16	—	10	1	5	—	—	—	4	1
Lincoln	23	—	7	1	15	—	—	—	4	11
Oxford	42	—	27	—	13	2	—	—	6	9
Penobscot	46	—	7	6	33	—	—	—	14	19
Piscataquis	5	—	2	—	3	—	—	—	—	3
Sagadahoc	16	—	2	2	11	1	—	2	5	5
Somerset	36	—	10	1	25	—	—	—	14	11
Waldo	16	—	6	1	9	—	—	—	7	2
Washington	16	—	8	—	8	—	—	—	6	2
York	81	1	35	5	40	1	—	—	15	25

1961 DRUNKEN DRIVING — INDICTMENTS AND APPEALS

Totals	405	22	56	32	286	31	235	33	26	1
Androscoggin	27	1	8	1	17	1	12	1	3	1
Aroostook	29	1	4	—	24	1	23	1	—	—
Cumberland	63	8	9	6	38	10	34	3	3	—
Franklin	10	1	1	1	7	1	4	2	1	—
Hancock	9	—	1	2	6	—	5	1	—	—
Kennebec	43	1	6	—	32	5	24	10	2	—
Knox	21	—	3	7	10	1	11	—	—	—
Lincoln	8	—	—	—	7	1	6	1	1	—
Oxford	4	—	1	—	3	—	1	1	1	—
Penobscot	92	2	2	11	77	2	60	7	10	—
Piscataquis	7	—	1	—	6	—	4	1	1	—
Sagadahoc	11	1	1	2	6	2	6	—	1	—
Somerset	16	2	1	—	13	2	11	1	1	—
Waldo	4	—	—	—	4	—	4	—	—	—
Washington	16	—	7	—	9	—	8	—	1	—
York	45	5	11	2	27	5	22	4	1	—

1961 EMBEZZLEMENT — 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	—	16	1	9	—	—	—	5	4
Androscoggin	1	—	1	—	—	—	—	—	—	—
Aroostook	8	—	4	1	3	—	—	—	3	—
Cumberland	6	—	6	—	—	—	—	—	—	—
Kennebec	2	—	—	—	2	—	—	—	1	1
Knox	1	1	—	—	—	—	—	—	—	—
Oxford	1	—	—	—	1	—	—	—	—	1
Penobscot	3	—	—	—	3	—	—	—	1	2
York	4	—	4	—	—	—	—	—	—	—

1961 ESCAPE — INDICTMENTS AND APPEALS

Totals	35	1	6	7	21	1	—	—	18	3
Androscoggin	7	—	3	—	4	—	—	—	3	1
Cumberland	10	1	—	—	9	1	—	—	9	—
Knox	3	—	—	1	2	—	—	—	2	—
Somerset	4	—	—	—	4	—	—	—	2	2
Waldo	2	—	—	—	2	—	—	—	2	—
York	9	—	3	6	—	—	—	—	—	—

1961 FORGERY — INDICTMENTS AND APPEALS

Totals	233	1	69	19	142	3	1	—	79	64
Androscoggin	49	—	14	9	26	—	—	—	18	8
Aroostook	13	1	5	—	7	1	—	—	4	3
Cumberland	57	—	13	2	40	2	—	—	26	16
Hancock	2	—	—	—	2	—	1	—	1	—
Kennebec	31	—	7	—	24	—	—	—	9	15
Knox	11	—	8	2	1	—	—	—	1	—
Oxford	8	—	4	—	4	—	—	—	—	4
Penobscot	19	—	1	3	15	—	—	—	9	6
Piscataquis	1	—	—	—	1	—	—	—	1	—
Sagadahoc	2	—	1	—	1	—	—	—	—	1
Somerset	10	—	2	—	8	—	—	—	2	6
Waldo	7	—	4	1	2	—	—	—	1	1
Washington	1	—	—	—	1	—	—	—	—	1
York	22	—	10	2	10	—	—	—	7	3

1961 INTOXICATION — 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	123	1	36	6	80	1	50	9	18	3
Androscoggin	8	—	2	—	6	—	3	—	1	2
Aroostook	9	—	1	—	8	—	4	—	4	—
Cumberland	13	—	6	1	6	—	6	—	—	—
Franklin	5	—	4	—	1	—	1	—	—	—
Hancock	1	—	—	—	1	—	1	—	—	—
Kennebec	3	—	2	—	1	—	1	—	—	—
Knox	6	—	4	2	—	—	—	—	—	—
Oxford	1	—	—	—	1	—	—	—	1	—
Penobscot	19	—	4	—	15	—	12	—	3	—
Piscataquis	3	—	2	—	1	—	1	—	—	—
Sagadahoc	3	—	—	2	1	—	1	—	—	—
Somerset	8	—	4	—	4	—	3	—	1	—
Waldo	33	—	4	1	28	—	12	9	7	—
York	11	1	3	—	7	1	5	—	1	1

1961 LARCENY — INDICTMENTS AND APPEALS

Totals	167	3	47	10	107	3	9	—	64	34
Androscoggin	11	—	2	—	9	—	—	—	7	2
Aroostook	15	—	4	—	11	—	3	—	5	3
Cumberland	34	1	6	1	26	1	1	—	21	4
Franklin	10	—	5	1	4	—	—	—	3	1
Hancock	1	—	—	—	1	—	1	—	—	—
Kennebec	3	—	2	—	1	—	1	—	—	—
Knox	1	—	—	1	—	—	—	—	—	—
Lincoln	1	—	—	—	1	—	—	—	1	—
Oxford	9	—	1	—	8	—	—	—	2	6
Penobscot	20	—	3	2	15	—	—	—	11	4
Piscataquis	5	—	1	—	4	—	—	—	1	3
Sagadahoc	4	—	2	1	1	—	—	—	—	1
Somerset	13	—	5	—	8	—	2	—	1	5
Waldo	8	—	4	1	3	—	—	—	1	2
Washington	12	1	6	—	5	1	—	—	4	1
York	20	1	6	3	10	1	1	—	7	2

