MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

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ATTORNEYS GENERAL OF MAINE

1820 - 1964

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 Tavenner, Freeport	1960-1962
John W. Benoit, Jr., Augusta	1961-
Ruth Crowley, Augusta	1961-
Courtland D. Perry II, Augusta	1961-
Jon R. Doyle, Winthrop	1961-
Wayne B. Hollingsworth, Augusta	1961-
Albert E. Guy, Gray	1961-1963
Leon V. Walker, Jr., Eliot	1962-
Peter G. Rich, Portland	1962-1963
Carl O. Bradford, Auburn	1963-1963
Frederick P. O'Connell, Augusta	1963-
Richard S. Cohen, Hallowell	1963-
Jerome S. Matus, Augusta	1964-

* Temporary appointment.

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

COUNTY ATTORNEYS

County		
Androscoggin	Laurier T. Raymond	Lewiston
Assistant	William H. Clifford, Jr.	Lewiston
Aroostook	John O. Rogers	Houlton
Assistant	Cecil H. Burleigh	Caribou
Cumberland	Franklin F. Stearns, Jr.	Portland
1st Assistant	Walter G. Casey	Portland
2nd Assistant	William K. Tyler	Portland
Franklin	Calvin B. Sewall	Farmington
Hancock	Gerald W. Wass	Bluehill
Kennebec	Jon Lund	Augusta
Assistant	Foahd Saliem	Waterville
Knox	Peter Sulides	Rockland
Lincoln	James Blenn Perkins, Jr. (resigned)	Boothbay Harbor
	Successor: Donald Brackett	Wiscasset
Oxford	David Hastings	Fryeburg
Penobscot	Howard M. Foley	Bangor
Assistant	Thomas Needham	Bangor
Piscataquis	Arthur C. Hathaway	Dover-Foxcroft
Sagadahoc	Donald A. Spear	Bath
Somerset	Clinton B. Townsend	Skowhegan
Waldo	Roger F. Blake	Belfast
Washington	Francis A. Brown	Calais
York	Lloyd P. LaFountain	Biddeford
Assistant	Ralph H. Ross	Sanford

STATE OF MAINE

Department of the Attorney General

Augusta, December 1, 1964.

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

At the end of 1964, the staff of the Attorney General's Office consisted of the Deputy Attorney General, 13 full-time assistant attorneys general, 1 part-time assistant attorney general, 2 investigators, and 4 clerical employees. There are two assistant attorneys general assigned to the Maine Employment Security Commission; two assistant attorneys general assigned to the Department of Health and Welfare; three assistant attorneys general assigned to the Bureau of Taxation; one assistant attorney general assigned to the Department of Mental Health and Corrections; one assistant attorney general assigned to the State Highway Commission; four assistant attorneys general assigned to the main office of the Attorney General; and one part-time assistant attorney general assigned to the Liquor Commission.

The principal duties of the Deputy Attorney General and the assistant attorneys general are the rendering of opinions for the various State departments, the Governor and Council, and the Legislature. The opinions which have been presented in writing are contained in this report.

By law the Attorney General's Office is closely connected with the sixteen county attorneys, and in many instances this office is called upon to assist those county attorneys in the presentation and trial of cases and in such other matters as requested by the county attorneys. In the past two years one meeting was called with the county attorneys at the State House for the purpose of becoming acquainted and exchanging ideas. This get-together proved extremely successful. Such a meeting tended to bring a closer relationship with those local prosecuting officers and this office, and I would recommend similar meetings in the future.

Because of pronouncements by the United States Supreme Court in respect to the rights of individuals, there has been an increase of post-conviction actions prosecuted in both the State and Federal courts. This office represents the State of Maine in this type of action under our habeas corpus statute. In 1963, 46 post-conviction petitions for the writ of habeas corpus were filed in the Superior Court, and 8 petitions were filed in the Federal District Court. In 1964, 38 such petitions were filed in the Superior Court, and 5 petitions were filed in the Federal District Court. This office briefed and argued 11 post-conviction appeal cases in the Maine Supreme Judicial Court.

In 1963, the Maine Milk Commission became involved in substantial litigation concerning the constitutionality of the Maine Milk Law and the validity of certain redeemable coupons which were dispensed by a milk firm with its sales of milk in Maine. This litigation resulted in plural Superior Court actions and the briefing and arguing of seven cases in the Supreme Judicial Court at the October Term, 1964. That Court determined, inter alia, that the Maine Milk Commission Law was constitutional and that the coupons violated the reference statute. The milk firm has taken an appeal to the United States Supreme Court.

The laws relating to the Department of Mental Health and Corrections have been expanded and improved through the efforts of the assistant attorney general with that department, and a central reimbursement agency within the department has been incorporated. The assistant has collected on behalf of the State in the past two years the sum of $26,892.72.

Within the Bureau of Taxation during the biennium, three inheritance tax, two sales and use tax, and one sardine tax cases were argued in the Law Court. Further, a sales tax case originating in the United States Bankruptcy Court resulted in an appeal and was ultimately argued before the United States District Court. Decisions were also received on four sales and use tax cases which had been previously argued in the Law Court.

One sales and use tax case was litigated in the Superior Court during this period and decisions were received on two previous sales and use tax cases which had been litigated in the Superior Court. One of these decisions will be argued during the December 1964 Term of the Law Court.

Two cases were presented to a single Justice of the Supreme Judicial Court for determination, one involving a proof of claim filed in receivership proceedings and the other involving the provability of penalties in bankruptcy proceedings. There are currently pending five sales and use tax cases in Superior Court. An additional sales and use tax case awaiting hearing in Superior Court has been settled.

The office has increased its use of the injunction procedure under the Sales and Use Tax Law and has been instrumental in the commencement of several receivership proceedings as a result thereof. The office was instrumental in the initiation of two involuntary bankruptcy proceedings before the United States Referee in Bankruptcy.

The collection of delinquent tax assessments, principally sales and use taxes, is another important part of the duties of the assistants in this department. Since the last biennium the accounts receivable of the Sales and Use Tax Division have been substantially reduced as a result of activities by the assistants assigned to the Sales Tax Division.

Assistant Attorney General Ralph W. Farris, Sr. is retiring at the end of his present term of office. Mr. Farris has been an assistant attorney general since 1957 in the Bureau of Taxation, and, of course, was the first three-term Attorney General of the State of Maine from 1945 to 1951. I want to thank him for the fine service to the State of Maine and in particular his service to me in the past six years.

Within the Department of Health and Welfare the total collections from estates, i. e., Old Age Assistance, Aid to the Blind, and Aid to the Disabled; collections from fathers with respect to Aid to Dependent Children and Child Welfare; and miscellaneous collections totaled $1,306,058.49.

Within the Maine Employment Security Commission two assistants handled the legal problems for that agency; rendered legal opinions on request of the Commission; attended all employer liability hearings before the Commission and represented the agency in the Superior Court and in

the Supreme Judicial Court, on appeals from Commission decisions, both in claimant cases and in employer liability cases under the Maine Employment Security Law as well as suits brought to collect delinquent employer contributions.

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

During 1963-1964 collection of delinquent employer accounts (including interest and penalties) amounted to $156,422.35. In the process of collecting these accounts, 97 statutory liens were filed; a total of 159 suits were brought in Superior Court and 62 proofs of claim were filed in the Bankruptcy Court. One Supreme Court case involving claimant eligibility was decided in favor of the agency and one Supreme Court case involving employer liability is pending as well as one claimant eligibility case.

A total of 871 claimant investigation cases was completed. The investigators during this period made 2,657 calls and developed as a result thereof a total of 221 cases of fraud and 136 cases of non fraud with a majority of the latter resulting in overpayments.

Also during the period municipal and district court action against violators resulted in 56 convictions; fines were assessed in 29 cases with fines suspended in 7 cases. Jail sentences were imposed in 27 cases but 16 suspended. In 9 other cases the individuals were placed on probation.

It has been one of the duties of the Attorney General to serve as the Chairman of the Allagash River Authority which was created by the 101st Legislature. This necessitated many hours of meetings with other members of the Authority and hearings before the public throughout the State. It was a pleasurable experience to have visited the area and participated in a canoe trip. I am in hopes that the report of the Allagash River Authority will be adopted or certainly that some form of state control will eventually be the rule in that area.

I, as Attorney General, also participated as a member of the Judicial Council and as a member of the Baxter State Park Authority.

As Attorney General of the State of Maine, I am a member of the National Association of Attorneys General which has proved to be an extremely interesting organization and of great help to this office in the reciprocal exchange of laws and ideas. It was my extreme pleasure and privilege to have served as Vice-President of the organization in 1963-1964 and to have been elected its President in June, 1964. It is with great reluctance that I must retire from that position as I finish my third term as Attorney General of the State of Maine.

After six years as Attorney General for Maine, it has been my privilege to have known and worked with many fine people. I believe Maine is fortunate in having a devoted administrative work force. To those who have

been so kind and helpful in making the job of Attorney General not only easier but more pleasurable, I say thank you. It has been a most interesting experience.

Respectfully submitted,

FRANK E. HANCOCK

Attorney General

January 4, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: State Aid for School Construction

I have reviewed the letter of December 17, 1962, from a Superintendent of Schools wherein he requests whether proposed alterations at the high school qualify for construction aid under section 237-H of chapter 41 of our Revised Statutes of 1954, as amended.

The applicable portions of section 237-H are as follows:

> "Sec. 237-H. State aid for school construction. 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, and on school debts, and Maine School Building Authority leases assumed by the district. . . .
>
> " . . .
>
> " 'Capital outlay purposes' as the term is used in this chapter shall mean the cost of new construction, expansion, acquisition or major alteration of a public school building. . . .
>
> " . . .
>
> "The term 'major alteration' as used in this section shall mean the cost of converting an existing public school building to the housing of another or additional grade level group, or providing additional school facilities in an existing public school building but shall not include the restoration of an existing public school building or piece of equipment within it, to a new condition of completeness or efficiency from a worn, damaged or deteriorated condition."

The proposed alterations consist of the installation of acoustical folding partitions in two of the large classrooms, the installation of sound-reducing draperies on the wall separating the kitchen and the cafeteria, and the application of darkening materials to certain windows of the cafeteria.

The proposed alterations do not qualify for that aid provided by 237-H. The proposed alterations are not "major alterations" within the definition of "major alteration" set forth in section 237-H. Certainly, if the words "major alteration" exclude the restoration of buildings or equipment "from a worn, damaged or deteriorated condition" to a "new condition of completeness or efficiency," the proposed alterations are not within the spirit of the words "major alteration."

JOHN W. BENOIT, JR.

Assistant Attorney General

January 7, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Responsibility for School Property during Emergencies

Your memorandum of December 5, 1962, is answered below.

Question:

In the event an emergency occurs or may be impending, does the local civil defense director have the authority to take over school facilities for feeding centers, hospitals, etc., or does such authority rest with the county or the state civil defense officials?

Answer:

Until the governor of our state executes the emergency powers prescribed in the Maine Civil Defense and Public Safety Act of 1949 (R. S. 1954, c. 12, amended), responsibility for management of school buildings rests with superintending school committees and school directors of the various administrative units as set forth in sec. 54, c. 41, R. S. 1954, amended. Pending the governor's proclamation declaring that an emergency exists in any or all sections of the state (§ 6, c. 12, R. S. 1954, amended), local, county, and state civil defense officials have authority to prepare for the carrying out of all emergency functions set out in § 3 of the Act. These acts done in preparation for emergencies do not include the exercise of control over school facilities.

Upon the issuance of the emergency proclamation by the governor of our state, those plans specified in sec. 6, II, c. 12, R. S. 1954, would, presumably, be put into operation. (The school officials raising questions concerning the control of school facilities in the event of an emergency proclamation by our governor might inquire whether, in their particular areas, there are in fact conflicts of interest.)

Please note that § 6, c. 12, R. S. 1954, amended, provides, among other things, that the governor of this state may assume direct operational control over all or any part of the civil defense and public safety functions when the emergency is beyond local control. The conclusion must be that when the local organization is capable of controlling the emergency, such organization exercises "direct operational control over all or any part of the civil defense and public safety functions."

I find no language in the "Maine Civil Defense and Public Safety Act of 1949" reducing the responsibility of school officials (as enumerated in § 54 of c. 41, R. S. 1954, amended) in times of catastrophes or disasters.

In conclusion, though school officials advance the possibility that conflicts of interest might arise between local, county, and state civil defense units, none is shown; the plans and programs formulated by these units exist for the purpose of preventing such conflicts from arising. Local school officials should expect assistance from the local civil defense unit; the presumption being that the county unit will direct its attention to county functions. The county civil defense unit will concern itself with county buildings, leaving the towns to direct their concern towards so-called town buildings.

Please direct to my attention any present, specific conflicts in order that I may assist you in resolving them.

JOHN W. BENOIT, JR.
Assistant Attorney General

January 9, 1963

To: Niran C. Bates, Director of Public Improvements

Re: Educational Television

You have asked this office for an interpretation of the respective responsibilities of the University of Maine and the Director of the Bureau of Public Improvements in relation to the construction of educational television facilities under the provisions of Chapter 247 of the Private and Special Laws of 1961.

The fundamental basis on which this opinion rests is the proposition that educational television is a state-wide facility as opposed to a project for the benefit of the University of Maine.

This conclusion is based on four parts of Chapter 247.

1. Section 1 provides in the first sentence:

> "There is created a Committee on Educational Television for the purpose of facilitating the development of educational television in this State."

This language which opens the Act indicates that the educational television program is for the whole state.

2. The composition of the Committee set forth in section 1 is another indication of the state-wide aspect of this program. The committee is made up of 7 members, one a representative of the State Department of Education; one a representative of the University of Maine, and five citizens of the State of Maine.

3. Section 3-A provides that the Governor and Council are the body authorized to accept gifts and federal grants-in-aid.

4. Section 4 provides in part:

> "The University of Maine is authorized to . . . for the purpose of providing *a state-wide educational television network* for the transmission of educational television to pupils in the schools, colleges, university and adult audiences *throughout the state;*" (Emphasis supplied).

There can be no doubt when one reads these parts of the first four sections that the legislature intended to provide a state-wide television network provided at state expense by state agencies.

As further evidence of this conclusion, a reading of acts of the legislature authorizing bond issues will bear out this conclusion. Particularly does it become apparent in comparing Chapter 174, Private and Special Laws 1959, "An Act Authorizing the Construction of Housing for the University of Maine and the Issuance of not Exceeding $10,000,000 Bonds of the State of Maine for the Financing Thereof" (hereinafter called U. of M. bond issue), with the Educational Television Act, Chapter 247, Private and Special Laws, 1961, (hereinafter called ETV bond issue).

Section 3 of the U. of M. bond issue varies in the first sentence from the ETV bond issue, section 7. The U. of M. bond issue provides:

"The Treasurer of State is hereby authorized, *under the direction of the Board of Trustees of the University of Maine* with the *approval of the Governor and Council,* to issue bonds. . . . " (Emphasis supplied).

The ETV bond issue provides:

"The Treasurer of State is authorized, *under the direction of the Governor and Council,* to issue from time to time serial coupon bonds. . . . " (Emphasis supplied).

The U. of M. bond issue gives the authority to the Board of Trustees to direct issuance of bonds with the approval of the Governor and Council. The ETV bond issue *gives sole authority to the Governor and Council to direct the issuance of the bonds.* This fact is most significant in showing the intent of the legislature to make ETV a state function as opposed to a University of Maine function.

Section 5 of the U. of M. bond issue is significantly different from section 9 of the ETV bond issue. Section 5 of the U. of M. bond issue gives the Board of Trustees of the University of Maine the direction, with approval of the Governor and Council, of the sale of the bonds. The Board of Trustees is also authorized to draw warrants for expenditures. The ETV bond issue, however, provides for the Governor and Council to direct the sale of such bonds and to issue its warrants for the expenditures.

These differences in the Act are another significant feature to be considered in determining whether Educational Television is a state-wide or University of Maine function.

Section 8 of the U. of M. bond issue provides:

"The proceeds of such bonds shall be expended under the direction and supervision of the Board of Trustees of the University of Maine."

Compare section 6 of the ETV bond issue which says, in part:

"The proceeds of the bonds authorized under this Act shall be expended under the direction and supervision of the Director of the Bureau of Public Improvements. . . . "

A careful reading of the two Acts and a detailed comparison of the several sections of each Act leads to the definite conclusion that Educational Television, as contemplated by this Act, is a state function rather than a function of the University of Maine.

Now what does this mean in relation to the University of Maine and the Director of the Bureau of Public Improvements as far as construction of educational television facilities are concerned? To obtain the answer it is necessary to read R. S. Chapter 15-A, sections 24-33. These sections set forth the functions and duties of the Bureau of Public Improvements.

First: Section 25 subsection VI provides:

"To approve the selection of qualified practicing Maine registered architects and engineers in the planning and supervision of construction and public improvements;"

This means that any architect or engineer hired to plan and supervise construction of television facilities must be approved by the Bureau of Public Improvements.

Second: Subsection VIII provides:

"To approve all proposals, plans, specifications and contracts for public improvements which require their submission to the governor and council for their final approval and acceptance;"

Inasmuch as the final contract for building educational television facilities must be approved by the Governor and Council, section 9, plans and specifications must be approved by the Bureau before they are advertised for bids.

Third: The bids for construction of the facilities must be opened by a committee of the Council and the Trustees authorized to sign a contract with the successful bidder. The contract must be approved by the Director of the Bureau of Public Improvements and as to form by the office of the Attorney General.

Fourth: Subsection IX states the inspection duties of the Bureau. Thus all, so-called, change orders must be approved by the Bureau.

Fifth: Subsection XIV, together with section 6 of the ETV bond issue, requires the Director of the Bureau to approve all claims for payments submitted by the architect or engineer and the general contractor.

Sixth: Subsection X requires that the Director of the Bureau promptly inspect all public improvements upon completion and to make recommendations for the acceptance or rejection of the project.

The legislature certainly intended this procedure to be followed in the construction of educational television facilities. This is the normal procedure followed by all state departments and the Bureau in the construction of state buildings and facilities.

It should be noted, however, that everything appearing in this opinion is confined solely to the construction of educational television facilities under Private and Special Laws 1961, Chapter 247. Nothing contained in this opinion is to be used or construed as applying to any other construction project involving the University of Maine.

GEORGE C. WEST
Deputy Attorney General

January 9, 1963

To: Governor John H. Reed, Executive

Re: Deduction of Labor Union Dues

In answer to your request for an opinion relating to labor union dues deductions, the following answers are respectfully submitted:

1. No payroll deductions may be made without appropriate legislation or, in the absence of the legislature, authorization by the Governor and Council. This would apply to deductions for labor union dues.

2. If such action is sought while the legislature is in session, the usual procedure of drafting a bill and having a sponsor should be followed. When authorization from the Governor and Council is sought, in the absence of the legislature, a council order may be presented by any person. Such an order does not have to originate from a state official.

3. The authorization of union dues deductions does not carry with it any incidental right of collective bargaining and/or arbitration. The only benefit that the union derives is that of having the dues deducted, and nothing more. In fact, collective bargaining, in the sense that private industrial employees are entitled to it, is not generally accorded to public employees, except in rare and isolated situations. See *Norfolk Teachers' Assoc. v. Board of Education*, 138 Conn. 269, 83 A. 2d 482; *Miami Water Works Local No. 654 v. Miami*, 157 Fla. 445, 26 So. 2d 194; *Mugford v. Mayor & City Council of Baltimore*, 185 Md. 266, 44 A. 2d 745; 31 A. L. R. 2d 1155-1159, 1170-1172.

4. The specific employees affected must authorize the dues deduction. See *Mugford v. Baltimore*, 185 Md. 266, 44 A. 2d 745; *Kirkpatrick v. Reid*, 193 Misc. 702, 85 N. Y. S. 2d 378. The State would not have the power to make the deduction of any labor union dues mandatory.

GEORGE C. WEST
Deputy Attorney General

January 15, 1963

To: Ernest H. Johnson, State Tax Assessor
Bureau of Taxation

Re: R. S. Chapter 16, sec. 199—Gasoline Road Tax on Motor Vehicles

Your memorandum of January 8, 1963, received requesting answers to questions propounded relating to R. S., chapter 16, sec. 199, Gasoline Road Tax on Motor Vehicles.

Question 1. If a truck is registered for a gross weight of from 16,001 lbs. to 18,000 lbs., paying $100 registration fee, can it be considered as being "licensed" for a gross weight of in excess of 20,000 lbs. during the months of December, January and February, under sec. 199 of Chapter 16, since under sec. 19 of Chapter 22 the vehicle may be operated with any overload during that period?

Answer: Section 19 of Chapter 22 provides the registration fees for trucks. The fourth paragraph of that section states that trucks for the registration of which a fee of $100 or more has been paid may be operated on the highways during the months of December, January and February with any overload provided it is not in excess of the provisions of sec. 109 of Chapter 22.

It is our opinion that a vehicle which is registered under sec. 19 of Chapter 22 for a gross weight of 20,000 lbs. or less is not "licensed" for a gross weight of in excess of 20,000 lbs., under sec. 199 of Chapter 16, even though under sec. 19 of Chapter 22 overloads are permitted during certain months of the year so that in those months the vehicle may be operated with a gross weight of over 20,000 lbs.

Question 2. If a truck is registered for a gross weight of 16,001 lbs. to 18,000 lbs., paying a $100 fee, and subsequently the owner pays the additional fee required for a "short-term permit" under the sixth paragraph of sec. 19 of Chapter 22, under which the vehicle is permitted to operate with

a gross weight in excess of 20,000 lbs., is such vehicle then to be considered as being "licensed" for a gross weight in excess of 20,000 lbs.?

Answer: The sixth paragraph of sec. 19 of Chapter 22 referred to "short-term permits," as distinct from normal registration or licensing under that section. It is our opinion that a vehicle registered for a gross weight of 20,000 lbs. or less, but permitted to operate with a greater gross weight because of a "short-term permit," is not to be considered as being "licensed" for a gross weight in excess of 20,000 lbs. under section 199 of Chapter 16.

RALPH W. FARRIS,
Assistant Attorney General

January 16, 1963

To: Honorable Norman K. Ferguson
Senator for Oxford County
Senate Chambers
State House
Augusta, Maine

Re: Expenditure of county funds for Retarded Children, Inc.

Dear Senator Ferguson:

This will acknowledge receipt of your letter of January 10, 1963, which is answered as follows:

Questions:

(1) Whether the legislature may direct a county to expend county moneys for the above-named corporation?

(2) If so, whether such moneys may be included in a legislative resolve laying such amount upon the county to be raised as a tax for the purpose of paying same?