1961 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	34	—	9	4	21	—	15	—	4	2
Cumberland	5	—	1	—	4	—	4	—	—	1
Franklin	5	—	2	—	3	—	2	—	1	—
Hancock	2	—	—	—	2	—	1	—	—	—
Knox	1	—	1	—	—	—	—	—	—	—
Lincoln	1	—	—	—	1	—	1	—	—	—
Oxford	2	—	—	—	2	—	2	—	—	—
Penobscot	3	—	1	1	1	—	1	—	—	—
Piscataquis	1	—	—	—	1	—	—	—	1	—
Sagadahoc	1	—	1	—	—	—	—	—	—	—
Somerset	5	—	—	2	3	—	3	—	—	—
Waldo	2	—	—	1	1	—	—	—	—	1
Washington	1	—	1	—	—	—	—	—	—	—
York	5	—	2	—	3	—	1	—	2	—

1961 MANSLAUGHTER — INDICTMENTS AND APPEALS

Totals	14	3	2	1	8	3	—	—	5	3
Androscoggin	2	—	—	—	2	—	—	—	—	2
Aroostook	3	—	—	1	2	—	—	—	2	—
Hancock	1	—	1*	—	—	—	—	—	—	—
Kennebec	2	1	—	—	1	1	—	—	1	—
Lincoln	2	1	1	—	—	1	—	—	—	—
Washington	2	1	—	—	1	1	—	—	1	—
York	2	—	—	—	2	—	—	—	1	1

*Guilty of Negligent Homicide

1961 MOTOR VEHICLE — 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	728	12	207	44	458	19	395	10	41	19
Androscoggin	42	1	8	—	33	1	30	—	1	2
Aroostook	45	—	17	—	28	—	24	1	1	2
Cumberland	141	1	53	5	80	3	69	1	7	5
Franklin	38	2	9	5	20	4	17	—	3	2
Hancock	9	—	3	—	6	—	4	—	2	—
Kennebec	60	1	9	—	49	2	41	2	7	—
Knox	21	—	5	2	13	1	13	—	1	—
Lincoln	10	—	5	—	5	—	5	—	—	—
Oxford	39	—	11	—	28	—	27	—	—	1
Penobscot	143	—	25	18	99	1	81	4	10	55
Piscataquis	16	—	8	—	8	—	8	—	—	—
Sagadahoc	5	1	2	2	—	1	—	—	—	—
Somerset	37	3	3	3	28	3	24	1	3	—
Waldo	14	—	5	—	9	—	5	—	4	—
Washington	33	1	15	—	17	1	17	—	—	—
York	75	2	29	9	35	2	30	1	2	2

1961 MURDER — INDICTMENTS AND APPEALS

Totals	4	1	—	—	2	2	—	—	3	—
Hancock	1	—	—	—	1*	—	—	—	1	—
Lincoln	1	—	—	—	—	1*	—	—	1	—
Penobscot	1	1	—	—	1*	1**	—	—	—	—
Waldo	1	—	—	—	—	—	—	—	1	—

*Guilty of Manslaughter
**N. G. by reason of insanity

1961 NIGHT HUNTING, ETC. — 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	108	9	19	4	76	9	66	10	—	—
Androscoggin	3	—	1	—	2	—	2	—	—	—
Aroostook	5	—	—	—	5	—	5	—	—	—
Cumberland	3	1	—	—	2	1	2	—	—	—
Franklin	4	3	—	—	1	3	1	—	—	—
Hancock	2	—	—	—	2	—	1	1	—	—
Kennebec	4	—	2	—	2	—	2	—	—	—
Lincoln	7	—	—	1	6	—	2	4	—	—
Oxford	9	2	2	—	5	2	5	—	—	—
Penobscot	25	—	3	1	21	—	20	1	—	—
Piscataquis	8	—	2	—	6	—	5	1	—	—
Somerset	19	1	5	1	12	1	9	3	—	—
Waldo	4	2	—	1	1	2	1	—	—	—
Washington	15	—	4	—	11	—	11	—	—	—

1961 NON-SUPPORT — INDICTMENTS AND APPEALS

Totals	26	1	6	2	17	1	3	—	6	8
Cumberland	3	1	—	—	2	1	2	—	—	—
Kennebec	3	—	—	—	3	—	—	—	1	2
Knox	2	—	—	—	2	—	1	—	1	—
Lincoln	2	—	—	—	2	—	—	—	1	1
Oxford	1	—	—	—	1	—	—	—	—	1
Penobscot	4	—	1	—	3	—	—	—	1	2
Sagadahoc	2	—	2	—	—	—	—	—	—	—
Somerset	3	—	—	2	1	—	—	—	1	—
Waldo	4	—	1	—	3	—	—	—	1	2
Washington	1	—	1	—	—	—	—	—	—	—
York	1	—	1	—	—	—	—	—	—	—

1961 RAPE — INDICTMENTS AND APPEALS

Totals	28	2	9	2	11	6	—	—	14	1
Androscoggin	6	—	2	—	3	1	—	—	3	1
Aroostook	1	—	1	—	—	—	—	—	—	—
Cumberland	5	—	2	—	1	2	—	—	3	—
Franklin	1	—	1	—	—	—	—	—	—	—
Hancock	1	—	—	—	1	—	—	—	1	—
Knox	1	—	—	1	—	—	—	—	—	—
Penobscot	3	—	1	1	1	—	—	—	1	—
Sagadahoc	1	—	1	—	—	—	—	—	—	—
					1*				1*	
Somerset	7	—	1	—	4	1	—	—	5	—
Waldo	1	1	—	—	—	1	—	—	—	—
Washington	1	1	—	—	—	1	—	—	—	—

*Guilty of Assault and Battery.

1961 ROBBERY — 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	33	—	8	5	17	3	—	—	18	2
Androscoggin	4	—	—	3	1	—	—	—	1	—
Aroostook	5	—	2	—	3	—	—	—	3	—
Cumberland	9	—	4	—	2	3	—	—	5	—
Franklin	2	—	2	—	—	—	—	—	—	—
Kennebec	2	—	—	—	2	—	—	—	—	2
Lincoln	1	—	—	1	—	—	—	—	—	—
Penobscot	4	—	—	1	3	—	—	—	3	—
Somerset	2	—	—	—	2	—	—	—	2	—
Waldo	2	—	—	—	2	—	—	—	2	—
Washington	2	—	—	—	2	—	—	—	2	—

1961 SEX OFFENSES — INDICTMENTS AND APPEALS

Totals	128	4	25	11	83	9	2	3	68	13
Androscoggin	17	1	6	—	10	1	—	—	9	1
Aroostook	19	—	3	—	16	—	1	—	13	2
Cumberland	17	—	2	—	11	2	—	—	12	1
						2*				
Franklin	1	—	1	—	—	—	—	—	—	—
Hancock	3	1	1	—	1	1	1	—	—	—
Kennebec	5	—	2	—	3	—	—	1	1	1
Knox	4	1	—	1	2	1	—	—	1	1
Oxford	4	—	—	—	4	—	—	2	1	1
Penobscot	17	—	2	8	7	—	—	—	4	3
Sagadahoc	6	—	3	—	3	—	—	—	3	—
Somerset	20	—	1	2	17	—	—	—	14	3
Waldo	7	—	2	—	4	1	—	—	5	—
Washington	1	—	—	—	1	—	—	—	1	—
York	7	1	2	—	4	1	—	—	4	—

*N.G. by reason of Insanity and by reason of Mental Defect. (Committed to A.S.H.)

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	296	5	119	20	149	8	48	2	56	46
Androscoggin	22	—	6	2	14	—	7	—	3	4
Aroostook	24	—	10	3	11	—	2	—	3	6
Cumberland	34	1	14	—	16	4	6	—	10	3
Franklin	13	1	7	1	4	1	3	—	—	1
Hancock	10	1	—	—	9	1	2	—	6	1
Kennebec	36	1	4	2	29	1	5	—	13	11
Knox	13	—	7	2	4	—	3	—	1	—
Lincoln	18	—	16	—	2	—	—	—	2	—
Oxford	8	—	3	—	5	—	3	—	1	1
Penobscot	37	—	9	5	23	—	3	—	13	7
Piscataquis	1	—	1	—	—	—	—	—	—	—
Sagadahoc	3	—	2	—	1	—	—	—	—	1
Somerset	14	—	5	1	8	—	3	—	2	3
Waldo	14	1	4	1	8	1	4	—	1	3
Washington	15	—	11	—	4	—	4	—	—	—
York	34	—	20	3	11	—	3	2	1	5

FINANCIAL STATISTICS, YEAR ENDING NOVEMBER 1, 1961

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	$ 31,360.27	$ 40,285.60*	$ 2,253.60	$ 13,926.20	$ 3,707.80	$ 41,062.01
Aroostook	20,321.62	39,259.90	1,817.60	9,953.10	8,336.53	121,177.38
Cumberland	66,257.20	92,980.65	1,784.40	11,442.30	6,146.68	97,310.72
Franklin	9,424.03	10,280.84	863.10	3,277.60	5,727.68	24,549.85
Hancock	18,546.10	17,201.58	961.35	6,073.30	4,225.40	42,954.11
Kennebec	19,908.76	26,218.85	1,456.80	7,274.80	7,271.00	68,645.28
Knox	1,076.05	5,591.52	821.60	390.00	2,732.84	25,417.84
Lincoln	4,370.28	5,460.50	1,285.20	6,297.70	2,155.00	2,155.00
Oxford	3,110.41	2,616.24	1,114.40	3,521.70	3,540.20	43,691.30
Penobscot	19,815.43	26,061.62	2,270.80	8,024.80	24,384.24	190,282.71
Piscataquis	2,208.08	9,537.79	441.20	898.60	2,971.31	17,803.34
Sagadahoc	7,862.69	3,997.34	833.80	2,111.20	1,427.00	15,153.00
Somerset	16,178.95	19,716.74	1,014.26	4,656.40	4,134.92	51,390.57
Waldo	7,699.46	28,364.31	642.00	2,076.80	1,804.20	22,618.90
Washington	13,386.33	22,041.75	1,373.60	3,594.00	5,157.60	40,957.04
York	18,044.38	38,653.80	2,207.00	8,540.00	6,835.50	95,333.63
Totals	$259,570.04	$388,269.03	$21,140.71	$ 92,058.50	$90,557.90	$900,502.68

* This amount includes $4,142.05 received from Sagadahoc for support of their prisoners.