Answers:

(1) Yes, where the purposes are public and of special benefit to the county.

(2) Yes.

Reasons:

In *Sawyer v. Gilmore*, 109 Me. 169, at page 186, our Supreme Court quoted with approval from a Kansas decision as follows:

> " . . . 'And finally we remark that counties are purely the creation of State authority. They are political organizations, whose powers and duties are within the control of the Legislature. That body defines the limits of their power, and prescribes what they must and what they must not do. It may prescribe the amount of taxes which each shall levy, and to what public purpose each shall devote the moneys thus obtained. . . . In short, as a general proposition, all the powers and duties of a county are subject to legislative control; and provided the purpose be a public one and a special benefit to the county it may direct the appropriation of the county funds therefor in such manner and to such amount as it shall deem best.' " (See: *State v. Board of Co. Coms. of Shawnee Co.*, 28 Kans. 431.)

In Cooley, Taxation, Vol. 1, section 102, there is stated:

> " . . . In regard to counties . . . the rules applicable . . . may be stated as follows:
>
> "1. They have no inherent power to tax for local purposes. Any power of taxation must be delegated to them either by the constitution itself or by the legislature.
>
> "2. The legislature, unless forbidden by the constitution, may delegate the power of local taxation to such political subdivision. . . .
>
> " . . .
>
> "5. No tax levied by a county . . . is valid unless the purpose is both a public purpose and a local purpose. . . . "

Continuing, section 119 of Cooley's work on Taxation provides:

> " . . . Among the purposes for which it has been held that a county may levy a tax for its use, as being for a county or corporate purpose, are . . . public improvements in general . . . and a county tax to aid in building a state home for the feeble-minded in the county is for a county purpose when the county will be specially benefited by the location of the institution in the county. . . . "

See, also, chapter 52, P. L. 1961, "An Act Relating to Expending Aroostook County Funds for Ricker College;" chapter 155, P. L. 1961, "An Act Relating to Expending Aroostook County Funds for Maine Potato Blossom Festival."

Respectfully yours,

JOHN W. BENOIT, JR.
Assistant Attorney General

January 28, 1963

To: Madge E. Ames, Labor and Industry

Re: Time records

We are in receipt of your request for an opinion requesting whether provisions of Chapter 30, section 38, Revised Statutes 1954 are complied with by keeping of time books or record books outside of the State of Maine. Chapter 30, section 38 states as follows:

> "Such time books or records shall be open at all reasonable hours to the inspection of the commissioner, his deputy or any authorized agent of the department."

The keeping of time records at any place other than within the State of Maine, even though they are accessible with prior written notice, does not comply with section 38. The words, as found in section 38, " . . . shall be open at all reasonable hours . . . " presuppose the existence of the books at a place where the Commissioner, his deputy or any authorized agent of the department would have jurisdiction. If such records are without the State of Maine, then they are not open "at all reasonable hours to the inspection of the commissioner," etc.

WAYNE B. HOLLINGSWORTH
Assistant Attorney General

January 30, 1963

To: Dean Fisher, M. D., Commissioner of Health & Welfare
Attn: Owen Pollard, Director, Division of Eye Care and Special Services

Re: Education of Legally Blind Children

Replying to your inquiry relative to certain phases of education of legally blind children dated November 29, 1962 and which reached our desk on January 2, 1963, we submit the following opinion:

Question 1. Can the department exercise its discretion in determining whether or not a legally blind child shall or shall not attend Perkins Institution or other residential school?

According to section 319 of chapter 25, Revised Statutes, the department *may*, upon the request of the parents or guardian, send such blind children as it may deem fit subjects for education to Perkins Institution *or other school considered by the department to be qualified to provide suitable education for the blind child.* Our interpretation of this statute is that the parents or guardian may request the department to educate a blind child, whereupon the department will determine whether such child is a fit subject for education. If found educable, then the department *may* provide the necessary education either at Perkins Institution or at any other school deemed suitable by the department. In other words, we feel that the parents cannot specify the particular school to which their child shall be sent. The decision as to the proper school for the child is made by the department. Furthermore, we must point out that it is not mandatory upon the department to honor all such requests for the education of blind children. The word "may" is used, thus allowing the department discretion in selecting candidates for such education, although a restriction is added in the statute as follows: "In the exercise of the discretionary power conferred by this section, no distinction shall be made on account of the wealth or poverty of the parents or guardians of such children."

Question 2. Can the department withdraw a student already enrolled on the basis that in their opinion the child's needs can best be met through other resources?

The statute is very specific in providing that "no such pupil shall be withdrawn from such institution except with the consent of the proper authorities thereof or of the governor . . . " Unless the school authorities consent to the withdrawal, your only recourse would be to ask for the Governor's consent to withdraw the specific child.

Question 3. What is the department's responsibility to the child, parents of a child, concerning complaints of activities within such an institution that would if founded on fact jeopardize the physical and moral well-being of the child?

In your example you have indicated the possibility of sexual abuse of a child by a faculty member. We also understand that you have brought this complaint to the attention of the director of the institution who has done nothing to either prove or disprove the allegations. Since this involves a serious criminal offense, it would seem that the department has the responsi-

bility of reporting same to the proper law enforcement officials in order that an investigation may be made.

RUTH L. CROWLEY
and
FRANK W. DAVIS
Assistant Attorneys General

January 31, 1963

To: Edward L. Allen, Ph. G., Secretary
Commission of Pharmacy
8 Harlow Street
Bangor, Maine

Dear Mr. Allen:

Since talking with you, I have studied again the wording of Section 14 of your law, and have discussed its meaning with the Attorney General.

It would appear that the words "who supply medicines to their bona fide patients" are not descriptive of the words "hospitals and sanitariums." If we consider hospitals who *do not* supply medicines, it is readily seen that such hospitals would not have pharmacies and the above quoted phrase would be meaningless unless it intended to restrict hospitals to supplying medicines only to bona fide patients.

It is, therefore, the opinion of the Attorney General that a hospital may not supply prescription drugs to its employees without complying with paragraph 1 of section 14. The hospital, in addition, would have to comply with the Unfair Sales Act, Revised Statutes, Chapter 184, section 1.

Sincerely yours,

LEON V. WALKER, JR.
Assistant Attorney General

February 7, 1963

To: Maynard F. Marsh, Chief Warden, Fish & Game

Re: Trespass on Lakes and Ponds

1. In your memo of January 3rd, you ask whether filling in with gravel along the shores of inland lakes is legal. The letter from your supervisor refers to Long Lake, but I will broaden this opinion to include all lakes and ponds.

2. Great ponds are natural ponds exceeding 10 acres in area. Marginal owners on these ponds own only to natural low water mark. Long Lake is such a pond. Below low water mark, the state owns the bed of the pond. Any filling in below low water mark is a trespass against the state.

3. Mill ponds, artificial ponds, and ponds of less than 10 acres are privately owned.

4. Remedies against trespassers are several, and vary considerably in severity. It is suggested that a conference be held with the Attorney General to determine as a matter of policy which remedy should be used.

LEON V. WALKER, JR.
Assistant Attorney General

February 8, 1963

To: Vance G. Springer, Director
Bureau of Administration, Health and Welfare

Re: Tuberculosis Hospital Building, Fort Fairfield

You have advised that construction of the above building has been completed. It is now necessary to provide for certain custodial care of the building until funds to equip and staff it are made available. Such custodial care includes watchmen, heat, utilities, and water, at least.

The question is whether these services may be provided out of construction funds provided by the General Fund Bond Issue of 1959.

We believe they can.

The bond issue was provided by Chapter 175, Private and Special Laws 1959. Section 1 provides in part:

> " . . . serial coupon bonds . . . for the purpose of raising funds to provide for such construction, repairs, equipment, supplies and furnishings, as authorized by section 6."

Section 6 is the allocation from General Fund Bond Issue. One paragraph of section 6 provides:

> "The Commissioner of Health and Welfare is authorized to contract with the trustees of the Community General Hospital for necessary services after the construction. Such services shall include, but not be limited to, food, heat, sewerage, water and other services necessary for the well-being of the patients in the annex."

The language of the Act is broad enough to allow the Commissioner to use construction funds for custodial care until funds are provided by the legislature.

GEORGE C. WEST
Deputy Attorney General

February 14, 1963

To: Honorable Walter A. Birt
House of Representatives
State House
Augusta, Maine

Dear Representative Birt:

Your letter received February 13, 1963, is answered below.

Facts:

At a 1962 annual town meeting, the town elected one member to the superintending school committee to fill the vacancy arising due to the expiration of that particular post. Shortly after the annual town meeting all three of the superintending school committee members resigned necessitating the special election of three new members of the superintending school committee. These newly elected members were to serve terms which would expire at the next annual town meeting (1963).

Question:

Whether, at the 1963 annual town meeting, the members of the superintending school committee may be elected for specified terms, i. e., one for

a term of three years, one for a term of two years, and one for a term of one year?
Answer:

The members may not be elected for specified terms.

Reason:

On the basis of the facts presented to this office, there is required, at the annual town meeting, an election of a superintending school committee consisting of those members. The necessity exists by reason of the special election of a superintending school committee to fill the vacancies occurring from the resignations of the superintending school committee members after the annual election. Though the law provides that the superintending school committee may fill vacancies occurring between annual town meetings (§ 45, c. 41, R. S.), such provision was ineffective because no such committee existed after its complete resignation.

Following the annual town meeting the newly elected members of the superintending school committee shall, by lot, determine the length of their terms as provided by said section 45, certifying such designation to the town clerk.

The law contains no provision for electing an entire superintending school committee *and*, at the same time, designating a varying length of their individual terms of office. Furthermore, the law provides that the single designation that may be made, relative to the length of a member's term, shall concern the succeeding annual elections of members whose terms expire and that in such cases the newly elected members shall be elected for three year terms.

Very truly yours,

JOHN W. BENOIT
Assistant Attorney General

February 14, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: School Construction Aid

Your memorandum of February 11, 1963, is answered below.

Facts:

A Maine town, by legislative enactment (chapter 191, Private & Special Laws of 1961) and resulting vote of acceptance by the townspeople, caused the creation of a school administrative district in the town. The town is constructing a new high school which will be ready for occupancy in the fall of 1963. The school officials desire to use the old high school as an upper grade elementary school; for grades 6, 7 and 8.

Question:

(1) Whether the certain proposed renovations in the old high school building are eligible for state construction aid?

Answer:

Yes. The proposed renovations qualify for state construction aid.

Question:

(2) If eligible for such aid, must the work be completed before occupancy by the different grade level groups?

Answer:

Yes. The work should be completed prior to occupancy.

The applicable provision of law is section 237-H of chapter 41, R. S., as amended. (The entire section is not quoted here for the reason of its extreme length.) The pertinent portions of section 237-H are:

> " . . .
>
> "'Capital outlay purposes' as the term is used in this chapter shall mean the cost of new construction, expansion, acquisition or major alteration of a public school building, . . . the cost of furnishings and equipment, . . .
>
> " . . .
>
> "The term 'major alteration' as used in this section shall mean the cost of converting an existing public school building to the *housing of another* or additional *grade level group*, or providing additional school facilities in an existing public school building but shall not include the restoration of an existing public school building or piece of equipment within it, to a new condition of completeness or efficiency from a worn, damaged or deteriorated condition.
>
> " . . . " (Emphasis ours).

There is no need to set forth the proposed renovations for the reason that all the items qualify for school construction aid as "cost[s] of converting an existing public school building to the housing of another . . . grade level group. . . ." The renovations will not affect the housing of high school grades; the former tenants of the building. Rather, the renovations will affect housing of grades 6, 7 and 8; other grade level groups.

The work may not be done over a period of years. Prior to the opening of the school in the fall, there should exist sufficient facts giving the indication that certain workmen have obligated themselves to perform the various tasks of renovation.

JOHN W. BENOIT
Assistant Attorney General

February 19, 1963

To: Honorable Bradford Wellman
Majority Floor Leader
House of Representatives
State House
Augusta, Maine

Re: L. D. 811 Resolve, Relating to Apportionment of Representatives from Penobscot County.

Dear Representative Wellman:

You have asked this office for an opinion as to the constitutionality of the above resolve. This resolve seeks to amend the 11th paragraph of Chap-

ter 81 of the resolves of 1961, as amended by Chapter 123 of the resolves of 1961. Chapter 81 of the resolves of 1961 is the resolve apportioning the House of Representatives in accordance with Article IV, Part First, section 2 of the State Constitution.

The second and third sentences of Article IV, Part First, section 2 say:

> "The legislature shall, *within every period of at most ten years and at least five*, cause the number of inhabitants of the state to be ascertained, exclusive of foreigners not naturalized. The number of representatives shall, *at the several periods of making such enumeration*, be fixed and apportioned among the several counties, as near as may be, . . . " (Emphasis supplied).

Then the question may be framed as that asked the Supreme Judicial Court in 1851 by the House of Representatives.

> "Has the Legislature constitutional power, after a general representative apportionment has been made, in conformity with the constitution, to alter the Representative Districts so established, until the next general apportionment?"

The question and answer appear in Opinion of the Justices, 33 Maine 587:

> "When an apportionment of representatives has been made according to these provisions (Article IV, Part First, section 2) 'among the several counties,' it must remain without alteration for five years — for no new enumeration and apportionment can be made within that time, without a violation of that clause of the consitution which provides that the least period for an enumeration shall be five years."

Prior to this time in Opinion of the Justices, 3 Maine at 479 the justices said, in speaking of the same section of the constitution:

> "And it was readily perceivable, that as *every apportionment made by the legislature must continue five years* and may continue ten . . . " (Emphasis added).

Likewise in Opinion of the Justices, 148 Maine at 409 the justices said:

> "There is nothing in the Constitution which requires the Legislature to state the term of the continuance of any apportionment it makes. *If made, it must continue for at least five years.*" (Emphasis added).

From these three Opinions of the Justices it can be seen that our court has ruled that an amendment to a general apportionment cannot be made until five years have elapsed.

Therefore, we must conclude that Legislative Document 811, Resolve, Relating to Apportionment of Representatives from Penobscot County is unconstitutional.

Very truly yours,

GEORGE C. WEST
Deputy Attorney General

February 20, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Contract and Joint Committee of Town of Turner and Leavitt Institute

Your memorandum of February 15, 1963, is answered below.

Facts:

The by-laws of Leavitt Institute provide, inter alia, that the superintending school committee of the Town of Turner shall serve as an executive committee for the trustees of the institute. By written opinion from this office dated January 15, 1962, your department was advised that Leavitt Institute did not qualify as a "public secondary school" under sec. 443(a), U. S. C. Title 20, for the reason that the superintending school committee had no authority to prescribe the curriculum of the institute though the law (c. 41, §54, R. S.) contemplates that such committee shall possess that authority. This same opinion indicated that if a joint committee were formed composed of the superintending school committee and an equal number of trustees and if a tuition contract were entered into between the town and the institute and if those requirements set forth in chapter 41, sections 125 through 129, inclusive, were met, then the institute would qualify as a "public school" under the National Defense Education Act of 1958.

Question:

Whether it is necessary to amend the by-laws of the institute thereby removing that section from the by-laws which sets up the superintending school committee as an executive committee for the trustees of the institute in order to give legal effect to the setting up of a joint committee?

Answer:

Yes, the by-laws should be amended.

Reason:

By-laws exist for the purpose of regulating and controlling the affairs of private corporations, unincorporated associations and other private bodies; they are the rules of action adopted for the government of groups of persons and entities. Because the office of a by-law is to regulate the conduct and define the duties of members towards the corporation, it is necessary that the by-laws be amended to give legal emphasis and meaning to the action desired by the corporation; action which presently finds no basis in the by-laws.

JOHN W. BENOIT
Assistant Attorney General

February 20, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: State Construction Subsidy — S. A. D. #2

Your memorandum of February 18, 1963, is answered below.

Facts:

The following changes are contemplated in the secondary school building in S. A. D. #2:

(1) Abandonment of the present kitchen and cafeteria followed by construction of a new kitchen and cafeteria in another part of the building.

(2) Expansion of the present home economics quarters.

(3) Construction of a school library, where none exists at present. This project results in the conversion of a balcony area.

Question:

Whether such changes qualify for state construction subsidy under chapter 41, section 237-H, Revised Statutes?

Answer:

The proposed changes do qualify for such aid.

Reason:

Abandonment of a school facility causes such facility to cease to exist for beneficial use. Later construction of a like facility in another part of the building qualifies for construction aid for the reason that such construction produces an additional school facility. The same reasoning applies to the construction of the school library. (See definition of "major alteration" in said section 237-H.)

The expansion of the home economics quarters will qualify for aid provided such expansion results in providing additional school facilities, i. e., an increase of facilities over former facilities offered.

JOHN W. BENOIT
Assistant Attorney General

February 20, 1963

To: James L. Brown, Elementary Supervisor of Education

Re: Disposal of Milton School Building and Lot

Your memorandum of February 6, 1963, is answered below.

Facts:

The State of Maine presently holds title to school buildings and a lot located in unorganized territory, which property the State wishes to dispose of by sale. The Milton Bible Church desires to secure the property through its pastor who is a member of the Northeastern Gospel Crusade, Incorporated of Vermont.

Question:

(1) Whether the Milton Bible Church possesses the legal capacity to take title to the property?

Answer:

No.

Question:

(2) Whether the pastor of the church has the capacity to take in the name of either the Northeastern Gospel Crusade, Incorporated or the Milton Bible Church?

Answer:

No.

Reasons:

According to the records of the Secretary of State, the Milton Bible Church is not a Maine corporation. Neither does the organization qualify to take land pursuant to § 19, c. 57, R. S., there being no board of deacons. Though the Northeastern Gospel Crusade, Incorporated, may be considered capable of taking title by reason of its having a corporate existence, still the transfer of title to a member of that entity may not constitute a transfer to the entity itself.

Section 164-A, chapter 41, Revised Statutes, provides for the sale of school property in unorganized territory. The section is not restrictive relative to the type of sale, i. e., sale on sealed bids or private sale. The manner of securing purchasers is left to the commissioner's discretion. Because you indicate that more moneys may be realized from the sale by sealed bids, that manner of transaction has merit.

In conclusion, you express concern, generally, whether proposed grantees have the proper status to acquire title to real estate. Though that inquiry is of interest to you, still, the grantee is the person having the task of determining his capacity to take and hold real property.

JOHN W. BENOIT
Assistant Attorney General

February 25, 1963

To: Honorable Clarence V. Harrington
House of Representatives
Augusta, Maine

Dear Mr. Harrington:

Re: Legislative Document 1373, An Act Relating to the Application of the Christmas Tree Law to Knox, Lincoln and Waldo Counties.

You have asked this office about the constitutionality of Legislative Document 1373, An Act Relating to the Application of the Christmas Tree Law to Knox, Lincoln and Waldo Counties. The proposed legislation seeks to exempt Knox, Lincoln and Waldo Counties from the operation of sections 67-A, 67-C, subsection II 67-E, 67-F and 67-I of Chapter 36.

Sections 67-A to 67-J were enacted by Public Laws 1959, Chapter 283. Some of the sections were amended in 1961. Section 67-A prohibits the transportation for commercial purposes Christmas trees or evergreen boughs without registering with the state forestry department. Fee is $1.00. Section 67-C, subsection II, calls for a person transporting trees or boughs to have landowner's permit and registration on person or in the truck. Section 67-E gives the forest commissioner right to suspend or revoke registration upon certain conditions. Section 67-F allows qualified officers to make inspection and seize and hold trees or boughs until proof of landowner's

permit or registration is produced. Section 67-I lists officers authorized to enforce the law.

From the above it can readily be seen that Legislative Document 1373 seeks to exempt persons in three named counties from the provisions of the law. One provision of the law would be applicable in those three counties but could not be enforced under the law. The enforcement of that provision would have to be by other methods than prescribed in the so-called Christmas tree law.

In order for a law exercising the police power of the State to be constitutional, it must be reasonable. It cannot be arbitrary or capricious. In setting up a class to be covered by its provisions it must select a natural class; one that can be readily ascertained. Once the class is established, all who are in that class must be covered. The law cannot select some and say "You come within the law" but select others and say "You do not come within the law." The law as enacted in 1959 and amended in 1961 selected all persons who cut and transport Christmas trees and evergreen boughs for commercial purposes. The proposed legislation seeks to exempt some persons.

As early as 1825 in *Lewis v. Webb*, 3 Me. 326, our court held that the legislature cannot dispense with a general law for particular cases. In *Milton v. Railroad Co.*, 103 Me. 218, it held that the legislature has no power to exempt any particular person or corporation from the operation of the general law, statutory or common. In the case of *In Re Milo Water Co.*, 128 Me. 531, the court quotes favorably from *State v. Mitchell*, 97 Me. 66; *Holden v. James*, 11 Mass. 396; *Pierce v. Kimball*, 9 Me. 59, and gives the following quote from the United States Supreme Court in the case of *Cotting v. Kansas City Stockyards*, 183 U. S. 79:

> "Recognizing the right of classification of industries and occupations, we must nevertheless always remember that the equal protection of the laws is guaranteed and that such equal protection is denied when, two parties being engaged in the same kind of business and under the same conditions, burdens are cast upon the one that are not cast upon the other."

Another case very much in point is from North Carolina. In 1937 the legislature passed a general law requiring all dry cleaning establishments to be licensed. In 1939 an amendment exempted some 14 counties from the general law. In the case of *State v. Harris*, 6 S. E. 2d 854, the court said:

> " . . . any law which, purporting to operate on a particular class, places upon those engaged in the business in a portion of the state a burden for the privilege which is exercised freely and without additional charge by those engaged in the business in other parts of the State, is arbitrary in classification because it discriminates *within* the class originally selected and extends to the latter a privilege and immunity not accorded to those who must under the law, pay the additional exaction or quit the business."

From the foregoing it is the opinion of this office that Legislative Document 1373 is unconstitutional.

Very truly yours,

GEORGE C. WEST
Deputy Attorney General

February 28, 1963

To: Honorable Dwight A. Brown
Senate Chambers
State House
Augusta, Maine

Re: L. D. 440 — An Act providing County Funds for Insurance for Firemen

Dear Senator Brown:

You ask whether the above-mentioned proposed legislative measure, if passed into law, would be constitutional in its mandate authorizing the expenditure of county funds for the purchase of accident and disability insurance for firemen.

This bill would not be violative of any of the three provisions found in the Constitution of Maine, Article IV, Part Third, Section 16. This bill would not be an infringement of the right of home rule.

It is well established that the Legislature has the power to authorize the counties to expend funds. (See *Sawyer v. Gilmore*, 109 Me. 169 at page 186.)

We have grave doubts, however, as to the constitutionality of the emergency preamble for the reason that the necessary facts to constitute an emergency appear to be lacking. (See *Payne v. Graham*, 118 Me. 251.) L. D. 440 appears to state conclusions rather than the necessary facts which are required by Article IV, Part Third, Section 16, supra. This preamble could, of course, be amended to state the necessary facts constituting an emergency.

In conclusion, therefore, if the bill is amended to state the necessary emergency facts in accordance with the constitution, it would be the opinion of this office that it is not in violation of the constitution of this state or of the United States.

Sincerely,

WAYNE B. HOLLINGSWORTH
Assistant Attorney General

March 1, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: State School Construction Aid

Your memorandum of February 21, 1963 is answered below:

Facts:

A school committee proposes to develop land adjacent to the high school which would include the following undertakings: Construction of a football field; a track and field events area; tennis courts and outdoor basketball courts; a baseball field; a boys' physical education play area and a girls' physical education play area with a girls' athletic field.

Question:

Are the above developments eligible, jointly or severally, for state school construction aid?

Answer:

No. The proposals do not qualify either jointly or severally for such aid.

Reason:

The applicable provision of law is found in Section 237-H of Chapter 41, R. S. 1954:

> " . . . The term 'school building' as used in this section shall mean, but not be limited to, any structure used or useful for schools and playgrounds, including facilities for physical education . . ."

The Legislature's definition of "school building" contains the words "structure" and "facilities." Litigation involving these terms has produced the following definitions:

> "A tennis court was not a 'structure' within meaning of zoning by-law of town of Belmont which did not regulate the use of land, except so far as it had a building or structure thereon." *Williams v. Inspector of Buildings of Belmont.* 341 Mass. 188, 168 N. E. 2d 257.
>
> "The words 'structure' and 'building' mean the same thing." *In re Willey,* 12 Vt. 359, 140 A. 2d 11.
>
> " . . . 'Facility' is not a technical word, but one in common use, and its meaning is to be found in the sense attached to it by approved usage. Roget's Thesaurus gives 'aid', 'assistance', and 'help' as equivalents of 'facility' . . ." *State v. Johnson,* 20 Mont. 367, 51 P. 820.

A football field is not a "school building" as that latter noun is defined in Section 237-H. The Legislature saw fit to use the word "structure" in defining the noun "school building" and by use of such word intended to encompass within the definition of "school building" those other structures used or useful for schools and playgrounds.

Note the opinion of this Department dated November 13, 1962 wherein you were advised that "playground equipment is an item which is the proper subject of state subsidy under the provision of R. S., 1954, Chapter 41, section 237-H." That opinion gives no reason why such equipment is eligible; no doubt the determination of eligibility was rested upon the belief that such equipment qualified as a structure used or useful for schools and playgrounds. In this respect, the fence surrounding the tennis court, the outdoor basketball backboards and other similar items might qualify for aid.

The words "including facilities for physical education" do not broaden the term "school building" beyond the import earlier expressed in the definition for the reason that a "facility" is an item giving aid and assistance to that which is already defined; the existence of a school facility does not suppose the creation of a new body but rather supposes the presence of new blood.

JOHN W. BENOIT, JR.
Assistant Attorney General

March 1, 1963

To: Honorable Donald O'Leary
House of Representatives
State House
Augusta, Maine

Re: Appropriation of Municipal Funds for Blood Bank Program

Dear Representative O'Leary:

Your request for an opinion dated February 25, 1963, is answered below:
Question:

May municipal funds be raised and appropriated for a blood bank program under the heading of Civil Defense?

Answer:

No.

Reason:

A municipality may appropriate funds for civil defense. *R. S., c. 90-A, sec. 12, VII* and *sec. 12 of c. 12, R. S.*

Section 12 of the Maine Civil Defense and Public Safety Act of 1949 provides, among other things:

> "Each political subdivision (county, city, town or village corporation) shall have the power to make appropriations in the manner provided by law for making appropriations for the *ordinary expenses of such political subdivision* for *the payment of expenses of its local organization for civil defense and public safety.* In making such appropriations, such political subdivision shall specify the amounts and purposes for which the moneys so provided may be used by the local organizations for civil defense and public safety." (Parenthesis and emphasis supplied).

"Civil defense and public safety" is defined in section 3 of the aforementioned Act. These words mean both "the preparation for and the carrying out of all emergency functions." Those functions do include medical and health services.

In order, then, that such appropriation be legally made certain prerequisites must exist. The expenditure must be one which (1) is for the payment of expenses of the local organization and (2) for a Civil defense and public safety purpose.

According to the correspondence attached to your request for an opinion, the municipality would vote to raise an amount of money equal to an amount representing .30 for each person in the municipality. These moneys would be turned over to the Walking Blood Bank Association of Dixfield, Maine. These facts reveal no "expense of the local organization" or of "a civil defense and public safety purpose."

Very truly yours,

JOHN W. BENOIT,
Assistant Attorney General

March 1, 1963

To: Paul A. MacDonald, Secretary of State

Re: L. D. 204 — An Act Relating to Reciprocity Under Financial Responsibility Law.

You have asked for an interpretation of subsection III, section 79, of Chapter 22, as proposed by the above legislative document. You asked specifically if you may invoke section 77-V B if this bill becomes law.

Subsection III relates to a Maine resident who may be involved in an accident in another state having a financial responsibility law. There is particular concern because some states have a lower damage figure than Maine, and also many states do not have the same discretionary powers possessed by the Secretary of State in section 77-V B.

Subsection III provides that upon certification that the operating privilege of a Maine resident has been suspended or revoked in another state because of failure to file the proper security or proof of financial responsibility *"under circumstances which require the Secretary of State to suspend a nonresident's operating privilege had the accident occurred in this State."* (emphasis supplied) the Secretary of State shall suspend the license and registration of the Maine resident.

Subsection I of this proposed act provides in part "Sections 75 to 82 shall apply to any person who is not a resident of this State. . . " Therefore, a nonresident involved in an accident in Maine has the protection of the $100 minimum damage as well as the Secretary of State's discretionary power stated in section 77-V B. It follows from this that a Maine resident has the protection of the $100 minimum damages of the Maine law as well as the Secretary of State's discretionary power stated in section 77-V B when the Secretary of State is asked to suspend or revoke his license and registration because of suspension or revocation in another State.

GEORGE C. WEST
Deputy Attorney General

March 4, 1963

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

Re: Out-of-State Credits

In your memo of February 26, 1963, you have asked for an abstract interpretation of subsection XII of section 4 of Chapter 63-A of the Revised Statutes. There is no specific case that calls for an interpretation. Consequently, only generalization can be used.

Section 4 relates to creditable service. Subsection XII concerns only out-of-state service and under what conditions it may be used toward creditable service. Paragraph A applies only to "out-of-state service rendered prior to July 1, 1955" and how allowable.

Paragraph B applies to "out-of-state service rendered after July 1, 1955, or rendered prior thereto if not allowed as creditable service under the provisions of paragraph A of this subsection." Therefore, paragraph B can be said to cover persons having out-of-state service who do not qualify under paragraph A.

Whereas paragraph A has more rigid requirements as to length of creditable service in Maine necessary before eligibility for out-of-state service may be considered (so far as the favored teaching profession is concerned) yet payment into the retirement fund is more favorable.

Whereas paragraph B has no requirements as to length of creditable service in Maine yet payment into the retirement fund for out-of-state service is less favorable.

Under paragraph A the favored teachers upon completion of certain creditable service in Maine may obtain certain out-of-state credit by contributing "on the same basis as he would have made contributions had such service been in Maine" i. e., only the member's contribution.

Under paragraph B the employee may have out-of-state credit if he pays into the fund "the actuarial equivalent, at the effective date of his retirement allowance, of the portion of his retirement allowance based on such additional creditable service," i. e., both the employer's and the member's share of his out-of-state service to be allowed. (If the actuarial equivalent is more that the so-called state's share plus member's share, he must pay that figure. The same is true if the actuarial equivalent should be less than the total of the two shares. In either event, he pays the "actuarial equivalent.")

GEORGE C. WEST
Deputy Attorney General

March 7, 1963

To: Wallace E. Brown, Deputy Secretary of State

Re: Interpretation of R. S., Chapter 22, section 77, V, F

You ask whether a person transporting cargo, who has liability coverage but does not have cargo insurance, and who negligently damages the cargo, is exempted from the provisions of the Financial Responsibility Law.

The answer is yes. All that the law requires of a vehicle owner is that he have in effect at the time of the accident a liability policy. In your case the owner had property damage coverage which would apply to the property damaged.

LEON V. WALKER, JR.
Assistant Attorney General

March 8, 1963

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

Re: Chapter 63-A, R. S. as amended, Section 6, subsection IV

We are in receipt of your request for an opinion based on the following facts, as they have been submitted to us by your Department.

"A member of the State Police who has had, up to now, a total of approximately 18 years of service in that Department and who also had some 8 years of service as a guard at the Maine State Prison prior to his affiliation with the Maine State Police Department is now asking as to whether or not he can qualify for the half pay retirement benefit provided for in Chapter 63-A, § 6 IV, R. S. 1954, as amended."

Chapter 63-A, section 6, subsection IV-A, reads as follows:

"A. Any member who

"1. Was a member on July 1, 1947 and is the deputy warden, the captain of the guard, or a guard of the state prison; or a warden in the department of inland fisheries and game, or a warden of the department of sea and shore fisheries, or

"2. Is a member of the state police, including the chief thereof, and who became a member of that department subsequent to July 9, 1943; an airplane pilot employed by the state of Maine; or a member of a fire or police department including the chiefs thereof and sheriffs and deputy sheriffs, and, in any case, who has at least 25 years of creditable service in his respective capacity, may be retired on or after the attainment of age 55 on a service retirement allowance."

The employee in question began his state employment on 8 August 1937 and has been continuously employed through the present time. When the State Retirement System came into effect in 1942, this employee became a member. From 1937 until 1945 this employee worked as a guard at the Maine State Prison, and from 1945 until the present, he has been a member of the Maine State Police.

It is our opinion that the employee in question clearly falls within the mandate of section 6, subsection IV-A. He was a member on July 1, 1947 as a guard; he became a member of the State Police subsequent to July 9, 1943; he has at least 25 years of creditable service; service has been continuous from 1937.

I specifically call your attention to the last few lines of section 6, subsection IV-A, number 2, where it states:

" . . . *in any case,* who has at least 25 years of creditable service in his respective capacity . . . "

There is nothing in section 6, subsection IV-A, number 2 that is intended to mean that an employee must stay in one specific job, as enumerated, for the full tenure of service. The job of a guard, and the job of a state police officer are both enumerated within the above mentioned section. Had the employee in question been either a guard or a state police officer exclusively, for the full tenure of his service, there would be no question as to his retirement eligibility. It is, therefore, our opinion that the Legislature did not intend to divest any employee of his retirement benefits if he were to transfer from one department in the state to another department, both being specifically enumerated in the above-mentioned statute.

WAYNE B. HOLLINGSWORTH
Assistant Attorney General

March 13, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Additions to Flanders Bay Community School District

Your memorandum of February 11, 1963 is answered below:

Facts:

The towns of Franklin and Steuben voted affirmatively to join the Flanders Bay Community School District (hereafter called District). Each of the towns in the District voted affirmatively on the admission of Franklin and Steuben. In the voting, however, it appears that the procedure was complicated by the fact that the two towns sought admission at the same time and that Franklin did not vote on approval of the admission of Steuben and neither did Steuben approve the admission of Franklin.

Question:

Whether the District is properly constituted with the addition of these two towns?

Answer:

The District is properly constituted with the addition of these two towns.

Reason:

The material provision of law is section 121 of Chapter 41, R. S. 1954, as amended:

> "The inhabitants of and territory within any town not originally in the district may be included upon vote of all the towns concerned in a manner similar to that prescribed for the establishing of the community school or schools under such terms and arrangements as may be recommended by the community school trustees and approved by such vote; provided the cost to the inhabitants and territory so applying shall be based on a fair valuation as determined by the state board of equalization."

Note that the facts do not concern themselves with the original formation of a community school district. When two or more towns contemplate the original formation of a community school district each town votes upon an article which article gives recognition that another town (or towns) is concerned also with such formation. Sec. 112 of C. 41, R. S., as amended.

A reading of Section 121, earlier set forth, indicates that once a community school district is formed, another town (or other towns) may join such district, "upon vote of all the towns concerned" and such vote shall be "in a manner similar to that prescribed for establishing" such districts. Certainly, neither Franklin nor Steuben possesses the necessary legal status to preclude the other from presently joining the district.

Continuing, a vote by Franklin approving Steuben's admittance to the District and a vote by Steuben approving the admittance of Franklin to the District would add no legal emphasis to the formation of the District for the reason that the District may designate which municipalities it shall accept as additions thereto.

The conclusion must be that a vote of "cross approval" by Franklin and Steuben is not presently contemplated by the applicable statutes.

JOHN W. BENOIT
Assistant Attorney General

March 14, 1963

To: Honorable Ralph D. Brooks, Jr.
Senate Chambers
State House
Augusta, Maine

Re: Use of Municipally-Owned School Buses for Non-School Purpose

Dear Senator Brooks:

Facts:

A municipality furnishes its inhabitants with a non-school recreational program. Because the particular program is located some distance outside the municipality, there exists the problem of transportation. Such transportation would be entirely within the State.

Question:

Whether, legally, a municipally-owned school bus may be used for the purpose of transporting children from the town to the place where the recreational services are offered?

Answer:

Municipally-owned school buses may be used for a public, non-school purpose, providing such usage has the approval of the appropriate school officials, i. e., those persons charged with the custody and care of school property.

According to our law, all school property is in the custody of certain school officials, i. e., a superintending school committee; school directors. These school officials manage such property and care for such property. Section 54, chapter 41, Revised Statutes of 1954.

Extra school use of school buildings causing no interference with the use of the buildings for school purposes has been upheld; the same principles apply to the use of other school property.

No discussion is given herein relative to the expenses incurred through non-school use of town buses; i. e., gasoline, oil, depreciation, etc. Actually, moneys should be appropriated by the town to cover these "additional expenses." This matter of expense is purely one for the municipality to cover in its own way.

In conclusion, the use of school buses for non-school purposes may be authorized by the appropriate school officials where the use is a public use. In order that school officials protect themselves from criticism by townspeople arising from the grant of use of school property, such officials may request a fee for use plus additional insurance coverage provided by the user, if necessary.

Respectfully yours,

JOHN W. BENOIT
Assistant Attorney General

March 15, 1963

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

Re: Article in Town Warrant Specifying Person who is to Answer Question re School Budget; Designation by Directors that Superintendent Answer Such Questions; Discussion of District School Budget at Town Meeting.

Your memorandum of March 14, 1963, is answered below.

Facts:

A municipality located within a school administrative district has placed the following article in the town meeting warrant:

> "To see if the town will approve a motion whereby any questions or discussions about the schools or school budget be solely answered by the School Directors, Prospect."

Questions:

1. May the elected directors appoint their executive secretary the superintendent of schools to answer all such questions?
2. School budget matters are discussed at the annual district budget meeting. Is it proper to discuss such matters at a town meeting which has no authority as such over district school budget appropriations?

Answers:

1. Question #1 is rendered moot by answer to Question #2.
2. The budget of the school administrative district is not the proper subject of the town meeting.

Reason:

As noted by you in your memorandum, school budget matters are discussed at the annual district budget meeting. Sec. 111-S, c. 41, R. S. 1954, as amended. In view of the existing legislation, a town located in a district lacks legal status to affect the district budget at the annual town meeting.

Section 111-L of chapter 41, Revised Statutes of 1954, as amended, sets forth precisely how the district is to be financed. Note the mandate of our legislature that the approval of the district budget shall be the province of the district voters acting as a body; that district budget approval is not placed on a "town basis."

Because of the aforementioned reasoning the other question is rendered moot. Even so, we make an observation that in a proper instance, the directors may appoint their executive secretary (superintendent of schools) to speak in their behalf.

I make no determination herein relative to the legality of the article in the warrant allowing a majority of voters to prohibit the minority from voicing expressions at the town meeting.

JOHN W. BENOIT
Assistant Attorney General

March 18, 1963

To: R. W. MacDonald, Chief Engineer, Water Improvement Commission

Re: State Grants to Sewage Treatment Facilities

You have asked if the Water Improvement Commission may limit the state contribution to a municipal or quasi-municipal pollution abatement construction program to a percentage of the cost of eligible items less than the 30% prescribed by federal law.

Answer: Yes.

Chapter 79, section 7-A, provides:

> "The Water Improvement Commission is authorized to pay an amount equal to the total federal contribution under P. L. 660, 84th Congress, to the expense of a municipal or quasi-municipal pollution abatement construction program which has received federal approval and federal funds for construction."

This statute is "authorization" for the Water Improvement Commission to pay an amount equal to the total federal contribution under a given law. The federal contribution under this particular law is 30% or $250,000, whichever is smaller, of the estimated cost of construction. The important verb in this statute is "authorized." Generally the verb "authorize" denotes authority or permission to do a certain act. It does not make the full and complete act mandatory. The person "authorized" may do a certain act if able or he believes that he should do it.

We, therefore, conclude that the Water Improvement Commission cannot contribute to a municipal or quasi-municipal pollution abatement construction program more than the total federal contribution under P. L. 660, 84th Congress. The federal contribution so specified is the maximum which the state may contribute. The state's contribution, like that of the federal government, is determined and limited by the amount of funds appropriated by the legislature. If the legislature does not appropriate to the Commission sufficient funds for it to contribute an equal share with the federal government, then the Commission may contribute a lesser amount. Such amount would, of course, be determined by the Commission.

GEORGE C. WEST
Deputy Attorney General

March 22, 1963

To: Governor John H. Reed
State House
Augusta, Maine

Dear Governor Reed:

Re: Interpretation of Section 15 I, Chapter 29, of Revised Statutes

You have asked two questions concerning Revised Statutes 1954, Chapter 29, section 15, I, as amended by Public Laws, 1961, Chapter 361, section 4.

"1) Does the present Section 15, I, make it mandatory that the com-

mission disqualify an employee for benefits who has left his employment due to illness or disability not associated with his employment and upon returning to his place of employment immediately upon recovery, finds that his former job has been filled or that work is not available to him?"

The pertinent section reads as follows:

> "Sec. 15. Disqualification for benefits. An individual shall be disqualified for benefits:
>
> "I. Voluntarily leaves work. For the period of unemployment subsequent to his having retired, or having left his regular employment voluntarily without good cause attributable to such employment, or with respect to a female claimant who has voluntarily left work to marry, or to perform the customary duties of a housewife, or to leave the locale to live with her husband, or to a claimant who has voluntarily removed himself from the labor market where presently employed to an area where employment opportunity is less frequent, if so found by the commission, and disqualification shall continue until claimant has earned fifteen times his weekly benefit amount. In no event shall disqualification for voluntarily leaving regular employment be avoided by periods of other employment unless such other employment shall have continued for 4 full weeks."

A 1961 amendment deleted the following sentence from the section in question:

> "A separation shall not be considered to be voluntary without good cause when it was caused by the illness or disability of the claimant and the claimant took all reasonable precautions to protect his employment status by having promptly notified his employer as to the reasons for his absence and by promptly requesting reemployment when he was again able to resume employment;"

It was because of this amendment that the Maine Employment Security Commission changed its interpretation of the section. In an Administrative Letter #UC-388, dated September 11, 1961, Subject: Effect of Amendments to the Law and Regulation on Operations and Procedures, the Commission stated at page 4, referring to Section 15, I:

> "In the light of this amendment, separations due to illness or disability will have to be considered as being voluntary without good cause attributable and the requalifying requirement imposed — unless the illness or disability is unquestionably job connected in which case it could be found to be with good cause attributable and allowed."

We respectfully disagree with this interpretation. Looking at the section as it reads today, the key words are: " . . . or having left his regular employment voluntarily without good cause attributable to such employment, . . . " The present interpretation seems to disregard the meaning of the word "voluntarily." "Voluntarily" refers to a free exercise of the will; something done intentionally without interference of another's influence. Where illness or a disability is the reason for an individual's leaving his work, under circumstances where it can be said, as a matter of fact, he had no choice, it cannot and should not be said that he left his work "voluntarily"

within the meaning of the phrase. Emphasis must be on the word "voluntarily" before consideration of the words "without good cause attributable to such employment."

We do not believe that the amendment of 1961 necessarily changed the meaning of the act. *Buzynski et al. v. County of Knox, et al.* 158 Me. — (1963). It is our opinion, therefore, that the present section 15, subsection I, does not make it mandatory upon the commission to disqualify an employee for benefits who has left his employment due to illness or disability not associated with his employment.

Respectfully yours,

FRANK E. HANCOCK
Attorney General

April 15, 1963

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

Re: Legality of Time Certificates of Deposits or Time Deposits with the Federal Home Loan Bank

You have asked, in your memo of March 29, 1963, regarding the legality of a savings bank making time deposits in other banks.

A savings bank may not make time deposits in other banks.

Revised Statutes 1954, chapter 59, section 19-D, II, provides:

> "Every savings bank, subject to the restrictions and limitations contained in this chapter, shall have the following powers: . . .
>
> "I. To deposit *on call* in banks or banking associations incorporated under the authority of this state, or the laws of the United States, or in any bank of the Federal Reserve System located anywhere in the United States; . . . " (Emphasis supplied).

Historically, we find this provision first appeared in Public Laws 1877, chapter 218, section 13, a revision of the banking laws recommended by a commission authorized by the legislature in 1875. The pertinent wording was:

> "Savings banks may deposit on call in banks or banking associations . . . "

There have been a number of amendments to this particular section including general revisions of the banking laws in 1923 and 1955. In spite of these actions by the legislature it has not changed this particular wording. It must be concluded that the intent of the legislature was to ban time deposits by savings banks, there being a clear distinction between time and call deposits. See *State v. Mitchell,* 51 So. 4, 9 (Miss.) quoting *State v. Caldwell,* 44 N. W. 700 (Iowa).

GEORGE C. WEST
Deputy Attorney General

April 17, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: School Building Committee

Your memorandum of March 26, 1963, is answered below.

Facts:

A Maine town, at a special town meeting held on April 16, 1962, voted on business of the following tenor:

> "Article 2. To see if the Town will vote to build an addition to the Penobscot elementary school." On this article the Town "voted to build an addition to the Penobscot Elementary School."
>
> "Article 4. To see if the Town will vote to elect a school building committee to carry out any action adopted under Articles 2 and 3 or to act on anything relating thereto." On this article the Town "voted to elect a committee of seven to go to Augusta, have plans drawn to present at next meeting, get all information needed at Augusta, and present five bids at next town meeting."