1961 LAW COURT CASES

County	Name of Case	Outcome
Androscoggin	Duguay, Vincent	Pending.
Aroostook	Wardwell, Gaylon	Pending.
Cumberland	Beckwith, George	Pending.
	Field, Robert	New trial ordered.
	Huff, Richard F.	New trial ordered.
	Mottram, Robert	Pending.
	Westbrook, City of	Demurrer sustained. Case dismissed.
Franklin	McLain, Robert R.	———
Hancock	NONE	
Kennebec	Roberts, Lawrence	Pending.
Knox	Bennett, Otto	Exceptions overruled.
	Carlson, Everett	Exceptions overruled. Appeal dismissed.
Lincoln	NONE	
Oxford	Child, Edwin L.	Pending.
	Holt, W. Thomas	Pending.
Penobscot	Barnett, Charles F.	Pending.
Piscataquis	Dinan, William L., Jr.	Pending.
Sagadahoc	NONE	
Somerset	*State v. Petley*	Pending.
Waldo	Hale, Clayton Brooks	Exceptions overruled.
	Sanborn, John B.	Exceptions sustained. Respondent remanded to Superior Court for discharge.
Washington	NONE	
York	(#3607)	
	Valle's Steak House	Pending.
	(#3608)	
	Valle's Steak House	Pending.
	(#3609)	
	Valle's Steak House	Pending.

1961 PETITIONS

Types of Petitions	Total	STATE COURTS Cases	Outcome	Appeal	FEDERAL COURTS U.S.C.A.	U.S.D.C.	U. S. Supreme	Outcome
Appeal of Conviction in Attempted Escape	1	1	Denied (1)					
Certificate of Probable Cause	1					1		Denied (1)
Certiorari	3						3	Denied (3)
Complaint (Education)	1	1	J/State (1)	Denied (1)				
Habeas Corpus	18	9	Denied (6) Dismissed w/o Hearing (1) Pending (2)	*Exceptions Overruled (1) *Petition Dismissed (1)	*1	*2 Appealed 9		Denied (11) Filed w/o Action (1)
Motion for Copy of Transcript	4	4	Denied (4)	Denied (2)				
Motion for New Trial	1	1	Pending (1)					
Motion for Rehearing	1	1	Pending (1)					
Motion for Retrial	1	1	Dismissed (1)					
Writ of Error	9	9	Denied (5) Pending (1) Returned w/o Action (2) Sentence Revoked New Sentence Imposed (1)	*Dismissed (1) *Exceptions Overruled (2)				
Writ of Error Coram Nobis	3	3	Denied (2) Withdrawn (1)					
Writ of Mandamus	2	1	Withdrawn (1)			1		Dismissed (1)
Writ of Replevin (Education)	1	1	J/State (1)					
TOTALS	46	32		8	1	11 2 Appeals	3	

*Court Appointed Attorney on Appeal.
J/—Judgment for

1962

1962 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	3149	91	990	268	1759	132	727	53	598	420
Arson	3	—	1	—	2	—	—	—	1	1
Assault & Battery	202	11	74	11	102 1*	14	19	1	51	34
Assault w. Intent to kill	8	—	1	—	5	2	—	—	7	—
Breaking, Entering & Larceny	464	4	143	22	293	5 1**	4	1	139	150
Drunken Driving	398	29	70	37	256	35	214	24	20	4
Embezzlement	18	1	6	1	10	1	4	—	—	6
Escape	35	—	4	6	24	1	—	—	23	2
Forgery, etc	237	2	100	11	120	6	19	1	59	45
Intoxication	110	—	34	6	69	1	41	2	23	4
Larceny	175	4	59	11	99	6	13	1	39	48
Liquor Offenses	59	1	20	10	27	2	22	1	4	1
Manslaughter	7	—	3	—	3	1	2	—	2	—
Motor Vehicle	599	7	189	44	355	11	277	10	54	18
Murder	8	—	—	1	6	1	—	—	7	—
Night Hunting	96	12	16	7	59	14	47	9	3	2
Non-Support	41	1	12	2	26	1	—	1	13	12
Rape	35	4	8	—	20	7	—	—	18	5
Robbery	40	—	6	4	30	—	—	—	26	4
Sex Offenses	152	6	41	13	86	12	10	—	54	28
Sunday Blue Laws	44	1	2	41	—	1	—	—	—	—
Miscellaneous	418	8	201	41	166	10	55	2	55	56

*Defendant deceased

**N.G. by reason of insanity. Committed to Institution.

1962 ARSON — INDICTMENTS AND APPEALS

Totals	3	—	1	—	2	—	—	—	1	1
Hancock	1	—	—	—	1	—	—	—	1	—
Waldo	1	—	1	—	—	—	—	—	—	—
York	1	—	—	—	1	—	—	—	—	1

1962 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	202	11	74	11	103	14	19	1	51	34
Androscoggin	11	1	4	1	3	3	1	—	4	—
Aroostook	29	—	10	—	19	—	2	—	7	10
Cumberland	17	1	3	1	12	1	2	—	9	1
Franklin	9	—	3	—	6	—	—	—	4	2
Hancock	9	1	2	2	4	1	1	—	1	2
Kennebec	11	1	3	—	7	1	2	—	2	3
Knox	5	—	4	—	1	—	—	—	1	—
Lincoln	7	1	4	—	2	1	—	—	2	—
Oxford	8	1	4	—	3	1	1	—	2	—
Penobscot	37	1	8	3	24	2	4	1	12	8
Piscataquis	3	—	1	2	—	—	—	—	—	—
Sagadahoc	12	—	7	1	4	—	—	—	2	2
Somerset	12	—	3	—	8	—	3	—	2	3
					1*					
Waldo	6	1	3	—	2	1	1	—	1	—
Washington	10	1	8	—	1	1	—	—	—	1
York	16	2	7	1	6	2	2	—	2	2

* Defendant Deceased.