[Article 3 dealt with an acceptance or a rejection of plans prepared by certain architects; the Town voted to reject the plans.]

At the annual town meeting on March 4, 1963, the Town voted an acceptance on the following article:

> "To see if the town will vote to accept a contract bid for the construction of an addition to the elementary school according to the plans, specifications, and bids by the School Building Committee."

No other article appeared in the warrant concerning the committee. At this same meeting the Town voted to appropriate certain moneys from surplus and voted to raise and appropriate other moneys to meet, in part, the contract price; the balance of moneys over those appropriated were to be borrowed by the Town.

You indicate that the state's interest in this matter is predicated upon its desire to know if plans are being presented by a legally-constituted committee?

Questions Posed:

(1) Whether the school building committee elected on April 26, 1962, continues to function until the school building addition is completed or did the committee cease to exist after the March 4, 1963, meeting by reason of the fulfilment of its assignment?

(2) Provided the committee still exists may its members elect a chairman from the membership to fill the vacancy created by the resignation and removal from town of the previous chairman?

Opinion:

In *Drisko v. Columbia*, 75 Me. 73 (1883), the facts before the court revealed that a town had inserted the following article in a warrant for town meeting: "To see if the town will pay Charles A. Drisko a certain sum which was actually reimbursed to the town by his enlisting for three years." The court continued as follows:

> "And the following vote was passed: 'Voted to pay a compensation to Charles A. Drisko of four hundred dollars in satisfaction of services he claims to have rendered the town for enlisting

in the United States service for three, instead of one year.' Is the vote within the purview of the warrant, in the light of the admission, upon the briefs of counsel, that no such reimbursement had ever been made to the town? We say it is not.

" . . . The vote calls for one thing, the warrant for another. This is not a case where an idea has been blindly or illiterately expressed. Both the warrant and vote are couched in clear and concise terms, and neither could be easily misunderstood."

See also *Stewart v. Inhabitants of York*, 117 Me. 385 (1918), wherein the court determined that a bridge building committee chosen by town vote had been given no legal power to employ counsel.

On November 3, 1925, this office forwarded an opinion to the department of education which involved powers of a building committee; that opinion contains language which applies to the present matter. I quote from the last paragraph of that opinion:

" . . . They were appointed for a specific purpose; they were authorized by the vote of the town to do certain things. They had no power to act in any other matter. The power to provide the equipment and furnishings was not given them by the town, hence they cannot act in this regard."

A reading of the vote of the Town upon Article 4 does not reveal any grant by the townspeople authorizing the committee to oversee construction of an addition to a school building. The town elected a committee and embellished it with certain directives. The committee had no power to act upon any other matter.

Because we find that the committee possesses no authority to oversee the proposed construction, the questions which you pose become moot. Nevertheless, we would not be remiss, we think, in opining that the committee has served its purpose and presently does not function.

JOHN W. BENOIT
Assistant Attorney General

April 23, 1963

To: E. L. Walter, Assistant Executive Secretary
Maine State Retirement System

Re: Definition of Payments made under Survivor Benefits Plan

Reference is made to your memo of April 19, 1963. You have asked for an opinion as to whether payments made under the so-called Survivor Benefits plan are payments to the widow or to the children or whether they are separable.

From the facts of the two cases named it is evident that Chapter 63-A, section 9 I B 1 (a) does not apply because neither deceased employee had 17½ years of creditable service at the time of his death.

It, therefore, follows that section 9 I B 1 (b) and (c) are the applicable provisions of the statute. The pertinent provisions of (b) read:

"A spouse, alive and not remarried at the time of the death of the member who has the care of unmarried children of the

deceased member under 18 years of age . . . shall be paid $75 a month, commencing the first month after such death occurs and continuing during his lifetime for such time as such children or progeny are in his care and he has not remarried."

This can only mean one thing — the widow or widower who has the care of unmarried children of the deceased employee under 18 years of age is to have $75 per month as reimbursement for such care.

The pertinent provisions of (c) read:

"The unmarried child or children under 18 years, . . . shall receive benefits as follows:

"One child shall be paid $75 a month.

"Two children shall be paid $100 per month, which shall be divided equally between them.

"Three children or more shall be paid $125 per month, which shall be divided equally among them."

It follows from this that payments beyond $75 a month to the widow are payments to the children.

Specifically, the question asked by the Veterans Administration says:

"*Child Care* Benefits are payable to Eligible Beneficiaries as follows:

A. Widow or Widower

caring for 1 child	$150
caring for 2 children	175
caring for 3 or more children	200"

Actually, only $75 per month of the amounts listed in the question are payments to the widow or widower. The remaining amounts are payments to to the child or children.

Although this is not a part of the question asked, it might be well to anticipate and save another opinion. There are two circumstances under which a widow is entitled to payments in her own right.

1. If the deceased member had 17½ years of creditable service at the time of his death.
2. If the widow attains age 60 and is not remarried.

GEORGE C. WEST
Deputy Attorney General

April 24, 1963

To: David Garceau, Commissioner of Banks and Banking

Re: Deposits in Industrial Banks

This memo may be considered as a supplement to my opinion of September 11, 1962. In a letter dated March 22, 1963, to Claude C. Phillippe, Supervising Examiner, Federal Deposit Insurance Corporation, the following was stated:

"I note that on page 2 of my opinion in the second paragraph I stated, '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.'

"The next sentence at the beginning of the next paragraph says, 'This office cannot find any.' I now realize that from the point of view of your Legal Division that this statement is much broader than I intended it when I wrote it.

"The actual intent of what I said is made more clear by the last two sentences of the opinion which say, 'They may sell certificates of deposit or indebtedness but may not accept savings 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.'

"My opinion was not intended in any way to indicate that industrial banks could not accept 'deposits' but only to indicate that such banks could not accept 'savings deposits' as such deposits are commonly known to the general public."

It is hoped that the above will clarify the situation relative to power of industrial banks to accept "deposits."

GEORGE C. WEST
Deputy Attorney General

May 8, 1963

To: Honorable Robert A. Marden
President of the Senate
State House
Augusta, Maine

Dear Bob:

With respect to the proposed Sunday Closing Law, L. D. 1364 and its proposed committee amendment, you have asked the question:

"If a store, such as LaVerdiere's Drug Store, has less than 5,000 square feet . . . and less than five employees for the sale of general merchandise, is their status in any way affected by the fact that there are additional employees devoting their time to the dispensing of prescriptions, etc., in connection with the exempted status of the store on Sunday as a drug store? In other words, do the druggist and pharmacist dispensing medicine on Sunday count as employees for the purpose of determining the total number of employees of the store under the provisions of the MacGregor Bill?"

The question(s) call for several answers.

1. If *any* store has less than 5,000 square feet of floor space, according to the proposed bill and amendment, it is a store exempt from the provisions of the law requiring closure on the Lord's Day and certain holidays.

The specific words are: "This section shall not apply to: . . . ; stores which have no more than 5,000 square feet of interior floor space, excluding storage space and space for displays and exhibits."

2. It matters not how many persons are employed in the store if the floor space is less than 5,000 square feet, according to the amendment.

The converse also would apply.

If a store exceeded the limit of square footage under the bill but employed 5 persons or less, it also would be exempt.

"This section shall not apply to: . . . ; stores wherein no more than 5 persons, including the proprietor, are employed in the usual and regular conduct of business;"

One to five persons could operate a store of any size on the Lord's Day, assuming this also was the usual complement in "the usual and regular conduct of business." We believe this to mean a regular business day.

3. In answer to — "do the druggist and pharmacist dispensing medicine on Sunday count as employees for the purposes of determining the total number of employees of the store . . . . "

Let's assume that our fictitious store had over 5,000 square feet and its exemption depended on the number of employees. The druggist and pharmacist should be counted as employees to determine its qualification.

The third paragraph of the bill reads in part: "For the purpose of determining qualification, a 'store' shall be deemed to be any operation conducted within one building advertising as, and representing itself to the public to be, one business enterprise regardless of internal departmentalization."

We are of the opinion that this paragraph relates to the "square footage" and "number of employees" qualifications, but this is not entirely clear. In other words, we don't believe the intention to be that the third paragraph apply to the words "drug stores" in the bill, without more. If this were so then LaVerdiere's drug stores or any other large drug store could remain open on the Lord's Day simply by calling itself a drug store and despite the fact that it might employ 10 persons and be of 10,000 square feet of space.

To put it finally — a store such as LaVerdiere's can remain open on the Lord's Day if it —

1) employs 5 persons or less in the usual and regular conduct of its business, *or*
2) contains no more than 5,000 square feet of interior floor space with certain exclusions.

If such a store exceeds both of these qualifications, then we believe that that part of it complying as a "drug store" within the limits defined by the court in *State v. Fantastic Fair, et al.*, 158 Me. 258, could remain open.

We gather from your question you feel that a store to be exempt under the law must qualify as to both square footage and number of employees. We disagree and believe the two qualifications to be separable, as is obvious by our answer.

Very truly yours,

FRANK E. HANCOCK
Attorney General

May 8, 1963

To: Col. Robert Marx, Chief, State Police

Re: Law of the Road as it Relates to Pulpwood Products

In your memorandum of May 2, 1963, you ask whether wood flour, prime wood fiber, and wood chips, come under the weight tolerance of 110% as set forth in Revised Statutes chapter 22, section 111-A.

The question might well be rephrased to be: Are the products of pulpwood — wood flour, prime wood fiber, and wood chips — pulpwood under Revised Statutes chapter 22, section 111-A?

The dictionary definition of pulpwood is: "The soft wood of certain trees, used in making paper; also this wood after being macerated; also the trees so used."

The definition of wood fiber is: "Wood comminuted and reduced to a powdery or dusty mass."

The definition of wood flour is: "Finely powdered wood or sawdust used in preparing explosives, in surgical dressings, etc."

The term "wood chips" is not defined, but would be commonly understood to be the chips from logs produced by cutting. It can be seen, then, that all of these are the products of pulpwood. The question is whether the legislature, in enacting section 111-A, intended to grant a weight tolerance not only to pulpwood but to its by-products.

In addition to "pulpwood," the statute gives the weight tolerance to "firewood," "logs," and "bolts." All of these are sections of trees. None are products in the sense that wood flour, etc., are. If the legislature meant to include such products, it could have done so by the inclusion of a phrase such as "and its products." It did not do so, however, and your question is, therefore, answered in the negative.

LEON V. WALKER, JR.
Assistant Attorney General

May 16, 1963

To: Irl E. Withee, Deputy Bank Commissioner

Re: Stock of a Trust Company as Collateral in Trust Department of that Bank

In your memo of January 17, 1963, you ask two questions. We will state and answer each one separately.

Question 1:

May a trust department of a trust company make a loan that would be secured by the stock of the trust company?

Answer:

No.

R. S. Chapter 59, section 117, provides:

> "Trust companies shall not make loans or discounts on the security of the shares of their own capital stock nor be the purchasers or holders of any such shares unless necessary to prevent loss upon a debt previously contracted in good faith, and all stock so acquired shall, within 1 year after its acquisition, be disposed of at public or private sale; provided, however, that the time for such disposition may be extended by the bank commissioner for good cause shown upon application to him in writing."

The statute is clear that a trust company may not accept its own capital stock as security for a loan nor may it purchase the same except under special circumstances.

The trust department is a part of the trust company. It is not a separate legal entity. It must be subject to all limitations placed upon the trust company. To say that a trust company may not do a certain act but that the trust department of the same trust company can do the act is anomalous.

Question 2:

May the stock of a trust company be considered as acceptable collateral in the bank's own pension fund? (This fund is under the control of the trust department of that bank.)

Answer:

No.

The same reasoning applies to this question as to the first question.

GEORGE C. WEST
Deputy Attorney General

May 16, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Conversion of School Room — Section 237-H

Your memorandum of May 10, 1963 is hereby acknowledged.

Facts:

A school administrative district proposes to adapt a section of a building for use as a district administrative office. Formerly this building housed grades seven and eight in the town where the same is located. Presently, the building is not in use for school purposes. Estimated cost of the conversion: $4,884.

The district has inquired of your department whether such construction is eligible for aid pursuant to Section 237-H, Chapter 41, R. S. 1954.

Opinion:

State aid for school construction is granted for capital outlay purposes. The words "capital outlay purposes" are defined as meaning, among other things, "the cost of new construction, expansion, acquisition or major alteration of a public school building." The proposed construction lies within the confines of the words 'major alteration' of a public school building.

There seems to be no doubt but that the building in question is "an existing public school building." The fact that the building is not presently being used for school purposes does not create a misnomer.

The term "major alteration" is defined in 237-H as meaning the conversion of "an existing public school building to the housing of another or additional grade level group, or providing additional school facilities in an existing public school building but shall not include the restoration of an existing public school building or piece of equipment within it, to a new condition of completeness or efficiency from a worn, damaged or deteriorated condition."

If the proposed construction is eligible at all, such eligibility would lie within the words "providing additional school facilities in an existing public school building."

In the construction of the laws we should incline strongly towards the popular signification of language. In that way the legislative intent is most

apt to be reached. *State v. Johnson*, 20 Mont. 367, 51 P. 820. In *State v. Cave*, 20 Mont. 468, 52 P. 200, the court was presented with the task of determining "the scope of the expression 'additional school facilities.'" That court said the following, among other things:

> . . . .
>
> " . . . It seems to us that the words 'additional school facilities' embrace some at least of the means necessary to 'support' or 'maintain' schools. It is not to be inferred, however, from anything said in this opinion, that the purchase of lots, or building of school houses, or the removal thereof, or building additions thereto, is included within the meaning of, 'additional school facilities,' for the statute expressly distinguishes each of these purposes from the other and from such 'school facilities.' . . . We think 'additional school facilities' mean facilities in addition to or beyond those already possessed. . . ."
>
> " . . . To provide, when reasonably necessary or convenient, more school rooms, is to furnish additional school facilities."
>
> . . . .

In *Cave* the court said that "the words 'additional school facilities' . . . certainly embrace more than apparatus or appliances for teaching." The court borrowed from Roget's Thesaurus which gives "aid," "assistance" and "help" as equivalents of the word "facility." To be sure, a school administrative office center would be of aid, assistance and help to the school district. The proposed office, then, is a facility and qualifies for aid with as much merit and according to the same guidance principles applicable to "more school rooms," i. e., that such facilities be "in addition to or beyond those already possessed" and when such facilities are "reasonably necessary."

JOHN W. BENOIT
Assistant Attorney General

May 21, 1963

To: Colonel Robert Marx, State Police

Re: Sunday Sales of Mobile Homes

You ask whether Chapter 134, § 38-A, R. S. 1954, as amended, is applicable to the provisions of Chapter 134, § 38-B, R. S. 1954, as amended. We answer in the negative.

Chapter 134, § 38-A, states:

> "Local option. — In any city or town that shall vote as hereinafter provided, it shall be lawful to keep open to the public on the Lord's Day and aforementioned holidays, other places of business *not exempted under section 38.* This provision shall not be effective in any municipality until a majority of the legal voters, present and voting at any regular election, so vote. The question in appropriate terms may be submitted to the voters at any such election by the municipal officers thereof, and shall by them be so submitted when thereto requested in writing by 100 legal voters therein at least 21 days before such regular election; nor shall it

be effective in any town until an article in such town warrant so providing shall have been adopted at an annual town meeting. When a city or town has voted in favor of adopting the provisions hereof, said provisions shall remain in effect therein until repealed in the same manner as provided for their adoption. (1959, c. 302, § 2. 1961, c. 362, § 2.)" (Emphasis supplied).

Section 38-B makes it illegal to sell mobile homes on Sunday. Section 38, the general "Sunday law" section lists many exceptions to the closing law. Section 38-A sets the procedure for a local option to keep open "other places of business not exempted under Section 38." In other words, municipalities are free to enlarge the list of exemptions, unless otherwise prohibited by law. Section 38-B is a specific mandate of the legislature, and is not subject to the local option provision. By its very existence, Section 38-B falls beyond the purview of the local option section.

In conclusion, Section 38-B is not affected by a vote of the municipality, pursuant to the provisions of Section 38-A.

Sincerely,

WAYNE B. HOLLINGSWORTH
Assistant Attorney General

May 22, 1963

To: Joseph T. Edgar, Deputy Secretary of State

Re: Recount of Local Referendum Ballots

You have received a request from two residents of a town for a recount of the referendum ballots voted on at a special town meeting election held to decide if the town shall join other towns in a School Administrative District.

You ask if the Secretary of State has jurisdiction to supervise a recount in such an election.

Answer: Yes.

The election was held pursuant to R. S. 1954, chapter 41, section 111-F, subsection IV. Under this subsection the School District Commission, after certain formalities have been performed, orders the question of the formation of the proposed School Administrative District to be submitted to the legal voters of the municipalities involved.

"The order shall be directed to the municipal officers of the municipalities which propose to form a School Administrative District, directing them to call town meetings or city elections, as the case may be, for the purpose of voting in favor of or in opposition to each article in the following form:"

There is nothing more in chapter 41 concerning the manner of holding the election. The statute contemplates a town meeting to be held in accordance with the general law or local charter, if any.

The town of Cumberland was granted a charter by Private and Special Laws, 1821, chapter 78. This act simply incorporated the town of Cumberland. It does not provide for any election procedures. Hence, town meetings would be governed by the general law in R. S. 1954, chapter 90-A.

Chapter 90-A has no provision for the recounting of referendum questions. Sections 38 and 39 relate to inspections and recount of ballots where town officials are being elected.

Section 39-A provides:

> "Except as otherwise provided by this chapter or by charter, the qualification of voters, the method of voting and the conduct of a municipal election are governed by chapter 3-A."

The matter of inspection and recount would be a part of "the conduct of a municipal election." Hence, the provisions of chapter 3-A would govern the method of recounting ballots in a municipal election.

The request for a recount dated May 18, 1963, addressed to the Secretary of State is proper. You should proceed in accordance with section 129.

GEORGE C. WEST
Deputy Attorney General

May 22, 1963

To: Scott K. Higgins, Director, Aeronautics Commission

Re: Airport Construction Fund

A county is planning to construct an airport with assistance from a town. Such an arrangement is cleared for federal funds under R. S. 1954, chapter 24, section 11.

You now ask if a grant from the Airport Construction Fund may be made to the county and town for the construction of this airport.

Answer: Yes.

Revised Statutes chapter 24, section 20, II, provides:

> "The commission with the consent of the governor and council may from the amount appropriated to aid in the construction, extension and improvement of state or municipal airports, known as the 'Airport Construction Fund,' grant to cities and towns separately and cities and towns jointly with one another or with counties an amount not to exceed 50% of the total cost of the construction, extension or improvement of such airport or airports."

This section uses the same wording as section 11 in naming grantees of aid, namely, "cities and towns separately and cities and towns jointly with one another or with counties." From this language the intent of the legislature appears clear that those places eligible for federal aid are also eligible for state aid, and vice versa. The legislature set up a comprehensive plan whereby the state would supplement federal aid for construction, extension and improvements of state or municipal airports.

The words "municipal airports" are not defined in chapter 24 so it is necessary to turn to case law to find out the meaning of "municipal."

Our court in the case of *City of Augusta v. Augusta Water District*, 101 Maine 148 at 151, said:

> "For the term municipal relates not only to a town or city, as a territorial entity, but it also pertains to local self government in general, and in a broader sense to the internal government of a state."

"Elsewhere, the courts have used the term municipal corporation as applicable to a county, *Tippecanoe County v. Lucas*, 93 U.S. 108; . . . "

There can be no question but the intent of the legislature is that aid from the Airport Construction Fund is available for the county constructing the airport with cooperation from a town.

GEORGE C. WEST
Deputy Attorney General

May 22, 1963

To: Asa A. Gordon, Co-ordinator, Maine School District Commission

Re: Towns Voting On Questions of School District Formation

Your memorandum of May 13, 1963 is hereby acknowledged.

Facts:

The residents of the territory within three municipalities desiring to form a school administrative district pursuant to Section 111-F of Chapter 41, R. S. 1954, as amended, made due application and held the requisite meeting set forth in said Section prior to voting upon the question of formation. In due course, the residents of each municipality cast votes upon the question of formation. All of the municipalities except one approved appropriate articles by majority vote.

Questions:

1. May the municipality which voted in the negative call for a new meeting to rescind its negative vote and to vote again upon the question of formation?
2. If the answer to question 1 is in the affirmative, must those municipalities which have already approved formation vote again upon the question?

Opinion:

Mechanics governing the formation of school administrative districts are set forth in Section 111-F and Section 111-G of Chapter 41, R. S. 1954, as amended. Note that IV of the former section requires that the School District Commission order the question of the formation to be submitted to the legal voters. Such order directs that the municipal officers call town meetings or city elections, as the case may be, for the purpose of approving or of disapproving the appropriate articles. Section 111-G contains language, inter alia, relative to the duties of the clerks of each municipality in the making of returns to the Commission after the residents have voted upon formation.

In *Bullard v. Allen*, 124 Me. 251, at page 261, our Supreme Judicial Court said, among other things:

"The plaintiff's claim, that the meeting of September 30 had no authority to reverse the action of the town taken on September 15, is of no avail under the circumstances of this case. The rights of third parties or other intervening rights had not been impaired. Our own court, in *Parker v. Titcomb*, 82 Me. 180, following the universal rule in such matters, has held that a town is free to act as it pleases within its legal scope. It may take action in one direc-

tion today and in another tomorrow provided it does not impair intervening rights."

In *Allen* the plaintiffs contended that a second town meeting "had no authority to reverse the action of the town" previously taken; and that the prior action was finalized. The court upheld the second action by the town.

Allen cited language from *Parker v. Titcomb*, 82 Me. 180, with approval. The Maine Court in *Titcomb* said, inter alia:

. . . .

"A town may reconsider its action at the same meeting or at a subsequent meeting if *seasonably done.* That is, if the action of the town hath not already *accomplished its purpose.* For, if the vote of a town once accomplishes its purpose, works out the intended result and hath spent its force, it cannot be reconsidered and taken back.

"(Here the Court stated the language quoted favorably in *Allen.*) There is a wide difference, however, between reconsidering action that has once taken *effect, and worked its result,* and, voting action to restore the original state of affairs by original and new proceedings." (Parenthesis and Emphasis supplied).

. . . .

In *Titcomb* the Court stated that the subsequent town meeting (in May) held for the purpose of reconsidering prior action in April was *ineffectual.* But the Court noted that the subsequent vote (to reconsider the previous vote) occurred after the first vote had "become effective and worked their purpose."