1962 ASSAULT WITH INTENT TO KILL — INDICTMENTS AND APPEALS

Totals	8	1	—	—	5	2	—	—	7	—
Androscoggin	1	—	—	—	—	1	—	—	1	—
Cumberland	3	—	—	—	3	—	—	—	3	—
Hancock	1	—	—	—	—	1	—	—	1	—
Lincoln	2	—	—	—	2	—	—	—	2	—
Waldo	1	1	—	—	—	—	—	—	—	—

1962 BREAKING, ENTERING & LARCENY — INDICTMENTS AND APPEALS

Dispositions	Total (a)	Ac-quit-ted (b)	Nol pross. etc. (c)	Pend-ing (d)	Convicted					
					Plea guilty (e)	Plea not guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	464	4	143	22	293	6	4	1	139	150
Androscoggin	23	—	14	2	7	—	—	—	6	1
Aroostook	55	—	16	—	39	—	—	—	20	19
Cumberland	55	1	8	—	46	1	1	—	23	22
Franklin	14	—	9	—	4	1	—	—	1	4
Hancock	34	—	12	2	20	—	—	—	11	9
Kennebec	25	—	5	—	20	—	1	—	9	10
Knox	2	—	1	—	1	—	—	—	1	—
Lincoln	17	—	10	2	5	—	—	—	2	3
Oxford	34	—	13	1	20	—	—	—	9	11
Penobscot	53	—	9	2	41	1*	—	—	21	20
Piscataquis	10	—	6	—	4	—	—	1	1	2
Sagadahoc	13	—	5	5	3	—	—	—	—	3
Somerset	31	—	5	1	25	—	2	—	8	15
Waldo	5	—	—	1	4	—	—	—	1	3
Washington	24	—	—	—	24	—	—	—	8	16
York	69	3	30	6	30	3	—	—	18	12

* N.G. by reason of insanity. Committed to Institution.

1962 DRUNKEN DRIVING — INDICTMENTS AND APPEALS

Totals	398	29	70	37	256	35	214	24	20	4
Androscoggin	33	3	6	3	21	3	19	2	—	—
Aroostook	30	2	8	—	20	2	14	5	1	—
Cumberland	63	5	14	7	36	6	35	—	1	1
Franklin	9	1	2	—	6	1	4	—	2	—
Hancock	10	—	1	1	8	—	8	—	—	—
Kennebec	36	4	4	4	21	7	14	7	3	—
Knox	16	—	3	1	11	1	10	—	2	—
Lincoln	7	1	1	1	4	1	4	—	—	—
Oxford	7	—	2	1	4	—	2	—	2	—
Penobscot	88	2	10	12	63	3	52	6	5	1
Piscataquis	3	—	—	—	3	—	3	—	—	—
Sagadahoc	10	2	4	—	4	2	3	—	1	—
Somerset	13	—	2	—	11	—	6	3	1	1
Waldo	7	1	—	1	5	1	3	1	1	—
Washington	8	1	2	—	5	1	5	—	—	—
York	58	7	11	6	34	7	32	—	1	1

1962 EMBEZZLEMENT — 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	1	6	1	10	1	4	—	—	6
Aroostook	8	1	4	—	3	1	1	—	—	2
Cumberland	1	—	—	—	1	—	—	—	—	1
Kennebec	2	—	1	—	1	—	—	—	—	1
Penobscot	1	—	—	1	—	—	—	—	—	—
Piscataquis	3	—	—	—	3	—	3	—	—	—
Somerset	3	—	1	—	2	—	—	—	—	2

1962 ESCAPE — INDICTMENTS AND APPEALS

Totals	35	—	4	6	24	1	—	—	23	2
Androscoggin	2	—	—	—	2	—	—	—	2	—
Aroostook	2	—	—	—	2	—	—	—	2	—
Cumberland	15	—	2	—	12	1	—	—	12	1
Kennebec	1	—	—	—	1	—	—	—	1	—
Knox	3	—	—	1	2	—	—	—	2	—
Piscataquis	1	—	—	—	1	—	—	—	—	1
Somerset	5	—	—	1	4	—	—	—	4	—
York	6	—	2	4	—	—	—	—	—	—

1962 FORGERY — INDICTMENTS AND APPEALS

Totals	237	2	100	11	120	6	19	1	59	45
Androscoggin	23	—	17	4	2	—	—	—	—	2
Aroostook	24	—	11	—	13	—	—	—	8	5
Cumberland	27	1	7	—	19	1	—	—	12	7
Franklin	2	—	1	—	1	—	1	—	—	—
Hancock	1	—	—	—	1	—	—	—	—	1
Kennebec	20	—	2	1	17	—	1	—	7	9
Knox	58	1	23	2	29	4	17	1	9	5
Oxford	5	—	4	—	—	1	—	—	1	—
Penobscot	30	—	12	1	17	—	—	—	13	4
Sagadahoc	1	—	—	—	1	—	—	—	—	1
Somerset	28	—	14	2	12	—	—	—	4	8
Waldo	8	—	4	1	3	—	—	—	3	—
Washington	2	—	—	—	2	—	—	—	1	1
York	10	—	6	—	4	—	—	—	2	2