. . . .

"When the April meeting adjourned, its votes consolidating three of its school districts into and as part of district No. 9 became effective and worked their purpose. The territory of the three annexed districts became a part of the territory of the district to which they were annexed. Their organization as districts for further purposes were thereby abolished and extinguished. They were thereafterwards unknown as school districts in Farmington. They were as effectually abolished as though they had never been."

. . . .

(Note: A reading of *Titcomb* reveals that though the second [May] meeting was ineffectual, the legislature, Chapter 377, 1889 legalized the May action. The Court's action in this respect is interesting:

. . . .

" . . . If the act of the legislature can be considered as a division of the territory of the new district into fractions corresponding to the old districts, then the vote of reconsideration had become valid, *not from any force of itself,* but from a decree of the sovereign power of the State; and we think such to be the true consideration of the case. . . . " (Emphasis supplied).

. . . .

Continuing, the expression of the Court in both *Allen* and *Titcomb* allows the inhabitants of a municipality to reconsider the action of an earlier meeting provided:

(1) The subsequent meeting held for the purpose of reconsideration is seasonably done; or,
(2) Such prior action has not accomplished its intended purpose or result; or,
(3) The rights of third parties or other intervening rights will not be impaired by such subsequent meeting.

Because no district was formed due to the failure of one of the towns to affirm formation, a second meeting seasonably held in that town would be proper for the reason that there has occurred neither an impairment of intervening rights nor the accomplishment of an intended purpose; no district having been formed with attending rights and obligations.

Those municipalities which have already approved formation need not vote again on that question. Additional action would add nothing to the vote presently existing in those towns.

JOHN W. BENOIT
Assistant Attorney General

May 27, 1963

To: E. L. Newdick, Commissioner of Agriculture

Re: Fertilizer

We are in receipt of your request for an opinion as to the interpretation of Chapter 48, Section 29, paragraph I, subsection I, R. S. 1954, which states:

"I. Of any independent contractor while engaged exclusively in the transportation of seed, feed, fertilizer and livestock for one or more owners or operators of farms directly from the place of purchase of said seed, feed, fertilizer and livestock by said owners or operators of said farms to said farms, or in the transportation of agricultural products for one or more owners or operators of farms directly from the farm on which said agricultural products were grown to place of storage or place of shipment within 60 miles by highway of said farm."

You specifically ask whether "lime, when hauled to farms, would properly be classed as a 'fertilizer' within the meaning of the statute."

We answer your question in the affirmative. Webster's dictionary defines fertilizer as "a fertilizing *agent* or substance, especially a manure for land, as guano, superphosphate, etc." (Emphasis added.) It would appear, therefore, that anything that acts as a "fertilizing agent" would properly be classified as fertilizer, if actually intended for use as fertilizer. In conjunction with the above, Dr. Roland A. Struchtemeyer, Head of the Department of Agronomy at the University of Maine, writes:

"I, personally, visualize the role of limestone as being two-fold. By this I mean that limestone is added to the soil to change the acidity, or pH of the soil. When the pH of the soil is changed the effectiveness of the other fertilizer materials are increased and the biological activity in the soil is stepped up. These changes usually result in an increased plant growth.

"The second role, and one not generally appreciated, is that of supplying the plants with calcium and magnesium. These two elements are essential for plant growth and we visualize that calcium generally, and magnesium when dolomitic limestone is used, are provided to the plant through the use of lime. On this basis, the material certainly has some fertility value.

"Technically speaking, any material added to the soil for the purpose of providing plant food is a fertilizer."

Your attention is also called to Chapter 32, Section 215-C, subsection I, R. S. 1954, as amended, the Maine Commercial Fertilizer Law. Under Section 215-C, subsection I, lime is defined thusly:

"I. The term 'agricultural lime' means any substance that contains calcium or magnesium intended or sold for *fertilizing purposes* or for neutralizing soil acidity, and shall include gypsum if intended for agricultural use." (Emphasis added).

In the same section (215-C) the following definitions are also found.

"IV. The term 'commercial fertilizer' includes mixed fertilizer or fertilizer materials or both.

"VII. The term 'fertilizer material' means any substance containing nitrogen, phosphorus, potassium or any recognized *plant nutrient element* or compound which is used primarily for its plant nutrient content. . . . " (Emphasis added).

In conclusion, there is little doubt that lime is fertilizer, if intended for use in the soil, within the meaning of Chapter 48, Section 29-I, subsection I.

WAYNE B. HOLLINGSWORTH
Assistant Attorney General

May 27, 1963

To: Honorable William R. Cole
Senate Chamber
Augusta, Maine

Dear Senator Cole:

Re: L. D. 1253 — An Act Relating to Weight of Commercial Vehicles

The question asked concerning this Legislative Document may be phrased as follows:

May a truck carry more than the maximum limit set by section 109 without penalty?

Section 111 sets the penalties for violation of section 109, which in turn sets a schedule of maximum allowable weights.

The third paragraph of section 11 provides in part:

"$20 and costs of court when the gross weight is in excess of the limits prescribed in section 109, provided such excess is intentional and is 1,000 pounds or over but less than 2,000 pounds, and the above provision as to intent shall apply only to such excess as is less than 2,000 pounds."

The above-quoted portion of section 111, as far as it relates to excesses under 1,000 pounds, in effect grants a tolerance. There is no penalty for carrying a load in excess of the limits set in section 109 as long as the overload does not exceed 1,000 pounds. There being no penalty, there is no violation or offense.

As to excesses over 1,000 pounds but under 2,000 pounds, there has to be the element of intent. An accidental or unintentional overloading carries no penalty. There being no penalty, there is no violation or offense.

When the excess is between 1,000 and 2,000 pounds and the truck is deliberately or intentionally overloaded, there is a penalty. Such overloading then becomes a violation or offense.

From all this we must conclude that exceeding the maximum weights set forth in section 109 is not, by itself, a violation until the excess is 2,000 pounds or over.

> "A criminal act is one which in some way or other subjects the actor to punishment."
>
> Broom's Phil. of Law S 613.
>
> "A crime may be provisionally defined to be 'an act which the State absolutely prohibits, or a forbearance from an act which the State absolutely commands to be done, the State making use of such a kind and measure of punishment as may seem needed to render such prohibition or command effectual.'"
>
> Amos. Jur. (London, 1872) 286.
>
> "The criminal law is that part of the law which relates to the definition and punishment of acts or omissions which are punished as being . . . "
>
> 1 History Crim. Law 3.

The text book writers appear to agree that punishment is an integral part of the definition of a crime. Without punishment an act cannot be considered a crime or of a penal nature. *Corpus Juris Secondum Criminal Law S. 24 (3), 25.* See also: *Mossew v. U.S. (C.C.A.) 266 F. 18; State v. Fair Lawn Service Center, Inc. (N. J.) 120 A 2d 233; Redding v. State (Neb.) 85 N.W. 2d 647; McNary v. State (Ohio) 191 N.E. 733; State v. Mandel (Ariz.) 728 P. 2d 413; DeVeau v. Braisted (N.Y.) 174 N.Y.S. 2d 596.*

Our court in *May v. Pennell, 101 Maine 516 at 519* said:

> "and the word 'crime' or 'offense' as ordinarily used in legislative enactments, by text writers on criminal law and in the practical administration of it by the courts, uniformly signifies a public wrong which subjects the perpetrator to legal punishment."

This office cannot advise you what effect the increase in maximum gross weights would have on the Federal Aid Highway program. This determination must be made by the proper federal officials.

Very truly yours,

GEORGE C. WEST
Deputy Attorney General

May 28, 1963

To: Philip R. Gingrow, Banks and Banking

Re: Lending Money by Corporations

There are corporations engaged in selling home improvement items, appliances and even possibly motor vehicles, boats and other items of tangible personal property. On many occasions they are able to make sales only by advancing money to the purchaser to pay off other installment contracts. In this way the purchaser consolidates two or more such contracts in one creditor. The sales corporation then sells the paper to a bank or some concern engaged primarily in the business of purchasing third party paper.

Question:

1. Would the lending of money by a corporation engaged in the home improvement business, or some business selling tangible personal property, to its customers for the purpose of consolidating other installment obligations be considered "a reasonable incident to the transaction of other corporate business?"

Answer:

Yes.

The reason for the question is the wording in chapter 53, section 8, and chapter 59, section 1-B, I, B. Chapter 53, section 8 provides in part:

> "Three or more persons may associate themselves together by written articles of agreement for the purpose of forming a corporation . . . to carry on any lawful business anywhere . . . ; and excepting corporations for banking, . . . and the business of savings banks, trust companies, loan and building associations or corporations intended to derive profit from the loan of money except as a reasonable incident to the transaction of other corporate business or where necessary to prevent corporate funds from being unproductive. . . . "

Chapter 59, section 1-B, I, B, provides in part:

> " 'Banking business' means
>
> "B. The loan of money for profit by a corporation except as a reasonable incident to the transaction of other corporate business or when necessary to prevent corporate funds from being unproductive."

Your question may be one which will someday have to be answered by the Supreme Judicial Court. This question could arise in a number of ways. This opinion, however, can serve as a guide for your office in making any investigations and determinations as to violations of chapter 59.

The corporate purposes as set forth in the certificate of organization may not give the corporation the proper authority to undertake this type of activity. However, this is not a matter which need concern your office, but it could well affect the court in ruling on the question.

There have been no court decisions on this question in Maine. We, therefore, answer your question based on our interpretation of the two statutes.

The loaning of money to a purchaser to pay off other installment debts and consequent consolidation of the two or more debts is the loaning of

money as "a reasonable incident to the transaction of other corporate business." It is, therefore, legal so far as your office is concerned.

It is not necessary to answer your second question.

GEORGE C. WEST
Deputy Attorney General

June 3, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: School Residence

Your memorandum dated May 23, 1963, is answered below.

Facts:

The Town of Denmark pays tuition expense to Bridgton Academy covering pupils from the Town who attend the Academy. The parents of one of the students boarding at the Academy contend that their son is entitled to Town tuition privileges. One parent (father) is a school teacher in Bayville, New York, who owns real property in Denmark upon which he pays real estate taxes; and he also pays a poll tax to Denmark. During certain school vacation periods allowed in New York the parents inhabit the Denmark residence; during all other times the parents reside together in New York. The Denmark school officials maintain that the son is not entitled to tuition privileges for the reason that the parent is not maintaining a home in Denmark during the school year.

Your department desires an opinion in order to adjudicate tuition claims before the payment of subsidy is made.

Question:

Are tuition privileges available to the son in light of the given facts?

Opinion:

We answer the question in the negative.

The applicable law is found in Chapter 41, section 44, R. S. 1954, as amended:

> " . . . every person between the ages of 5 and 21 shall have the right to attend the public schools in the administrative unit in which his parent or guardian has residence. Residence as used in this section shall mean the administrative unit where the father maintains a home for his family. If the parents of the child are separated, residency shall be considered to be the administrative unit where the person having custody of the child maintains his or her home."

The question we must necessarily ask ourselves is: Whether the father is *maintaining a home* for his family in Denmark.

"Maintain" as used in section 44, may be said to be synonymous with "provide." *Webster's New Collegiate Dictionary* defines "maintain" as: "To continue or preserve in or with; to carry on." The following language appears in *Words and Phrases*, "Maintain":

> " 'Maintain' means to support, to sustain, to uphold, to carry on, or continue."

"The word 'maintain' is defined to furnish means for subsistence of existence of, to keep in an existing state or condition, to keep from change, to keep up and preserve . . . "

In conclusion, the ownership of a house and the maintaining of a home are not synonymous in meaning; the term "home" imports more than the word "house." At best, the parent maintains a house in Denmark; he does not maintain a home for his son in Denmark.

JOHN W. BENOIT
Assistant Attorney General

June 19, 1963

To: Honorable Robert A. Marden
President of the Senate
State House
Augusta, Maine

Dear Bob:

You have asked the question:

"In the event of death of a legislator to what pay is his duly elected successor entitled?"

The general law reads in part as follows:

Chapter 10, section 2: "Salary and travel of members of the legislature and representatives of Indian tribes. Each member of the senate and house of representatives shall receive $1,600 for the regular session of the legislature, and shall be paid for travel at each legislative session once each week at the rate of 5c per mile to and from his place of abode, the mileage to be determined by the most reasonable direct route. He is entitled to mileage on the first day of the session, and such amounts of his salary and at such times as the legislature may determine during the session, and the balance at the end thereof. Two dollars shall be deducted from the pay of every member for each day that he is absent from his duties, without being excused by the house to which he belongs."

The legislature (SP 30) ordered, "that there be paid to the members of the Senate and House as advances on account of compensation established by statute, the amount of one hundred and sixty dollars ($160) fortnightly, according to lists certified to the State Controller by the Secretary of the Senate and Clerk of the House, respectively; and that the final payrolls bear the approval of the Joint Standing Committee on Appropriations and Financial Affairs."

It is clear that the pay of a legislator is for the "regular session of the legislature" and not for the 2-year term for which he was elected. The length of legislative sessions vary. It is apparent from the joint order that an attempt was made to divide the legislative session into pay periods which would coincide as nearly as possible with the term of the session. Neither the statute nor the order anticipates vacancies in a legislative office. We assume the appropriation for legislative salaries is based on payment to 185 mem-

bers. Therefore, if one of those members dies or otherwise vacates the office and a successor is duly elected to fill the vacancy, that successor would be entitled to the remaining amount of the $1,600 which would have been due the first elected member. He is not entitled to full pay. However, there is nothing to prevent the legislature from awarding him such proportionate part of that salary as he should be entitled, notwithstanding the original January order.

Subject to the constitutional provision, Article IV, Part Third, section 7, the legislature (meaning both branches) may at any time during the session make the determination as to what amounts and at what time their salaries shall be paid; the only proviso being that "the balance be paid at the end" of the session.

Very truly yours,

FRANK E. HANCOCK
Attorney General

June 21, 1963

To: Dr. Warren G. Hill
Commissioner of Education
State Office Building
Augusta, Maine

Dear Dr. Hill:

In light of the recent United States Supreme Court decision in the *Schempp and Murray* cases, —— U. S. ——, relating to prayers in the public schools, we offer the following synopsis of the decisions and an interpretation of its effect on the present practice under Maine law.

The statutes before the court were, *Pennsylvania,* 24 Pa. Stat. § 15 — 1516 (in part) —

> "At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian."

Maryland — a rule of the Baltimore City School Commissioners pursuant to a Maryland statute (Art. 77 § 202) which provided for the holding of opening exercises in the schools consisting primarily of the reading, without comment, of a chapter of the Holy Bible and/or the use of the Lord's Prayer. Children could be excused on request.

Maine's statute reads as follows: Chapter 41, § 145, Revised Statutes of Maine:

> "Readings from scriptures in public schools; no sectarian comment or teaching. To insure greater security in the faith of our fathers, to inculcate into the lives of the rising generation the spiritual values necessary to the well-being of our and future civilizations, to develop those high moral and religious principles essential to human happiness, to make available to the youth of our

land the book which has been the inspiration of the greatest masterpieces of literature, art and music, and which has been the strength of the great men and women of the Christian era, there shall be, in all the public schools of the state, daily or at suitable intervals, readings from the scriptures with special emphasis upon the Ten Commandments, the Psalms of David, the Proverbs of Solomon, the Sermon on the Mount and the Lord's Prayer. It is provided further, that there shall be no denominational or sectarian comment or teaching and each student shall give respectful attention but shall be free in in his own forms of worship."

You can readily see that the Maine law is specifically mandatory in its application. However, the provisions allowing students to be excused in the matter before the court was of no factor in the decision.

The specific finding of the court is expressed thusly:

"In light of the history of the First Amendment and of our cases interpreting and applying its requirements, we hold that the practices at issue and the laws requiring them are unconstitutional under the Establishment Clause, as applied to the states through the Fourteenth Amendment."

Mr. Justice Clark, who wrote the majority opinion, takes time to review the history of the First Amendment and those cases in which the court has heretofore ruled on religious questions. His summation of this review is stated as follows:

" . . . . As we have indicated, the Establishment Clause has been directly considered by this Court eight times in the past score of years and, with only one Justice dissenting on this point, it has consistently held that the clause withdrew all legislative power respecting religious belief or the expression thereof. The test may be stated as follows: What are the purpose and primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. *That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.*" (Emphasis ours)

The state's "neutrality" is the theme of the decision.

Justice Clark: " . . . . They are religious exercises, required by the States in violation of the command of the First Amendment that the government maintain strict neutrality, neither aiding nor opposing religion."

Again Justice Clark: " . . . . In the relationship between man and religion, the State is firmly committed to a position of neutrality . . . . "

Mr. Justice Goldberg concurring with the majority sums it up rather neatly:

"The practices here involved do not fall within any sensible or acceptable concept of compelled or permitted accommodation and involve the state so significantly and directly in the realm of the sectarian as to give rise to those very divisive influences and

inhibitions of freedom which both religion clauses of the First Amendment preclude. The state has ordained and has utilized its facilities to engage in unmistakably religious exercises — the devotional reading and recitation of the Holy Bible — in a manner having substantial and significant import and impact. That it has selected, rather than written, a particular devotional liturgy seems to me without constitutional import. The pervasive religiosity and direct governmental involvement inhering in the prescription of prayer and Bible reading in the public schools, during and as part of the curricular day, involving young impressionable children whose school attendance is statutorily compelled, and utilizing the prestige, power, and influence of school administration, staff, and authority, cannot realistically be termed simply accommodation, and must fall within the interdiction of the First Amendment."

There is no question that the exercises set forth in section 145 of chapter 41, and the statute itself, are unconstitutional and must be considered henceforth null and void. All practices in our public schools of Bible reading and recitation of the Lord's Prayer or any other prayer as part of a religious exercise shall cease. The pamphlet printed and distributed by the Department of Education entitled "Suggested Bible Readings For Maine Public Schools" should be now discarded by school officials.

It is clear that the decision does not prohibit the secular study of the Bible or of those subjects in which the history of religion may be an integral part. As the court said,

> " . . . (I)t might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistent with the First Amendment. . . . "

It also would not prohibit the study and recitation in our schools of documents and books containing references to God nor would it prohibit the singing of religious hymns by students as long as that singing was not a part of a regular religious exercise or program. At least Justice Goldberg gives us a hint as to the feeling of the court:

> " . . . And, of course, today's decision does not mean that all incidents of government which import of the religious are therefore and without more banned by the strictures of the Establishment Clause."

He then quotes the Court in *Engel v. Vitale*, 370 U. S. 421 (N. Y. Regents Prayer Case):

> "There is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which include the composer's professions of faith in a

> Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise that the State . . . has sponsored in this instance."

We trust this interpretation will answer the basic question of the validity of the Maine law and serve as somewhat of a guide in advising school officials at the local level.

Very truly yours,

FRANK E. HANCOCK
Attorney General

June 26, 1963

Steven D. Shaw, Administrative Assistant
State House
Augusta, Maine

Dear Steve:

You have asked, "1. Whether or not after the adjournment of the Legislature it is the Governor's prerogative to review the pending legislation without time limitation until the next meeting of the Legislature, or do the Resolves and Acts become law notwithstanding his signature, after expiration of the time limitation of five days, as set forth in Section 2 referred to above."

We answer your first question in the negative. It is our opinion that the Governor must sign those Bills and Resolves, presented to him after adjournment of the legislature, within 5 days after that presentation. If he does not do so, then those Bills and Resolves left unsigned shall have the force and effect as if he had signed them, unless returned within 3 days after the next meeting of the legislature. (Maine Constitution Article IV, Part Third, Section 2.)

> " . . . (W)hen there is no expressed constitutional provision, most jurisdictions had held that the Executive may approve a bill after adjournment if he does so within the time specified for failure to return." *Volume 1, Southerland Statutory Construction*, Section 1505.

In reference to similar wording as our own Constitution, Professor Alonzo H. Tuttle said in the Ohio State University Law Journal, Volume 3, No. 3, June, 1937:

> "Many courts . . . have construed these clauses as still giving the Executive the power to sign bills after such adjournment, but only by analogy within the time provided for such signing while the legislature is in session.

We interpret section 2 as follows:

If a Bill or Resolve is passed by both houses of the legislature it becomes law,

(1) When approved and signed by the Governor within 5 days of presentation to him.

(2) When the legislature being in session, the Governor fails to sign such Bill or Resolve within the 5 days after presentation.

(3) When after being returned to the legislature within the 5 days it is passed by the requisite majorities over his objections.

(4) When, if the session of the legislature terminates by an adjournment before the expiration of the 5 days, he fails to return the bill with his objections within 3 days after their next meeting.

Second question: "2. Will you also kindly advise the Governor as to whether or not the five day provision for the Governor's consideration of a Bill or Resolve includes the day of receipt of the Act, or does the five day period begin the day following, for a period of five days, Sundays excepted."

The law seems clear that in construing the 5 day period in Article IV, Part Third, Section 2 of the Maine Constitution, time shall start the day following the presentation of the Bill or Resolve to the Governor, Sundays excepted. There is numerous law on this point and this office has previously issued an opinion to Governor Frederick Payne whereby the same conclusion was reached.

Very truly yours,

FRANK E. HANCOCK
Attorney General

June 27, 1963

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

Re: Disposition of School Building in Seboeis Plantation by Condemnation

Your memorandum of June 20, 1963 is hereby acknowledged.

Facts:

Recently, Seboeis became a part of School Administrative District #31. Prior to the formation of the District, the Plantation operated a one-room school on property owned by a resident of the Plantation.

Questions:

(1) If the building is transferred to the District and used for school purposes, may the Board of Directors, under the provisions of Section 15, take the land and a suitable playground by condemnation?

(2) Or, if the building is not transferred to the School Administrative District, may the Plantation take the land and a suitable playground by condemnation?

Opinion:

Section 15 of Chapter 41, R. S. 1954, as amended, provides the following condemnation authority, inter alia:

> "When a location for the *erection* or *removal* of a schoolhouse and requisite buildings has been legally designated by vote of the town at any town meeting called for that purpose or by the school directors of a school administrative district, . . . they may lay out a schoolhouse lot and playground, not exceeding 25 acres

for any one *project*, and appraise the damages . . . Any administrative unit may take real estate for the enlargement or extension of any location designated for the *erection* or *removal* of a schoolhouse and requisite buildings and playgrounds. . . ." (Emphasis supplied).

A leading text states the following relative to the construction of condemnation statutes:

" . . . When the power is granted, the extent to which it may be exercised is limited to the express terms or clear implication of the statute in which the grant is contained. In other words, statutes conferring the power must be *strictly construed.* Clear legislative authority must be shown to justify the taking. Authority cannot be implied or inferred from vague or doubtful language. When the matter is doubtful, it must be resolved in favor of the property owner. . . . . " (Emphasis supplied).

Section 15, authorizes a town (or plantation; Chapter 10, Section 22, XIX, R. S. 1954) or the directors of a school administrative district to take real property for the purpose of constructing a schoolhouse and requisite buildings thereon or for the purpose of removing a schoolhouse and requisite buildings thereto. (The Section, through lack of good draftsmanship, appears to authorize condemnation of land in order to remove buildings on the land condemned; but we do not so interpret the Section.) After the taking of the realty, the municipal officers stake out a schoolhouse lot and playground. *Leavitt v. Eastman*, 77 Me. 117. We note that the prerequisites of the taking are either (1) location for construction of a schoolhouse and requisite buildings, or (2) location for the relocation of such buildings. We must conclude, that the facts given above present no prerequisite for taking of the realty by the school directors of the district.

The plantation may not take the land for the reasons above stated. Further, whether a plantation, at a given time, possesses rights of condemnation under Section 15 is somewhat vague. Section 15 speaks of an "administrative unit." Such "unit" is defined in Section 28, Chapter 41, R. S. 1954, as a "municipal or quasi-municipal" corporation "responsible for operating public schools." In *Means v. Blakesburg*, 7 Me. 133, our Supreme Judicial Court held that although plantations *may* raise money for the support of the poor, they are not *obliged* to do so. Our Legislature used the same language concerning the raising of money for support of the poor and raising money for support of the schools. There is, therefore, some doubt whether a plantation, at a given time, is "responsible for operating public schools" and thus clothed with condemnation powers.

The next to last sentence of Section 15 will not permit the taking of land for playgrounds alone. The Legislature used the word "and," preceding the word "playgrounds," rather than the word "or." *Words and Phrases*, "and."

In conclusion, because the given facts satisfy none of the Section 15 prerequisites, neither the directors of the district nor the plantation may take the land in question.

JOHN W. BENOIT

Assistant Attorney General

July 3, 1963

To: David Garceau, Commissioner of Banks and Banking

Re: Municipal Corporation Notes held by Trust Companies — Loans or Securities?

Facts:

A trust company holds notes of a city. The City Council duly authorized their issuance. The notes recite that they are issued to build and equip a public elementary school.

Question:

Should these notes be considered as loans or the purchase of securities?

Answer:

They are to be considered as loans.

Opinion:

It is not necessary to get into a technical discussion of the difference between a loan and the purchase of securities. The matter is settled by the wording of chapter 59, section 112. The second sentence of this section states, in part:

> "Loans to municipal corporations located within the state upon their bonds or notes shall not be affected by the provisions hereof; . . . . "

The legislature, by indirection, has stated that money advanced by a trust company to a municipal corporation whether in exchange for bonds or notes of the municipality are, in effect, loans.

Additionally, it should be pointed out that Private and Special Laws 1945, Chapter 49, Article IX, Section 8, by which the notes are authorized, provides:

> "Money may be *borrowed* within the limits fixed by the constitution and statutes of the state now or hereafter applying to said Old Town by the issue and sale of bonds or notes pledged on the credit of the city, ... " (Emphasis supplied).

Again the legislature has stated that money obtained through notes is "borrowed," not a sale of securities. The word "borrowed" certainly implies the "loaning" of money rather than the sale of securities.

Note the difference in the language used by the legislature in authorizing bond issues by the state. Private and Special Laws 1963, chapters 180, 181, 182, 186 and 200.

GEORGE C. WEST
Deputy Attorney General

July 18, 1963

To: Mr. Joseph T. Edgar
Deputy Secretary of State
State House
Augusta, Maine

Dear Mr. Edgar:

Re: Bond Issue for Self-Liquidating Student Housing for the State Teachers' Colleges.

On deposit with the Secretary of State is an act relating to the above subject which shows on its face that on June 22, 1963, it was passed to be enacted by the House and the Senate and was approved by the Governor. It bears the authenticating signatures of the Speaker of the House, the Senate President and the Governor.

The legislative journal indicates that, although the bill was passed in its original form by the House, it was amended in the Senate and was not enacted in its amended form by the House.

In your memorandum of July 11, 1963, you ask:

(1) Does there now exist a valid act providing for a bond issue to provide funds for self-liquidating student housing at the State Teachers' Colleges?

(2) Shall or shall not this department include the above legislation on the ballots to be used in the Special Election of November 5, 1963?

Your questions are answered in the affirmative.

In *Weeks v. Smith*, 81 Me. 538, the court said:

> " . . . our constitution . . . requires both branches of the legislature to keep journals of their proceedings, thereby making them public records to be looked to, when no higher or better source remains from which to establish the validity of a statute.
>
> "But when the original act, duly certified by the presiding officer of each house to have been properly passed, and approved by the governor, showing upon its face no irregularities or violation of constitutional methods, is found deposited in the secretary's office, it is the highest evidence of the legislative will, and must be considered as absolute verity, and cannot be impeached by any irregularity touching its passage shown by the journal of either house."

In *Field v. Clark*, 143 U. S. 649, it was alleged that a section of a bill, as it finally passed, was not in the bill authenticated by the signatures of the presiding officers of the respective houses, and approved by the President. Citing *Weeks v. Smith* with approval, the U. S. Supreme Court held that it was not competent to show from the journals of either house that the act did not pass in the precise form in which it was signed by the presiding officers and approved by the President.

In *Pangborn v. Young*, 32 N. J. Law 29, the question arose as to the relative value, as evidence of the passage of a bill, of the journals of the legislature and the enrolled act authenticated by the signatures of the speakers of the two houses and by the approval of the governor. It was alleged that the bill originated in the house and was amended in the senate, but as presented to and approved by the governor, did not contain the senate amendments. The court held that the authenticated bill was conclusive proof of the enactment and contents of the statute, and could not be contradicted by the legislative journals or in any other mode.

If, then, no invalidating irregularity appears on the face of the bill, there is no question that it is a valid law, enacted in its original, but not

in its amended form. Below the signatures of the Speaker, the Senate President and the Governor, appears a stamp, and the signature of Harvey R. Pease, Clerk. The stamp reads, "House of Representatives, House Receded & Concurred, June 22, 1963." Without resort to the legislative journal, or to testimony of the Clerk or other persons, it cannot be determined at what point in the sequence of events this stamp was placed on the bill.

In *Stuart v. Chapman*, 104 Me. 17, two amendments to the same statute were passed and signed on the same day. It was urged that the legislative journals showed that one bill was passed and signed before the other, and was thus amended by the latter. The court held that the journals could not be used to prove this fact, and held that, nothing appearing to the contrary, statutes approved on the same day would be presumed to have been approved contemporaneously.

By the same token, the journal, or other evidence outside the bill itself, cannot be resorted to in order to find out precisely when or with what intent the stamp was placed on the bill. In and of itself, the stamp does not indicate any irregularity such as to invalidate the bill.

It is the opinion of the Attorney General, therefore, that the bill designated P. & S., 1963, chapter 182, on deposit in your office, is a valid act and should be placed on the ballots to be used in the special election of November 5, 1963.

Very truly yours,

FRANK E. HANCOCK
Attorney General

July 19, 1963

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

Re: Right of Former Employee to Retirement — Military Leave

Facts:

An employee of the Maine State Library entered military service in February, 1941. He remained in service until December 31, 1950, when he retired with a permanent physical disability. He was under medical care from January 1951 to April 1954.

On advice of medical authorities, he went to work in May 1954 for Tele-dale Distributing Company, St. Petersburg, Florida. Employment continued through April 1957. Left employment due to heart attack.

Since 1957 he has worked a few weeks each winter in T. V. antenna work to keep busy.

He has been advised not to do any work that requires physical exertion or mental strain. He is not allowed to live in a cold climate.

He is under constant medical supervision at both Walter Reed Army Hospital and State Hospital McDill Air Force Base, Tampa, Florida.

Question:

Is the former state employee eligible to return to state employment thereby validating his credits toward retirement after this extended period of time?

Answer:

No.

Opinion:

There may be some doubt as to whether this employee is covered under the State Retirement System. He entered military service prior to the enactment and the effective date of the present retirement law. Also he entered service prior to "a time of war." However, we prefer to assume, without deciding, that he was a member of the retirement system and answer the question on that basis.

Revised Statutes 1954, chapter 63-A, section 3, subsection VI, provides in part:

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

The answer to the question depends on whether the former employee's "return to covered employment" is delayed "by a military service incurred illness or disability" beyond 90 days after his honorable discharge. Initially his return was so delayed. From December 31, 1950 to April 1954, he could not return to work because of "service incurred illness or disability."

In May 1954 he obtained employment and continued through April 1957, a period of three years. There appears to be a period of three years when he could have returned to covered employment, thereby asserting his right to retirement credits. He failed to do this and has now no rights to any retirement credits from the State of Maine.

GEORGE C. WEST
Deputy Attorney General

July 24, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Requirements for Graduation

Facts:

The trustees of a private secondary school have adopted a regulation requiring all seniors to successfully pass four subjects for that particular year. In order that a secondary school acquire State approval for attendance, tuition or subsidy purposes the graduation requirements of such school should include, among other things, 16 Carnegie units earned in grades 9 through 12 inclusive.

Several local municipalities cause their pupils to attend this private institution; and tuition moneys are paid the school by the municipalities.

It is possible, under this regulation, that a tuition student with more than the statutory amount of 16 Carnegie units would be denied graduation because of his failure to have passed four courses in the senior year.

Question:

Whether the private school regulation is compatible with the statute as both relate to graduation requirements?

Answer:

Yes.

Opinion:

Our statute contains the following language relative to Carnegie units:

> ". . . No school shall be given basic approval for attendance, tuition or subsidy purpose . . . unless it meets the following requirements:
>
> " . . .
>
> "VIII. The requirements for graduation include 16 Carnegie units earned in grades 9 through 12, inclusive, 4 of which shall be in English and 1 in American History."

A leading text defines graduation as "the completion of the prescribed course which entitled one to a diploma." *79 C. J. S., "Schools and School Districts."*

Another text contains the following matter:

> "The governing board of a school which is authorized to examine students and to determine whether they have performed all the conditions prescribed to entitle them to a diploma or other evidence of completion of the course of study exercises quasi-judicial functions, and in that capacity its decisions are conclusive, providing its action has been in good faith, and not arbitrary. . . . " *47 Am. Jur., "Schools," § 149.*

VIII of the statute makes use of the word "include."

> "The term 'includes' is ordinarily a word of enlargement and not of limitation."
>
> " 'Include' means to comprise as a component part, to enclose within, contain, embrace."
>
> " 'Include' has two shades of meaning. It may apply where that which is affected is the only thing included, and it is also used to express the idea that the thing in question constitutes a part only of the contents of some other thing. It is more commonly used in the latter sense." *Words and Phrases*, "Include."

The language of VIII uses the word "include" to express the idea that the 16 Carnegie units constitute a part of the requirements of graduation; and such expression is a minimum rather than a maximum requirement.

Your memorandum indicates that the private school in question has acquired approval of its educational program from the State Board of Education. Such approval constituted an authorization of the school's program for attendance and tuition purposes. *C. 41, § 125, R. S. 1954.*

We read VIII as stating a minimum requirement prerequisite concerning the acquisition of state approval for attendance, tuition, and subsidy purposes. We have found no statutory maximum requirement relative to high school graduation.

The present facts reveal that certain municipalities provide for the management of schools through superintending school committees pursuant to R. S. 1954, C. 41, § 45 and § 54. The latter section authorizes each such committee to "direct the general course of instruction" of students within its jurisdiction. Section 105 of the same chapter allows any administrative unit to authorize its superintending school committee to contract with the

trustees of an academy for the schooling of all or part of its pupils. Each superintending school committee may direct a general course of study being always mindful of legislative requirements. But this is not to say that all schools must have exactly the same course of study.

> " . . . Equal and uniform privileges and rights should control over all the state, but this does not mean that each and every school shall have exactly the same course of study. . . . . "
> *47 Am. Jur., Schools, § 10.*

Courts are not prone to interfere with the exercise of discretion by school officials in matters confided by law to their judgment unless there is a clear abuse of discretion or a violation of law.

> " . . . and they will not consider whether the regulations are wise or expedient, but merely whether they are a reasonable exercise of the power and discretion of the board. . . . "

In conclusion, we find no repugnancy between the school's regulation and the above cited statute relative to Carnegie units in high school graduation requirements.

JOHN W. BENOIT
Assistant Attorney General

July 30, 1963

To: Asa A. Gordon, Director, School Administrative Services

Re: Post-Graduate Student Tuition Fee

Your memorandum of July 19, 1963 is hereby acknowledged.

Facts:

A person under twenty-one years of age who was graduated from a public secondary school in this State desires to serve a post-graduate course in such school. Maine law provides that every person between the ages of five and twenty-one shall have the right to attend the public schools.

First Question Posed:

1. Is it legal and proper for an administrative unit to charge a fee for students attending a post-graduate course if the students are under twenty-one years of age?

We respectfully prefer to restate the first question thusly: Whether free tuition privileges in the public school system extend to post-graduate courses?

Answer — To Restated Question

Free tuition privileges in the public school system do not extend to post-graduate courses.

Reason:

We advance the following statutory excerpts as evidence of legislative intention that free tuition privileges in the public school system extend through grade twelve only.

> " . . . that any youth who has satisfactorily completed the course of study of an approved secondary school in which the program of studies terminated before the 12th grade, as provided by section 98, shall be entitled to his free tuition, for the completion of grades 9 to 12 in an approved secondary school without the exami-

nation prescribed. . . . Any youth who otherwise meets the requirements of this section for admission to grade 9 shall be entitled to the payment of his tuition in any approved secondary school offering part or all of the program of grades 9 through 12. . . . " *R. S. 1954, c. 41,* § *107.*

" . . . No school shall be given basic approval for attendance, tuition or subsidy purpose within the provisions of this chapter unless it meets the following requirements:

" . . . .

"VII. Consecutive grades. It is organized to include not less than 2 consecutive grades from 7 to 12. . . .

"VIII. The requirements for graduation include 16 Carnegie units earned in grades 9 through 12. . . . " *R. S. 1954, c. 41,* § *98.*

And it is the Legislature that has the duty of requiring the various administrative units to provide "for the support and maintenance of public schools." Constitution of Maine, Article VIII.

Section 102 of c. 41, R. S. 1954, makes mention of a "course of study in the free high schools." A "graduate" is one who has received an academic certification signifying the completion of a prescribed course of study in a a school. *Webster's New Collegiate Dictionary,* 1961. *Words and Phrases,* "Graduate." The person graduated from the public school system of the State has, by reason of such graduation, availed himself of the right provided by law. Our statutes have not yet created any right of tuition-free attendance to the public schools for the person graduated from such schools. And Chapter 41 of our Revised Statutes does not provide for graduate schools in our public school system.

Second Question Posed:

2. May a town refuse to pay tuition for a student to attend a post-graduate course in another town when the sending town operates no secondary school?

Because of the answer and reason given under the first question above, the second question is rendered moot.

JOHN W. BENOIT
Assistant Attorney General

August 2, 1963

To: Hayden L. V. Anderson, Executive Director,

Division of Professional Services

Re: Revocation of Teachers Certificates; Sufficient Cause; Documentation.

Your memorandum of July 24, 1963, is hereby acknowledged.

Facts:

A superintendent of schools has written a letter to your office containing a resume of facts which, if true, reveal misconduct on the part of a male school teacher towards high school girls. The letter indicates that the superintendent of schools, after hearing a rumor relative to this matter from a member of the superintending school committee, made an investigation

which consisted of a conversation with the high school librarian into whose classroom the student ran crying and complaining; a conversation with a teacher who had accompanied the librarian to the classroom of the denounced teacher where both heard him admit he had "made passes" at the girl; and an actual conversation with the male teacher wherein the teacher admitted his conduct was improper.

The subject teacher signed no statement regarding the event. He presently holds a teaching position in New York State.

Maine statutes provide for the revocation of a teacher's certificate for "sufficient cause." *R. S. 1954, c. 41, § 184.*

Question:

The facts have been presented in letter form. Will such manner of presentment suffice as a basis for determining the existence or the non-existence of a "sufficient cause" to revoke the teacher's certificate?

Answer:

Such presentation, though sufficient, may well be supplemented by further statements.

Reason:

This opinion concerns itself with a question of the mechanics of revocation of a public school teacher's certificate rather than with the subject of the dismissal of a public school teacher. The applicable law is found in R. S. 1954, c. 41, § 184:

> " . . . . Provided further, that any certificate granted under this or any preceding law may for sufficient cause be revoked and annulled. Nothing in this section relative to revocation of teacher's certificates shall be retroactive. Any teacher whose certificate has been revoked shall be granted a hearing on request before a committee; one member to be selected by the commissioner, the second by the teacher involved and the third by the other two members. The hearings before this committee may be public at their discretion and their decision shall be final."

Too, this opinion is involved with a question of administrative procedure, i. e., what type of fact presentation is required to be presented under the statute above cited.

On June 4, 1943, this office rendered an opinion to the Commissioner of Education on a related matter. Then, the question was whether there existed sufficient grounds to support revocation of a teacher's certificate. The opinion after stating the existing statute in substantially the same form as it exists today, contains the following matter, inter alia:

> "The language is sufficiently broad to give you authority to revoke the certificate of any teacher when in your *opinion* such revocation is justified.
>
> . . .
>
> "There is not sufficient *evidence* presented to me in the *documents* from your office . . . (to advise whether there exists grounds for revocation). There is an *administrative problem,* and it can become a matter of interest to this department in case only of maladministration or mis-administration." (Parenthesis and emphasis supplied).

The Commissioner of Education is an executive officer of the State.

"The governor and the commissioner of education are executive officials charged with protecting the interest of all educational groups and institution." *78 C. J. S., Schools and School Districts, § 86.*

" . . . The Commissioner shall be executive officer. . . . " *R. S. 1954, c. 41, § 4.*

Teacher's certificates are mere privileges granted by the State and revocable by the State at its pleasure.

"The state has plenary powers with respect to teachers' certificates. A teacher's certificate is not a property right, and it has none of the elements of a contract between the teacher and the state. . . . A certificate is a mere privilege conferred by the state . . . Speaking of licenses, the Supreme Court of the United States has said: 'The correlative power to revoke or recall a permission is a necessary consequence of the main power. A mere license by a State is always revocable.'" The Courts and the Public Schools, Edwards, 1955, Univ. of Chicago Press.

See also *Marrs v. Matthews,* ...... Tex. ......, 270 S. W. 586, to the same effect.

"The legislature in the proper exercise of its power may provide for a general system of licenses or certificates for persons qualified to teach in the public schools. Likewise, since teachers' licenses or certificates, like other licenses, possess none of the elements of a contract protected by the due process clause of the Fourteenth Amendment, but merely confer a personal privilege, the legislature may likewise provide for the revocation of such licenses at its pleasure. The right to license teachers or to revoke their licenses may be delegated by the legislature to a ministerial board or officer." *47 Am. Jur., Schools, § 110.*

The Commissioner is entitled to rely upon the assistance of others. *R. S. 1954, c. 41, § 11, 87.* And he may adopt the conclusions based upon evidence heard by others.

" . . . it has been held that executive officers, being entitled to rely on the assistance of others, may adopt conclusions based on evidence heard by others. . . . " *67 C. J. S., Officers, § 103 (b)*

In conclusion, therefore, the Commissioner of Education may rely upon signed statements of a material person or persons containing a concise and objective reporting of facts gathered from observation. The material person or persons may be the appropriate superintendent of schools; the applicable superintending school committee; a teacher; or a student. Thus, in the present matter we suggest that the Commissioner secure signed statements from the two teachers as to what transpired in order to supplement the report of the superintendent of schools. Statements may be secured from students when other documentation is lacking. In other words, the Commissioner should possess the same kind of documentation to revoke a certificate as he possesses when granting a certificate.

JOHN W. BENOIT
Assistant Attorney General

August 15, 1963

To: Ernest H. Johnson, State Tax Assessor

Re: Soldiers' and Sailors' Civil Relief Act

Your request of August 12, 1963, received for an opinion on the question of a nonresident serviceman stationed in Maine owning a house trailer on April 1 and not paying an excise tax or personal property tax under the Maine statute.

Chapter 22, section 15-A provides that "No motor vehicle or *house trailer* shall be registered under this chapter until the excise tax or personal property tax has been paid in accordance with Chapter 91-A, sections 124 and 126." This was enacted P. L. 1959, Chapter 308, section 3.

You request me to review Mr. Bailey's opinion of November 14, 1956, and let you know whether I agree with that opinion and whether I agree with your understanding or interpretation of that opinion.

In regard to the opinion of Mr. Bailey of November 14, 1956, I note that he states that the "Federal Law suspends the state law while the state law exempts certain vehicles and that is respectable argument for the procedure which is already in practice."

You have submitted the request of Mr. Birkenwald for a review of the opinion of Mr. Bailey of 1956, and a copy of Bulletin No. 6 of 1962, and I am of the opinion that your understanding and interpretation of the statute and the opinion of Mr. Bailey are correct, and section 5, Chapter 304, P. L. 1963, takes care of this situation where it provides that where a property tax is paid in accordance with this section and later registration of the vehicle is desired, a personal or real estate receipt shall be accepted by the registering agency in lieu of an excise tax receipt, provided that such tax receipt contains sufficient information to identify the vehicle.

It is our opinion that if the nonresident serviceman does not excise his house trailer in case it was in Maine on April 1st and the personal property tax is committed he would be subject to the personal property tax and not the excise tax.

Chapter 91-A, section 126 II House Trailers. "A. If paid prior to April 1st or if the house trailer is acquired or is brought into this State after April 1st the excise tax shall be paid in the place where the trailer is located" and section 127 of Chapter 91-A exempts from personal property tax "any vehicle owner who has paid the excise tax on his vehicle in accordance with sections 124 and 126 shall be exempt from personal property taxation of such vehicle for that year."

It is our opinion that the Soldiers' and Sailors' Civil Relief Act does not apply in the case of the serviceman paying a fee or tax to place a trailer on the public highway in Maine.

RALPH W. FARRIS
Assistant Attorney General

August 19, 1963

To: Colonel Robert Marx, Chief, Maine State Police

Re: Clarification of Section 113 B, Chapter 22

Facts and Question:

In your memo of August 7, you have asked for a clarification of the words "acting jointly" as used in R. S. 1954, chapter 22, section 113 B.

Answer and Reasons:

A proper interpretation of the words "acting jointly" would indicate a meeting of the three units involved and a decision by all three to take some specific action.