1962 INTOXICATION — 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	110	—	34	6	69	1	41	2	23	4
Androscoggin	9	—	2	1	6	—	6	—	—	—
Aroostook	8	—	3	—	5	—	3	—	2	—
Cumberland	21	—	10	1	10	—	5	—	5	—
Franklin	4	—	2	—	2	—	2	—	—	—
Hancock	5	—	1	1	3	—	2	—	1	—
Kennebec	4	—	1	—	2	1	2	—	1	—
Knox	3	—	1	—	2	—	—	—	1	1
Oxford	1	—	—	—	1	—	—	—	—	1
Penobscot	28	—	5	1	22	—	8	1	12	1
Piscataquis	5	—	2	—	3	—	1	1	1	—
Sagadahoc	4	—	2	—	2	—	2	—	—	—
Somerset	3	—	1	1	1	—	1	—	—	—
Waldo	7	—	—	1	6	—	6	—	—	—
Washington	2	—	1	—	1	—	1	—	—	—
York	6	—	3	—	3	—	2	—	—	1

1962 LARCENY — INDICTMENTS AND APPEALS

Totals	175	4	59	11	99	6	13	1	39	48
Androscoggin	4	2	—	2	—	2	—	—	—	—
Aroostook	21	—	7	—	14	—	—	—	3	11
Cumberland	36	—	14	2	18	2	4	—	7	9
Franklin	5	—	1	—	4	—	2	—	—	2
Hancock	5	—	1	—	4	—	—	—	2	2
Kennebec	16	—	5	—	11	—	2	1	4	4
Knox	2	—	2	—	—	—	—	—	—	—
Oxford	3	—	2	—	1	—	—	—	1	—
Penobscot	25	—	9	—	16	—	1	—	10	5
Piscataquis	9	1	—	1	7	1	1	—	1	5
Sagadahoc	8	1	4	—	3	1	—	—	1	2
Somerset	12	—	4	—	8	—	—	—	3	5
Waldo	2	—	2	—	—	—	—	—	—	—
Washington	7	—	2	—	5	—	—	—	3	2
York	20	—	6	6	8	—	3	—	4	1

1962 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	59	1	20	10	27	2	22	1	4	1
Androscoggin	3	—	2	—	1	—	1	—	—	—
Aroostook	3	—	1	—	2	—	2	—	—	—
Cumberland	10	—	1	6	3	—	2	—	1	—
Franklin	7	—	3	—	4	—	4	—	—	—
Hancock	1	—	—	—	1	—	1	—	—	—
Kennebec	3	—	2	—	1	—	1	—	—	—
Oxford	3	—	2	—	—	1	1	—	—	—
Penobscot	7	—	—	2	5	—	5	—	—	—
Piscataquis	3	1	1	—	1	1	—	1	—	—
Somerset	9	—	3	—	6	—	3	—	3	—
Waldo	1	—	—	1	—	—	—	—	—	—
Washington	1	—	—	—	1	—	—	—	—	1
York	8	—	5	1	2	—	2	—	—	—

1962 MANSLAUGHTER — INDICTMENTS AND APPEALS

Totals	7	—	3	—	3	1	2	—	2	—
Aroostook	1	—	—	—	1	—	1	—	—	—
Hancock	1	—	—	—	1	—	—	—	1	—
Lincoln	1	—	1	—	—	—	—	—	—	—
Oxford	3	—	2	—	—	1	1	—	—	—
Somerset	1	—	—	—	1	—	—	—	1	—

1962 MOTOR VEHICLE — INDICTMENTS AND APPEALS

Totals	599	7	189	44	355	11	277	10	54	18
Androscoggin	29	2	10	1	16	2	13	1	1	1
Aroostook	30	—	9	—	21	—	16	—	5	—
Cumberland	113	—	38	7	68	—	51	—	14	3
Franklin	36	—	7	—	29	—	24	—	3	2
Hancock	12	1	2	3	6	1	5	—	1	—
Kennebec	42	—	8	3	31	—	20	3	8	—
Knox	8	—	—	—	7	1	6	1	1	—
Lincoln	9	1	4	—	4	1	2	1	1	—
Oxford	44	—	18	3	22	1	18	—	4	1
Penobscot	123	—	35	20	68	—	53	1	8	6
Piscataquis	12	—	1	—	10	1	6	3	1	1
Sagadahoc	9	—	3	2	4	—	2	—	1	1
Somerset	35	1	8	2	24	1	18	—	4	2
Waldo	16	—	3	—	12	1	10	—	2	1
Washington	7	—	5	—	2	—	2	—	—	—
York	74	2	38	3	31	2	31	—	—	—

1962 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	—	—	1	6	1	—	—	7	—
Androscoggin	1	—	—	—	1	—	—	—	1	—
Aroostook	1	—	—	—	1	—	—	—	1	—
Kennebec	2	—	—	1	—	1*	—	—	1	—
Lincoln	1	—	—	—	1	—	—	—	1	—
Piscataquis	1	—	—	—	1*	—	—	—	1	—
Sagadahoc	1	—	—	—	1	—	—	—	1	—
York	1	—	—	—	1	—	—	—	1	—