Section 113 B provides that "the State Highway Commission, the Secretary of State and the Chief of the State Police, *acting jointly*, shall have authority" (emphasis supplied) to take certain specified actions.

In *Reclamation Dist. No. 3 v. Parvin* (Cal.) 8 P. 43, the court said:

> "The statute (section 33) required the commissioners to 'jointly view and assess upon each . . . . ' The word 'jointly' qualifies the words 'view' and 'assess,' but it means only that the three commissioners, acting jointly or together, shall view and assess, etc."

Applied to the present situation this would mean that the Highway Commission, the Secretary of State and the Chief of the State Police should meet and make their decisions.

The case of *White, et al. v. Powell, et al.* (Ala.) 20 So. 2d 467, provides the answer to how a decision should be reached.

An Alabama statute provided for the appointment of probation officers certified by the state department of welfare. They were to be paid "a reasonable salary to be determined by the judge, the advisory board, or county board of public welfare and the court of county commissioners, board of revenue, or other governing body of the county, *acting jointly*." (Emphasis supplied).

> "The power of fixation conferred is statutory and limited and will be strictly construed. It is conferred, as to Walker County, on the county board of revenue as such, and not on the individual members of the board. The same is true as to the board of public welfare, and the statute requires the fixation to be made by the judge of the juvenile court, the county board of public welfare, and the board of revenue 'acting jointly.' Otherwise stated, the statute for this limited purpose creates three units, consisting of the judge, the county board of public welfare, and the board of revenue, each unit having one vote, and leaves to each of said boards to determine according to its own rules what vote it will cast.
>
> "The word 'acting' here used is a participle. In its capacity as an adjective it modifies the noun 'judge' and the collective nouns 'county welfare board' and 'board of revenue,' and in its capacity of a verb, in turn, it is modified by the adverb 'jointly,' connoting a legislative intent that the three units shall act in unison to the end of fixing the amount unanimously."

Hence, the Highway Commission has one vote, the Secretary of State has one vote and the Chief of the State Police has one vote. All must agree. A majority vote is not sufficient.

You have further inquired if the designated departments may appoint a representative to act for them.

Answer:

No.

Chapter 23, section 3, in the last sentence states:

"The chairman . . . but all policy decisions of the commission must be by a majority of its total membership."

Hence, it follows that the Highway Commission cannot delegate to an employee authority to determine its policy relative to highway speeds.

Chapter 15, section 1, provides that "subject to the approval of the governor and council, the chief may designate a commissioned officer of the state police to act as his deputy."

The Constitution, Article V, Part Third, Section 2, provides that "the records of the state shall be kept in the office of the secretary, who may appoint his deputies, for whose conduct he shall be accountable."

Chapter 21, section 1, only says "he and his deputy shall also receive such actual traveling expenses incident . . . . "

In no place in the statutes has the legislature defined the duties of the Deputy Chief of the State Police or the Deputy Secretary of State. Lacking such legislative designation, neither may substitute for the official named in section 113 B.

GEORGE C. WEST
Deputy Attorney General

September 5, 1963

To: Paul A. MacDonald, Secretary of State

Re: Interpretations of Motor Vehicle Dealer Registration Board Amendments (Chapters 296 and 414, sections 3 A-B-C-D and E, Public Laws 1963)

Facts:

Chapters 296 and 414, sections 3 A-B-C-D and E, Public Laws 1963 rewrite, by extensive amendments, chapter 22, sections 21 to 29, inc., known as the Motor Vehicle Registration Board law. As a result of these amendments certain questions have arisen. Each question will be stated and answered separately.

Question No. 1:

Can the holder of a Transporter plate, who is a dealer in mobile homes, legally use the Transporter plate on the towing vehicle, or must such towing vehicle be registered in the usual manner?

Answer:

No.

Reason:

Transporter plates are for the use of persons who in the "ordinary and usual incident to the operation of their businesses" transport and deliver vehicles. "Instead of registering each vehicle owned" by such persons, transporter plates are "to be used for the transportation and delivery of such vehicles." The legislative intent is to allow such vehicles on the highways without individual registration but with a plate duly authorized by an appropriate authority. It is the purpose of section 26-A to provide plates for such vehicles when being transported and delivered.

Another view of section 26-A indicates that two types of vehicles are covered by transporter plates:

1. Self-propelled vehicles. These are "heavy equipment" or "special mobile equipment" as defined in section 1: farm machinery; finance companies and banks (repossessed motor vehicles).

2. Non-self-propelled vehicles. These are mobile homes; trailers; semi-trailers; junk dealers (vehicles wrecked and unable to move by their own power).

Hence, it follows that transporter plates are intended for use on such vehicles themselves. Otherwise each vehicle would have to be registered separately. These plates are not intended for use on the towing, transporting or conveying vehicle. The towing vehicle must be registered in the usual manner.

Question No. 2:

Can a Dealer legally operate a wrecker on Dealer plates:

a. within a 15 mile radius?

b. in excess of a 15 mile radius? — assuming in both cases that compensation is received, either in the form of a fixed charge or as an inclusion in a bill for repairs.

c. Would it be proper for the Maine Automobile Dealer Registration Board, by rule and regulation, to limit the use of Dealer plates on wreckers?

Answer:

a. Yes.

Reason:

A wrecker is a motor vehicle within the definitions in section 1, of chapter 22. Hence, a wrecker may be operated on dealer plates within a radius of 15 miles from the place of business as registered.

Answer:

b. Yes and No.

The reason for the question is a possible conflict with Public Utility laws relating to motor vehicles transporting property for hire. That law requires a Public Utility registration and plate for motor vehicles transporting property for hire beyond a 15 mile radius from the place of registration. When a PUC registration and plate is required the motor vehicle must have an individual registration. Dealer plates are not proper on a wrecker required to have PUC registration and plates.

There is an exception to the PUC law. If a wrecker picks up a disabled motor vehicle beyond the 15 mile limit and returns it for repairs to the garage from which the wrecker is registered, a PUC registration and plate is not required.

Answer:

c. It is not possible to answer this question. It is a very general question. Section 26 provides authority for the Board to make rules and regulations. Rules and regulations within the limits stated therein and within the statutory limits of the use of transporter plates set forth in section 29 would be permissible.

The only way the question can be answered is for the Board to draft proposed rules and regulations, then submit them to this office as required

by chapter 20-A. It could then be determined if specific rules, regulations or standards are proper.

Question No. 3:

Assuming a registered vehicle is being towed by a dealer or holder of Transporter registration and a standard garage insurance policy is in effect, would the Dealer be covered by the policy in case of injury or damage caused by the towed, *registered* vehicle?

Answer:

Maybe.

Reason:

There is a standard garage liability insurance policy. Such policy will cover the situation outlined in the question provided the holder has exercised the option and paid for the coverage. Some holders have failed to request the coverage and have been somewhat embarrassed when reporting such an accident to the insurance company.

Question No. 4:

Could the above-mentioned Dealer Board legally promulgate a rule and regulations, establishing the length of time a specific vehicle could be operated on Dealer plates?

Answer:

No.

Reason:

Section 26 provides for the granting on an annual basis of dealer plates instead of registering "each motor vehicle owned or controlled" by a dealer. The legislative intent appears to be that a dealer may use for 1 year such plates granted to him.

The use of such plates on a "motor truck, tractor or trailer registered under section 26" is limited by section 29. Apparently no limitation of use is made for passenger motor vehicles. There is nothing in the law to indicate any intention by the legislature to so limit the use of dealer plates on passenger cars. It would not be proper for the Board to invoke a limit.

Question No. 5:

Does "heavy equipment" as used in Section 26-A of chapter 296 of the Public Laws of 1963 include trucks, regardless of size or weight?

Answer:

No.

The word "truck" and the phrase "heavy equipment" are not defined in chapter 22. There is a definition of a "motor truck" as "any motor vehicle designed and used for the conveyance of property." Generally, by common usage, the phrase "heavy equipment" is understood as bulldozers, back-hoes, graders and such mechanical devices used in construction work.

The definition of "special mobile equipment" in section 1 would more nearly approximate "heavy equipment." Hence, it would follow that a "motor truck," regardless of weight, would not be classified as "heavy equipment."

Question No. 6:

Would it be permissible for a farm machinery dealer or heavy equipment dealer who sells trucks as part of his operation, to hold dealer plates

for the truck phase of the business and Transporter plates for the movement of other self-propelled machinery?
Answer:

Yes.

There is nothing in the law to prevent the issuing of dealer and transporter plates to one person. If a person qualifies under both sections 26 and 26-A, he is entitled to both types of plates.

GEORGE C. WEST
Deputy Attorney General

September 19, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Residence for School Purposes; Tuition Privileges

We acknowledge your memorandum of August 2, 1963.
Facts:

A physician presently employed by the United States Government as a doctor attached to American embassies abroad and who presently is serving in Saigon, owns a house in Bethel, Maine where, formerly, he practiced medicine. This physician is assigned to foreign stations for two-year periods. During his absence from Bethel, the doctor rents his house and pays the taxes on it. Of the doctor's five children; two are in attendance at college; two now are enrolled at Gould Academy in Bethel; and the remaining child is with the parents in Saigon. Doctor says that he considers Bethel as his legal residence.

Bethel causes certain of its pupils to attend Gould Academy pursuant to tuition arrangements allowed by statute.

By law this State, through the Commissioner of Education, reimburses the administrative units (to the extent of ½ of that amount paid by the administrative units) for tuition expenditures *R.S. 1954, c. 41, § 108.* Section 8 indicates that the State is to reimburse the administrative unit for tuition expense which the latter "shall have been required to pay."
Question:

The question you posed: "Are his children eligible for tuition payment by the Town of Bethel during the time he is serving abroad?" calls for this office to formally express itself upon a local matter. Respectfully, we reframe your question: Should the State reimburse the Town of Bethel for the tuition expense paid pursuant to the given facts?
Answer:

Yes.
Reason:

If, either (1) the tuition has not been paid by the administrative unit, or (2) if paid, the amount was not required to have been paid, the State is to make no indemnification. *R.S. 1954, c. 41, § 108.* What can be said is that in the first instance there is nothing to indemnify and in the second instance the administrative unit is not entitled to ask for indemnification. Thus, the query is whether the Town of Bethel was required to pay for the tuition of the doctor's two children attending Gould Academy.

Maine statutes give to every person of requisite age the right to attend the public schools in the administrative unit in which the person's parent or guardian has residence. *R. S. 1954, c. 41, § 44.* Section 44 defines residence as "the administrative unit where *the father maintains a home for his family.*" (Emphasis supplied.) Free tuition privileges arise when the administrative unit wherein the *"parent or guardain maintains a home for his family"* does not support and maintain an approved secondary school. *R. S. 1954, c. 41, § 107.* (Emphasis supplied.) Note the similarity of language of the underlined portions of our statutes. Unless the doctor maintained a home for his family in Bethel the Town was not required to pay tuition to Gould Academy.

Webster's New Collegiate Dictionary defines "maintain" as: "To continue or preserve in or with; to carry on."

We interpret the words "maintains a home for his family" as being synonymous with maintenance of a domicile.

> "Eminent courts hold that statutes relating to public schools should receive a liberal construction in aid of their dominant purpose which is universal elementary education. . . . The domicile of the 'parent or guardian' determines the town or district wherein the pupil has a legal right to free school privileges. . . . " *Shaw v. Small,* 124 Me. 36.

The doctor intends to return, someday, to Bethel; he maintains the house through payment of real estate taxes and by having a regard for the upkeep of the property.

Government officials residing abroad do not, generally lose their original domicile.

> "Ambassadors, consuls, and other public officials residing abroad in governmental service do not generally acquire a domicile in the country where their official duties are performed, but retain their original domicile. . . . " *28 C. J. S., Domicile, § 12.*

In conclusion, the doctor maintains a domicile in Bethel and as a result thereof, Bethel properly expended tuition moneys re the doctor's two children attending Gould Academy.

JOHN W. BENOIT
Assistant Attorney General

September 23, 1963

To: Ernest H. Johnson, State Tax Assessor

Re: Application of Sales Tax to Refund Gasoline

Facts:

The State Tax Assessor has been deducting sales tax on refunds for gasoline purchased under section 166, Chapter 16, R. S., and the 101st Legislature enacted Chapter 367, P. L. 1963, amending section 160, Chapter 16, R. S. by inserting the word "commercial" before the words "motor boat" in two places, and amended section 167 of said chapter by inserting the words "and pleasure motor boats not used for commercial purposes," the State Tax Assessor had been deducting sales tax from refunds of 6c of the 7c tax for nonhighway use, and the refund of 6c on tax consumed in commercial boat

operations with eight mills of the remaining penny being paid over to the Sea and Shore Fisheries Department, and under the 1963 amendment he proposes to deduct the sales tax on refunds of 3c on fuel used in noncommercial boats, 3½c of the remaining 4c to be paid over to the "boating facilities fund"; on the refund of 3c tax on fuel used in piston engine aircraft under section 167, Chapter 16, and on the refund of 5c under 167-A and the refund of 3c tax paid on fuel in local bus operations he has not been deducting the sales tax from the amount of the refunds.

Question:

Whether under the sales tax law subsection VIII of section 10, Chapter 17, R. S. should we deduct the applicable sales tax from all types of refunds noted below, or should we deduct the sales tax only in certain types of refunds, and in the latter case which types of refunds are to be subjected to a deduction for sales tax?

a. The normal refund of 6c of the 7c tax for nonhighway use. The remaining penny of tax is retained by the state;
b. A refund of 6c of tax on fuel consumed in commercial boats, with eight mills of the remaining penny being paid over to the Sea and Shore Fisheries Department for research activities;
c. A refund of 3c on fuel used in noncommercial boats, with 3½c of the remaining 4c being paid over to the boating facilities fund;
d. Refund of 3c of tax on fuel used in piston engine aircraft, with the remaining 4c being paid over to the aeronautical fund.
e. Refund of 5c of tax on jet aviation fuel, with remaining 2c being paid over to the aeronautical fund; and
f. Refund of 3c of tax paid on fuel used in local bus operations.

Answer and Opinion:

It is our opinion that you should continue to deduct the sales tax on refunds under category "a" and "b" and also after September 21st deduct the sales tax on refunds under category "c."

As to categories "d" and "e" it is our opinion that you should deduct from the refund the sales tax on the gasoline and motor fuels purchases for aircraft as aircraft is a vehicle and not used on the highway; the statute provides that the tax payable upon such fuels not used by vehicles on the highway shall be deducted from the refund. (For the definition of "vehicle" see Volume 44, page 147, Words and Phrases, and United States v. One Pitcairn Biplane, 11 Fed. Supp. 24). In regard to category "f" relating to gas sold to busses or common carriers under section 166-A, we are of the opinion that you should not deduct a sales tax on refunds of tax paid on fuel used in local bus operations.

RALPH W. FARRIS
Assistant Attorney General

September 24, 1963

To: Earle R. Hayes, Executive Secretary

Re: Change from Disability Retirant to Retirant

Facts:

Public Laws, 1963, Chapter 361, effective September 21, 1963, provides:

"C. Any person who attains age 60 while a recipient of a

disability retirement allowance in accordance with paragraph A shall be entitled to a recomputation of benefits as provided in section 6 and shall be paid that amount which is greater. Further, if the amount of the service retirement allowance is greater than that being paid as the ordinary disability retirement allowance, the recipient shall no longer be considered as receiving a disability retirement allowance."

Question:

Can retirement benefits be recomputed under one of the options in section 12 rather than on a straight life basis?

Answer:

No.

Reasons:

A person retired upon disability allowance has always remained upon such allowance unless restored to service. Section 7, the last sentence states:

"For the purpose of this section, 'retirement allowance' shall mean the allowance payable without optional modification as hereinafter provided in section 12."

Without this sentence a disability retiree would have available the options listed in section 12.

Under the new provision of section 7, I, C, a disability retiree upon attaining age 60 may have his benefits recomputed as if retiring and take whichever benefit is the greater — disability benefits or regular retirement.

Because P. L. 1963, chapter 361, does not mention section 12, the question arises if the person will have the advantages of the options listed in section 12 or must he accept straight life benefits.

Chapter 63-A, section 12, provides in part:

"Upon attainment of eligibility for retirement the member may at any time within 30 days from the date he elects to make his benefits effective, if the written application is in the possession of the board of trustees on or before said effective date, or, at any time within 30 days of the actual receipt by the board of trustees of the written request for benefits, change his selection of option to retirement allowance, from retirement allowance to an option or from one of the options to another."

The key words in section 12 are "upon attainment of eligibility for retirement." This poses the question, when does a member attain eligibility for retirement? Section 1 states, "retirement shall mean termination of membership with a retirement allowance granted under the provisions of this chapter." Also the same section states, "retirement allowance shall mean the retirement payments to which a member is entitled as provided in this chapter."

There are three "retirement allowances" as provided by chapter 63-A. 1) Section 6 provides for a *service retirement allowance* upon reaching age 60. 2) Section 7, I, provides for a *disability retirement allowance* under

certain conditions. 3) Section 7, II, provides for a *disability retirement allowance* as a result of injuries received in the line of duty.

Hence, it follows that a member who receives a retirement allowance of any nature has entered the state of "retirement." The member has reached "attainment of eligibility for retirement" (section 12) when he first receives a retirement allowance.

It then follows that he cannot be said to have reached "attainment of eligibility for retirement" if he becomes entitled to a *service retirement allowance* upon age 60 while a recipient of a *disability retirement allowance.*

The member is, therefore, not eligible to exercise the options enumerated in section 12.

GEORGE C. WEST
Deputy Attorney General

September 30, 1963

To: Captain Ralph E. Staples, State Police — Div. Spec. Ser.

Re: Interpretation of Special Mobile Equipment as applied to Registration of Dump Trucks

Facts:

A dump truck is used exclusively for the transportation of earth on that portion of the highway actually under construction.

Question:

Is a dump truck which is used for the transportation of earth on that portion of the highway actually under construction only considered as Special Mobile Equipment?

Answer:

No.

Reason:

Chapter 22, section 16, provides in part:

> "The annual fees for registration and licensing of vehicles shall be in accordance with the following schedule . . . .
>
> III. Trailers.
>
> "Special mobile equipment, which is permanently mounted on a traction unit or motor chassis, shall be registered and a fee of $10 shall be paid for such registration in lieu of all other registration fees. Registration under the provisions of this paragraph shall not include any vehicle which may be used for the conveyance of property except hand toools or parts which are used in connection with the operation of such equipment, *except* that *road construction or maintenance machinery coming under the definition of special mobile equipment may be used for the transportation of earth on that portion of the highway actually under construction.* Such special mobile equipment may be operated unloaded over the highway between construction projects and to or from the place where such vehicles are customarily kept, if a permit for such movement is first obtained in accordance with section 98." (Emphasis supplied).

What is special mobile equipment? Chapter 22, section 1, has the following definition:

> " 'special mobile equipment' shall mean *every self-propelled vehicle not designed or used primarily for the transportation of* persons or *property* and incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, stone-crushers, air compressors, power shovels, cranes, graders, rollers, well-drillers, and wood-sawing equipment used for hire. The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this section;" (Emphasis supplied).

A reading of the underlined portions clearly indicates that dump trucks are not within the definition of Special Mobile Equipment. Dump trucks are self-propelled vehicles designed for and used primarily for the transportation of property.

GEORGE C. WEST
Deputy Attorney General

October 3, 1963

To: Frank T. Kelly, R. S., Executive Secretary, Board of Hairdressers

Re: Registration Fee for Students of Schools of Hairdressing and Beauty Culture

Facts:

Under an amendment to the laws relating to hairdressers passed in 1963, the State Board of Hairdressers has ruled that all students enrolling on or before September 20, 1963, shall have the right to complete their training provided that they have filled out and returned to the Board an application with a fee of $3.00 for a certificate of registration as students.

Five students in a school of hairdressing and beauty culture have questioned the ruling of the Board.

The Board has asked three questions which will be stated and answered separately after the general question is answered.

Question:

Is the Board correct in ruling that students already enrolled in a school prior to the effective date of the law must register and pay the fee required under the new law?

Answer:

No.

Reason:

P. L. 1963, chapter 158, section 6, adds three new paragraphs to chapter 25, section 222. The third added paragraph reads as follows:

> "Students to be accepted shall have reached at least the age of 16 and have completed the 10th grade in a secondary school. An enrollment record of each *new* student admitted to a school shall be sent to the secretary of the board on the first day of each month, accompanied by a registration fee of $3 for each *new* student. The

board shall furnish each student registered a certificate of registration as a student. Said certificate of registration shall expire 12 months from date of issue." (Emphasis supplied).

There are two separate matters stated in this paragraph. They are (1) the qualification and (2) the registration of students entering a school of hairdressing and beauty culture.

The Board has interpreted the first to mean that all students entering beauty schools as new students on and after September 21, 1963 (the effective date of the law) shall be, at least 16 and required to produce proof of completing the 10th grade. This is a correct interpretation of the first sentence of the above-quoted paragraph.

The Board then interpreted the second sentence to cover students already enrolled prior to September 21, 1963, as well as those enrolling on or after that date. So much of the Board's interpretation as relates to students already enrolled prior to September 21, 1963, is incorrect.

The legislature may enact retroactive laws as long as they do not affect vested rights. *Augusta v. Waterville*, 106 Me. 398, and many other cases. Unless a clear intent is shown, it is presumed to have prospective operation only. *Carr v. Judkins*, 102 Me. 506, and many other cases.

There is no clear intent shown to make this statute retroactive or retrospective. In fact, the language of the second sentence indicates a clear legislative intent to enact a prospective statute only. Note the use of the word "new." Certainly a "new student" is one enrolled for the first time in a school after the passage of the law. A student who has been previously enrolled and was an active student on September 21, 1963, cannot conceivably be classified as a "new student."

The Board, being in error, has collected illegally a registration fee from students who were active students in schools of hairdressing and beauty culture on September 21, 1963.

Question No. 1:

Are all students required by law to have certificates of registration as such?

Answer:

No:

Reason:

The question is interpreted to mean "certificates of registration as a student" under section 222. Only those "new students" described above are required to have such a certificate. The Board may, if it wishes, issue such certificate to "old students" but cannot charge a fee for such certificate or registration.

Question No. 2:

Does the Board have the right to refuse to credit hours and time spent in school for those students failing to make application to procure such certificates?

Answer:

Yes, as qualified in the Reasons.

Reasons:

As the last paragraph of section 222 applies only to students enrolling on or after September 21, 1963, this answer applies to only those students.