*Plead guilty to Manslaughter

1962 NIGHT HUNTING — INDICTMENTS AND APPEALS

Totals	96	12	16	7	59	14	47	9	3	2
Aroostook	9	—	1	—	8	—	7	1	—	—
Franklin	8	—	3	—	5	—	5	—	—	—
Hancock	5	—	—	—	5	—	4	—	1	—
Kennebec	1	—	1	—	—	—	—	—	—	—
Lincoln	3	3	—	—	—	3	—	—	—	—
Oxford	6	—	—	1	4	1	4	—	—	1
Penobscot	35	—	7	6	22	—	16	5	1	—
Piscataquis	3	—	1	—	2	—	2	—	—	—
Somerset	8	1	2	—	5	1	2	2	—	1
Waldo	7	4	—	—	2	5	1	1	1	—
Washington	11	4	1	—	6	4	6	—	—	—

1962 NON-SUPPORT — INDICTMENTS AND APPEALS

Totals	41	1	12	2	26	1	—	1	13	12
Aroostook	5	—	2	—	3	—	—	—	—	3
Cumberland	11	1	5	—	5	1	—	—	1	4
Hancock	1	—	—	—	1	—	—	—	—	1
Kennebec	4	—	2	—	2	—	—	—	2	—
Oxford	6	—	—	—	6	—	—	—	5	1
Penobscot	2	—	1	—	1	—	—	—	—	1
Sagadahoc	3	—	—	1	2	—	—	—	2	—
Somerset	4	—	—	—	4	—	—	1	2	1
Waldo	1	—	—	—	1	—	—	—	1	—
Washington	1	—	1	—	—	—	—	—	—	—
York	3	—	1	1	1	—	—	—	—	1

1962 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	35	4	8	—	20	7	—	—	18	5
Androscoggin	2	1	—	—	1	1	—	—	1	—
Aroostook	19	1	5	—	13	1	—	—	8	5
Cumberland	2	—	1	—	1	—	—	—	1	—
Hancock	1	—	—	—	1	—	—	—	1	—
Kennebec	5	1	—	—	2	3	—	—	4	—
Knox	1	—	1	—	—	—	—	—	—	—
Penobscot	1	—	—	—	1	—	—	—	1	—
Somerset	3	1	1	—	—	2	—	—	1	—
York	1	—	—	—	1	—	—	—	1	—

1962 ROBBERY — INDICTMENTS AND APPEALS

Totals	40	—	6	4	30	—	—	—	26	4
Androscoggin	12	—	2	2	8	—	—	—	8	—
Aroostook	1	—	—	—	1	—	—	—	1	—
Cumberland	13	—	2	1	10	—	—	—	7	3
Franklin	1	—	—	—	1	—	—	—	1	—
Kennebec	6	—	2	—	4	—	—	—	3	1
Oxford	1	—	—	—	1	—	—	—	1	—
Penobscot	2	—	—	1	1	—	—	—	1	—
Washington	4	—	—	—	4	—	—	—	4	—

1962 SEX OFFENSES — INDICTMENTS AND APPEALS

Totals	152	6	41	13	86	12	10	—	54	28
Androscoggin	9	1	2	—	6	1	1	—	5	—
Aroostook	35	—	9	—	26	—	6	—	13	7
Cumberland	15	1	3	—	10	2	—	—	10	1
Franklin	1	—	—	—	1	—	—	—	—	1
Hancock	2	1	—	—	1	1	—	—	—	1
Kennebec	14	1	3	2	8	1	—	—	6	2
Knox	3	—	2	—	—	1	—	—	1	—
Oxford	7	—	2	—	3	2	—	—	5	—
Penobscot	28	1	12	2	12	2	—	—	8	5
Piscataquis	3	—	—	1	2	—	—	—	—	2
Sagadahoc	14	—	5	6	2	1	—	—	3	—
Somerset	16	1	3	—	12	1	3	—	1	8
Washington	2	—	—	—	2	—	—	—	1	1
York	3	—	—	2	1	—	—	—	1	—

1962 SUNDAY BLUE LAWS — 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	44	1	2	41	—	1	—	—	—	—
Androscoggin	9	1	—	8	—	1	—	—	—	—
Cumberland	11	—	2	9	—	—	—	—	—	—
Kennebec	24	—	—	24	—	—	—	—	—	—

1962 MISCELLANEOUS — INDICTMENTS AND APPEALS

Totals	418	8	201	41	166	10	55	2	55	56
Androscoggin	13	—	8	5	—	—	—	—	—	—
Aroostook	42	1	27	—	14	1	4	—	7	3
Cumberland	51	1	18	9	23	1	6	—	12	5
Franklin	27	—	14	—	13	—	9	—	2	2
Hancock	20	3	8	1	8	3	2	—	2	4
Kennebec	34	—	9	—	25	—	9	—	9	7
Knox	10	1	7	—	2	1	1	—	—	1
Lincoln	12	1	6	1	4	1	2	—	—	2
Oxford	17	—	13	—	4	—	1	—	—	3
Penobscot	63	—	20	11	32	—	7	1	9	15
Piscataquis	7	—	3	—	3	1	—	—	1	3
Sagadahoc	14	—	11	—	3	—	—	—	2	1
Somerset	47	—	36	2	9	—	2	—	4	3
Waldo	15	—	4	—	10	1	3	—	5	3
Washington	9	—	3	—	6	—	1	—	2	3
York	37	1	14	12	10	1	8	1	—	1

FINANCIAL STATISTICS, YEAR ENDING NOVEMBER 1, 1962

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	$ 29,816.51	*$ 37,220.20	$ 2,907.90	$ 14,323.80	$ 11,588.00	$ 35,264.97
Aroostook	22,778.14	37,952.63	2,118.60	12,824.60	6,961.38	101,109.02
Cumberland	61,054.56	98,801.46	2,170.02	10,847.10	13,482.20	125,606.53
Franklin	8,726.91	9,749.74	650.20	3,231.60	3,694.40	18,332.50
Hancock	7,251.42	21,163.11	1,253.90	3,501.55	2,261.00	36,375.49
Kennebec	17,358.66	26,349.99	1,671.80	7,108.20	2,693.62	59,016.20
Knox	547.28	13,972.60	787.00	432.00	1,451.00	21,149.76
Lincoln	7,498.46	367.79	1,344.30	6,095.70	1,587.00	18,615.00
Oxford	4,177.10	3,604.59	1,335.80	6,512.00	2,043.64	36,596.36
Penobscot	21,546.69	30,010.00	2,560.80	10,776.00	10,165.32	150,391.19
Piscataquis	2,238.74	7,033.26	707.20	2,037.20	1,421.00	14,375.85
Sagadahoc	3,573.35	4,719.96	1,009.80	6,087.22	808.00	18,201.85
Somerset	23,690.69	23,094.93	2,375.60	8,903.30	3,925.80	47,533.27
Waldo	10,658.22	31,203.79	705.80	4,148.60	1,265.00	21,754.00
Washington	6,629.56	18,109.85	951.60	4,125.72	1,558.00	30,628.68
York	27,790.69	38,240.16	3,473.00	13,674.69	9,443.43	203,273.00
Totals	$255,336.98	$401,594.06	$26,023.32	$114,629.28	$ 74,348.79	$938,223.67

*This amount represents total paid out for Support of Prisoners, however, we received from Sagadahoc County $3,114.69 and Maine State Prison $3,630.69 for support of their prisoners in our jail.

County	Name of Case	Outcome
Androscoggin	Berube, Lawrence E.	Pending.
	Duguay, Vincent	Judgment for the State.
	Pelletier, Emile	Appeal withdrawn.
	Steckino, Arthur	Judgment for the State.
Aroostook	Wardwell, Gaylon L.	Judgment for the State.
Cumberland	Beckwith, George R.	Exceptions sustained, in part. New trial granted.
	Brackett, Alton	Pending.
	Croteau, Joseph	Appeal sustained. New trial granted.
	The Fantastic Fair, Inc.	Pending.
	Karmil Merchandising Corp.	Pending.
	Mottram, Robert H.	Appeal denied.
Franklin	NONE	
Hancock	NONE	
Kennebec	Bernatchez, Edmond	Pending.
	Biddison, Douglas	Pending.
	Park, Ralph Thomas, II	Pending.
Knox	Bennett, Otto	Exceptions overruled.
	Tripp, George O., Jr.	Exceptions overruled.
Lincoln	NONE	
Oxford	Child, Edwin L.	Judgment for the State.
	Holt, W. Thomas	Judgment for the State.
Penobscot	Barnett, Charles F.	Judgment for the State.
Piscataquis	Dinan, William L., Jr.	Judgment for the State
Sagadahoc	NONE	
Somerset	*State v. Petley*	Pending.
Waldo	NONE	
Washington	NONE	

York	(#3828)	
	Austin, James G.	Pending.
	(#3829)	
	Austin, James G.	Pending.
	Binette, Raoul J.	Pending.
	Charette, Gerard	Pending.
	(#3810)	
	Deschambault, Clement H.	Pending.
	(#3811)	
	Deschambault, Clement H.	Pending.
	Hodgkins, Oscar	Pending.

1962 PETITIONS

Types of Petitions	Total	Cases	STATE COURTS Outcome	Appeal	FEDERAL COURTS U.S.C.A.	U.S.D.C.	U. S. Supreme	Outcome
Certiorari	1	1	Dismissed (1)					
Complaint for Declaratory Relief (Education)	1	1	J/S.A.D. (1)					
Declaratory Judgment	2	2	Denied (1) Pending (1)	*Pending (1)				
Habeas Corpus	14	10	Denied (9) Withdrawn (1)	Denied (2)	*1	4		Denied w/o Hearing (1) Dismissed (3) *Pending (1)
Motion for Record and Transcript	2	2	Denied (2)					
Motion for Retrial	1	1	Denied (1)	Pending (1)				
Suit for Dissolution Agreement Fees (Education)	1	1	Pending (1)					
10 Taxpayers Suit (Education)	1	1	Pending (1)					
Writ of Error	3	3	Denied (1) Pending (1) Withdrawn (1)					
Writ of Error Coram Nobis	7	7	Denied (3) Dismissed w/o Hearing (2) Pending (1) Returned w/o Action (1)	Pending (1) *Pending (1)				
Writ of Mandamus	3	2	Dismissed (1) Withdrawn (1)			1		Dismissed (1)
TOTALS	36	31		6	*1	5		

J/S.A.D. — Judgment for School Administrative District.
* Court Appointed Attorney on Appeal.

MEDICAL EXAMINERS' REPORTS OF DEAD BODIES

Counties	1961	1962
Androscoggin	4	8
Aroostook	74	82
Cumberland	145	199
Franklin	14	24
Hancock	53	39
Kennebec	78	132
Knox	35	48
Lincoln	13	14
Oxford	67	55
Penobscot	197	184
Piscataquis	19	22
Sagadahoc	1	15
Somerset	72	75
Waldo	——*	6
Washington	54	36
York	200	174
Totals	1,026	1,113

*No reports received.

INDEX TO OPINIONS