Section 215, second paragraph, authorizes the Board to make rules and regulations "prescribing the requirements for the . . . operation, maintenance . . . of any school of hairdressing and beauty culture." Hence, the Board may, by rule or regulation, provide for not giving credit hours to those students failing to make application. It might be noted that if the Board is satisfied that the failure to apply is the fault of the operator of the school, that students should not be penalized.

Question No. 3:

Is the operator or manager in violation of this section if he allows students to continue training without such certificates?

Answer:

Yes, as qualified.

Reasons:

The above answer carries the same qualification as the answer to No. 2.

The statute implies that the school will submit an enrollment record of new students on the first day of each month. The duty being placed on the school, the operator would be at fault if he fails to submit such a record. Failure to submit an enrollment record by the operator of the school would then be a violation of this section.

GEORGE C. WEST
Deputy Attorney General

October 9, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: State Subsidy on School Construction Located Upon Leased Land

Your memorandum of September 4, 1963, is acknowledged.

Facts

The officials of a school administrative district are contemplating the construction of a school building upon leased land. The lease is one for a ninety-nine year period commencing on September 2, 1949.

Question:

Whether the State should pay subsidy to the school district for capital outlay it expended in the construction of a school building upon leased land?

Answer:

Yes.

Reason:

State aid for school construction is paid pursuant to R. S., c. 41, § 237-H. The section defines a capital outlay expenditure as the cost of new construction, expansion, acquisition, or major alteration of a public school building; the cost of all land or interest in land of any nature or description for such construction. (We need not set out the other expenditures presented in the section.)

Your question, put another way, asks whether the State can look behind the cost of new construction of a public school building and withhold subsidy because of the fact that the building is determined to be located upon leased land. Section 237-H does not admit of such an examination.

We have informed your department (November 27, 1961) upon a related matter, that the law does not require the State to inquire into the source of the funds which the administrative unit expends for capital outlay purposes. In that opinion we stated, inter alia:

. . . .

" . . . our state subsidy law does not require that we look beyond the expenditure of the funds by the school district for the construction. . . . "

Further, the subsidy for school construction is paid on a principle of reimbursement to the administrative unit for capital outlay expenditures. Your Department, in such an instance, determines from filed reports whether the expenditure of the administrative unit was or was not for a capital outlay purpose. If the purpose of the expenditure was to pay a capital outlay expense then the project is entitled to reimbursement.

JOHN W. BENOIT
Assistant Attorney General

October 18, 1963

To: Asa A. Gordon, Director of School Administrative Services

Re: Clarification of "municipal officials" in Section 111-J-1, Chapter 41, R. S.

Your memorandum of October 17, 1963 is acknowledged.

Facts:

R. S., c. 41, § 111-J-1 is as follows, in part:

. . . .

"Each municipality in a School Administrative District shall be represented at the meeting to determine the necessity for reapportionment by its municipal officers, district director or directors and 2 representatives from each municipality chosen at large by its municipal officials. . . . "

Question:

What does the term "municipal officials" mean when used in this section?

Answer:

The mayor and aldermen of cities; the selectmen of towns; and the assessors of plantations.

Reason:

An applicable provision of our statutes is as follows:

"*Sec. 22 Rules of construction.* The following rules shall be observed in the construction of statutes, unless such construction is inconsistent with the plain meaning of the enactment.

. . . .

"XXVI. The term 'municipal officers' means the mayor and aldermen of cities, the selectmen of towns and the assessors of plantations."

. . . .

The words "municipal officers" and "municipal officials" for the purposes of R. S., c. 41, § 111-J-1, are synonymous.

Respectfully yours,

JOHN W. BENOIT
Assistant Attorney General

October 18, 1963

To: Kermit N. Nickerson, Deputy Commissioner of Education

Re: Conveyance Contracts in School Administrative Districts

Your memorandum of September 16, 1963 is acknowledged.

Facts:

On September 12, 1947, Ralph W. Farris, Attorney General, forwarded a legal opinion to your department which stated that towns were authorized to purchase school buses on a conditional sales contract basis financed over a three-year period pursuant to Section 8 of Chapter 37, R. S. (now § 14, c. 41, R. S., as amended).

Presently, R. S., c. 41, § 111-N contains language similar to the language existing in c. 37, § 8, R. S. when Attorney General Farris wrote the aforementioned opinion; and the only difference in substance is that the former section referred to towns while the latter section refers to school administrative districts.

Question:

Whether the principle expressed in the September 12, 1947 opinion applies to school administrative districts?

Answer:

Yes.

Reason:

Because of the similarity of c. 41, § 111-N, R. S., as amended, to the law which was before Attorney General Farris in 1947 (c. 37, § 8, R. S.) when he wrote the opinion already mentioned, we incorporate the principle expressed therein as being applicable to school administrative districts.

JOHN W. BENOIT
Assistant Attorney General

October 25, 1963

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

Re: Industrial Wastes

Facts:

The Water Improvement Commission is continually running into the insistence that a municipality building a treatment plant must consider the fact that they can be obliged to admit to the system, even though the system was designed for sanitary sewage alone, industrial waste irrespective of whether amenable to the process designed for sanitary waste and regardless

of the fact that plant capacity might be such that the municipal plant would be overloaded.

Question:

Can a sewer district be forced to accept into a sewer system, for treatment, an industrial waste compatible or not with the present system of treatment?

Answer:

No.

Opinion:

Chapter 96, Section 128-150, R. S. 1954, as amended, deals with domestic sewage and does not contemplate industrial waste. Specifically, Section 133 dictates the procedures that shall be used for acceptance into a municipal sewer system. It is our opinion that industrial waste is not contemplated, and is therefore excluded.

We feel compelled to point out, however, that this is still an open question and at some future time it may be the basis of litigation on the part of one or more industrial plants.

WAYNE B. HOLLINGSWORTH
Assistant Attorney General

October 29, 1963

To: Maynard F. Marsh, Chief Warden, Inland Fisheries & Game

Re: Concealed Weapon Permits

Facts:

On occasions a person is found with a loaded rifle or shotgun in his motor vehicle or trailer. The person claims a legal right to have such a loaded rifle or shotgun in his motor vehicle or trailer because he has a permit from his local chief of police to carry a concealed weapon.

Question:

In accordance with chapter 37, section 78, is it lawful for the holder of a concealed weapon permit to have a loaded rifle or shotgun in a motor vehicle?

Answer:

No.

Opinion:

The 3rd sentence of chapter 37, section 78 reads:

> "It shall be unlawful for any person, excepting a law enforcement officer while in the line of duty, to have in or on a motor vehicle or trailer any rifle or shotgun with a cartridge or shell in the chamber, magazine, clip or cylinder."

No wording can be any clearer or less ambiguous than that sentence. No one may have in or on a motor vehicle or trailer a loaded rifle or shotgun, except a law enforcement officer while in the line of duty.

The 4th sentence of the same section says:

> "No person, except a law enforcement officer in the line of duty or a person having a valid permit to carry a concealed weapon, may have in or on any motor vehicle or trailer any loaded pistol or revolver."

No wording can be any clearer or less ambiguous than that sentence. No one may have in or on a motor vehicle or trailer a loaded pistol or revolver, except a law enforcement officer in the line of duty or a person having a valid permit to carry a concealed weapon.

When the two sentences are read together they clearly show a distinction between a loaded rifle or shotgun and a loaded pistol or revolver. A valid permit to carry a concealed weapon is not a defense to having a loaded rifle or shotgun in or on a motor vehicle or trailer. A valid permit to carry a concealed weapon is a defense to having a loaded pistol or revolver in or on a motor vehicle or trailer.

See opinion of Attorney General dated October 30, 1945, to the effect that the former provision applied to any time of the year. The application of this section is not confined to the hunting season.

GEORGE C. WEST
Deputy Attorney General

October 29, 1963

To: Maynard F. Marsh, Chief Warden, Inland Fisheries & Game

Re: Definition of Paraplegic in Fish and Game Laws

Facts:

Under chapter 37, section 78, paraplegics may hunt from motor vehicles which remain stationary.

Question:

Is an amputee a paraplegic?

Answer:

Not necessarily.

Opinion:

R. S. chapter 37, section 78, second paragraph reads:

"Notwithstanding the provisions of this section, paraplegics may hunt from motor vehicles which remain stationary."

(The above paragraph was enacted by P. L. 1959, c. 333, § 8.)

Webster's Third New International Dictionary (1961) defines a paraplegic as "an individual affected with paraplegia." The same dictionary defines paraplegia as "paralysis of the lower half of the body with involvement of both legs usually due to disease of or injury to the spinal cord."

The words amputee and paraplegic are not synonymous. An amputee may, under certain conditions, be a paraplegic but not always. Only an amputee who has lost his legs because of paraplegia is a paraplegic.

It should be noted that R. S. 22, relating to motor vehicles, has had several provisions relating to a "veteran who has lost both legs or the use of both legs" and "any amputee veteran." (Section 13.) Also, "any amputee veteran," (Section 60.) It is obvious that the Legislature has made a distinction between an "amputee" and a "paraplegic."

Hence, it follows that the word "paraplegic" as used in Revised Statutes, chapter 37, section 78, does not include all "amputees."

GEORGE C. WEST
Deputy Attorney General

November 5, 1963

To: Joseph T. Edgar, Deputy Secretary of State

Re: Voting Registration by Non-resident Wives of Servicemen

Question:

(1) If a serviceman who is a qualified registered voter in the State of Maine marries a non-resident, must that non-resident reside in the State of Maine for the Constitutionally required six-month period before she may become qualified to vote in the State of Maine?

Answer:

Yes.

Opinion:

The non-resident spouse must "establish a residence" in this State as provided in our Constitution:

> "Every citizen of the United States of the age of twenty-one years and upwards, excepting paupers and persons under guardianship, having his or her residence established in this state for the term of six months next preceding any election, shall be an elector for governor, senators and representatives, in the city, town or plantation where his or her residence has been established for the term of three months next preceding such election, and he or she shall continue to be an elector in such city, town or plantation for the period of three months after his or her removal therefrom, if he or she continues to reside in this state during such period, unless barred by the provisions of the second paragraph of this section; and the elections shall be by written ballot. But persons in the military, naval or marine service of the United States, or this state, shall not be considered as having obtained such established residence by being stationed in any garrison, barrack or military place, in any city, town or plantation; nor shall the residence of a student at any seminary of learning entitle him to the right of suffrage in the city, town or plantation where such seminary is established. No person, however, shall be deemed to have lost his residence by reason of his absence from the state in the military service of the United States, or of this state."

"Residence" generally is synonymous with "domicil." See chapter 3-A, section 1, "Definitions." There can be no absolute criterion by which to determine residence. Each case must depend on its particular facts or circumstances, and the question should be determined as one of fact. (18 A. Jur., Elections, § 56.) It would appear that physical presence is essential in effecting "residence" in the first instance.

> "(B)odily presence in a place coupled with an intention to make such place a home will establish a domicil or residence." (*Sanders v. Getchell*, 76 Maine 158, 165.) See also 18 Am. Jur., Elections § 56, but that physical presence is not necessarily essential to the continuance of "residence" or "domicil." Intent being the important factor coupled with acts evincing such intent."

If you mean to "live in" by your term "reside" our answer is "yes." To establish her residence the new wife must, at the least, come to Maine, live

here for a short time with the intention of residing here. It need not be a continuous "residing in" for the six-month period.

Question:

(2) If the above-mentioned non-resident does not reside in the State of Maine at any time, does she, by virtue of marrying a Maine voting-resident serviceman, acquire voting residence in this state?

Answer:

No.

Opinion:

The doctrine that a married woman's domicil is fixed by the domicil of her husband does not necessarily apply to a "voting residence or domicil." She would still have to comply with the constitutional requirement as stated in the answer to question 1.

The answers to questions 1 and 2 sufficiently cover questions 3 and 4.

FRANK E. HANCOCK
Attorney General

November 6, 1963

To: Ernest H. Johnson, State Tax Assessor

Re: Diamond National Corporation — re dies

Facts:

Diamond National Corporation, manufactures in South Portland, Maine, dies for the production of molded pulp products by various other plants of the same corporation located in other parts of the country.

Diamond National purchases materials and parts and uses them in the manufacture of the dies. The dies, upon manufacture, are shipped by the South Portland plant out of state to the other plants.

The company, relying upon the definitions of "storage" and " 'storage' or 'use' " in section 2 of the law, as well as the provisions of section 12-A of the law, maintains that these purchases are not taxable because the dies into which they are incorporated are shipped out of the state, and therefore the materials and parts should be considered as being kept within the state for subsequent use outside of the state, or being kept within the state for the purpose of subsequently transporting them outside the state.

Question:

Whether, in the circumstances indicated, the taxpayer is entitled to claim exemption on the purchase of materials and parts which are to be fabricated into dies in this state, when the completed dies are shipped outside this state to be used in the production of molded pulp products elsewhere.

Answer:

No.

Opinion:

The following law is applicable:

> "A tax is imposed on the storage, use or other consumption in this State of tangible personal property, purchased at retail sale on and after July 1, 1963, at the rate of 4% of the sale price. . . "
> *R. S. 1954, ch. 17, sec. 4.*

"'Storage' includes any keeping or retention in this State for any purpose, except subsequent use outside of this State, of tangible personal property purchased at retail sale." *R. S. 1954, ch. 17, sec. 2.*

"'Storage' or 'use' does not include keeping or retention or the exercise of power over tangible personal property brought into this State for the purpose of subsequently transporting it outside the State." *R. S. 1954, ch. 17, sec. 2.*

"When a business which operates from fixed locations within and without this State purchases supplies and equipment in this State, places them in inventory in this State, and subsequently withdraws them from inventory for use at a location of the business in another state without having made use other than storage within this State, it may request a refund of Maine sales tax paid at the time of purchase, provided it maintains inventory records by which the acquisition and disposition of such supplies and equipment purchased can be traced. No refund shall be made where the state to which the supplies and equipment are removed levies a sales or use tax. Such refunds must be requested in accordance with section 18." *R. S. 1954, ch. 17, sec. 12-A.*

Reported cases in this area are of little help.

"Because of the variance in the provisions in use tax laws respecting the exemption of enumerated transactions, there is very little in common among cases decided under such exemption clauses." *153 A. L. R. 628.*

It is important to note that in the normal situation of this kind goods are brought into the state, placed in inventory, and with no physical change being made therein, transported without the state for use elsewhere. Clearly this situation comes within the statute providing either for nontaxability or a refund.

However, in the factual situation here a physical change is made in the materials and parts in that they are processed to form a die, which die is transported without the state.

I do not think there is merit in the taxpayer's contention that the purchases in question are not taxable since the dies into which they are incorporated are shipped out of the state.

No citation of authority is needed to indicate that tax exemptions are strictly construed. A tax is imposed on the "storage, use or other consumption in this State of tangible personal property."

"Storage" does not include "property purchased at retail sale" for "subsequent use outside of this State."

The statute is clear; it is the original property unchanged in form, which, if kept for subsequent use outside the State is non-taxable. Had the legislature intended to exempt property purchased at retail sale, which had been processed and made use of to form other property, which was shipped outside the State, it would have so provided.

"The fundamental rule of statutory construction is to ascertain and carry out the legislative intent. The language of the statute

is 'the vehicle best calculated to express the intention' . . . . "
Acheson et al. v. Johnson, 147 Me. 280.

Many states so specifically provide that "storage" and "use" do not include property purchased for "the purpose of being processed, fabricated or manufactured into, attached to or incorporated into," other tangible personal property to be transported outside the state and thereafter used solely outside the State.

Since the Maine legislature has not expressed such intent it cannot be read into the statute.

The taxpayer's argument that section 12-A is controlling has no merit since obviously "use other than storage" was made of the property. That section provides that "when a business operates from fixed locations within and without this State, purchases supplies and equipment in this State, and subsequently withdraws them from inventory for use at a location of the business in another state without having made use other than storage within this State, it may request a refund of the Maine sales tax paid at the time of purchase . . . . "

The taxpayer here utilized the property in producing completely new property; storage only did not occur, nor are any facts presented to show prior payment of sales tax.

This section with its particular emphasis on "use other than storage" gives weight to the earlier conclusion that to take advantage of the exemption the property must remain in its original state.

The question here really is whether the processing and utilization of the property purchased to produce new property will subject the transaction to use tax.

> "For taxability there must be a 'use.' The courts insist on something substantial to meet this requirement." *Prentice-Hall, State and Local Taxes, Sales Tax, Para 92,640.*

Use Defined:

> " 'Use' is defined as 'to employ for any purpose.' " *43 Words and Phrases, § 463.*

Use Tax Defined:

> "a 'use tax' presupposing ownership, is an excise tax imposed on the enjoyment of property in a contemplated manner." *43 Words and Phrases, p. 193 supp.*

Use and Consumption Defined:

> "The words 'use' and 'consumption' in statute imposing tax on sales for use or consumption and not for resale in any form are not technical words having a peculiar meaning in law, but are words in common use, and hence they must be given their plain, ordinary meaning. (Citing cases). The noun 'use' means the act of employing anything, or state of being employed, application . . . The word consumption means the act or process of consuming. . . . also the using up of anything . . . . " *9 Words and Phrases, p. 25.*

The taxpayer here has utilized the property and materials to form a new article; certainly in the light of the above definitions it can be said to have incurred a use tax because of such "use." To predicate taxability the statute requires that the property be used, stored or consumed, two of

those elements, use and consumption, are satisfied here.

The court in *Trimount Co. v. Johnson*, 152 Me. 109, in speaking of machines leased by the petitioner said:

> "If petitioner exercises in this State any right or power incident to its ownership of the machine, the tax is imposed. The tax does not rest upon the sum total of rights and powers incident to ownership, but upon any right or power."

It is therefore clear that the utilization of property to produce new property in the circumstances stated, is such an exercise of rights over the property as to subject the materials and parts to use tax.

A comment here relative to the possible interstate character of the transaction is appropriate.

> "And the use tax is valid, if imposed upon local storage or use, such as withdrawal from storage, despite intended subsequent use (not immediate or direct use) in interstate commerce." *Prentice-Hall, State and Local Taxes, Sales Tax, Para. 92,600.*

There appears to be no problem here with relation to interstate commerce. See *Hunnewell Trucking v. Johnson*, 157 Me. 338, see also *Ashton Power Co. v. Dept. of Revenue*, 52 N. W. 2d 174 (Mich., 1952).

I conclude therefore that a use tax should be levied on the cost of the materials and parts.

JON R. DOYLE
Assistant Attorney General

November 7, 1963

To: Honorable John H. Reed
Governor of Maine
State House
Augusta, Maine

Dear Governor Reed:

Since the United States Supreme Court decision declaring Bible reading and prayers in the public schools unconstitutional in June of this year, I have received a number of letters from citizens of Maine protesting the decision and also protesting my interpretation thereof as noted in an opinion to the Commissioner of Education on June 21st. I understand that you have received similar letters of protest. I am writing this letter to you in hopes that it will clarify the decision and the position of this office with respect to the practice involved. If necessary, I think this letter should be reproduced and sent to each of those who have made protest or inquiry about the decision.

Of necessity I shall have to reiterate much of my opinion to the Commissioner, but I hope that by giving more of a background to the decision that it will clarify the position of this office and allay the fears of some of our citizens.

It may be important to note at the outset that the *Schempp and Murray* case was an 8 - 1 United States Supreme Court opinion. It is interesting to note also that just a year prior to the *Schempp and Murray* case the Court in a 6 - 1 opinion (2 judges not sitting) decided that the New York Regents

Prayer was unconstitutional. *Engel v. Vitale,* 370 U. S. 421. The opinions in both the Engel case and the Schempp case reflect the thoughtfulness given to the situation involving prayer in the public schools. As Mr. Justice Brennan said in the Schempp case,

> "The Court's historic duty to expend the meaning of the constitution has encountered few issues more intricate or more demanding than that of the relationship of religion and the public schools."

And Mr. Justice Goldberg said,

> "As is apparent from the opinions filed today, delineation of the constitutionally permissible relationship between religion and the government is a most difficult and sensitive task, calling for the careful exercise of both judicial and public judgment and restraint."

I mention this phase only to emphasize that the members of the Court fully realized the seriousness of the question before them and did not lightly regard it. However, except for the one dissent, the Justices had no trouble in agreeing on the final result. It would, of course, be most satisfactory if everyone could not only read, but study, the Schempp case and those prior First Amendment cases in order to understand the history and background to this decision.

The cases arose as follows: Pennsylvania law required that "At least 10 verses from the Holy Bible shall be read, without comment, at the opening of each public school on each public day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian." The Appellees, Edward Schempp, his wife and two children are Unitarians. They brought suit to enjoin enforcement of the statute contending violation of their constitutional rights. In Maryland, the Board of School Commissioners of Baltimore adopted a rule pursuant to Maryland law providing for the holding of opening exercises in the schools of the city consisting primarily of the "reading, without comment, of a chapter in the Holy Bible and/or the use of the Lord's Prayer." The petitioners in that case, Mrs. Madalyn Murray and her son, were professed atheists. In the Maryland situation the rule had been amended to permit children to be excused from the exercise on request of the parent. The Murrays protested the rule and the practice as being in violation of their constitutional rights. The two cases were heard together by the United States Supreme Court.

So that we may compare Maine's statute regarding prayer, I will here interject that citation.

> "Readings from scriptures in public schools; no sectarian comment or teaching. To insure greater security in the faith of our fathers, to inculcate into the lives of the rising generation the spiritual values necessary to the well-being of our and future civilizations, to develop those high moral and religious principles essential to human happiness, to make available to the youth of our land the book which has been the inspiration of the greatest masterpieces of literature, art and music, and which has been the strength of the great men and women of the Christian era, there shall be, in all the public schools of the state, daily or at suitable intervals, readings from the scriptures with special emphasis upon the Ten

Commandments, the Psalms of David, the Proverbs of Solomon, the Sermon on the Mount and the Lord's Prayer. It is provided further, that there shall be no denominational or sectarian comment or teaching and each student shall give respectful attention but shall be free in his own forms of worship."

You will note that the Maine law is mandatory in its application and that there is no provision for a child to absent himself should he so desire.

Mr. Justice Clark, in writing the opinion of the Court, found that, "in light of the history of the First Amendment and of our cases interpreting and applying its requirements, we hold that the practices at issue and the laws requiring them are unconstitutional under the Establishment Clause as applied to the States through the Fourteenth Amendment."

The portion of the First Amendment with which we are here involved reads that, "Congress shall make no law respecting establishment of religion or prohibiting the free exercise thereof . . . " This applies to the States through that portion of the Fourteenth Amendment which reads, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Court cited and reaffirmed the conclusion that,

> "The (First) Amendment's purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the Colonies. Necessarily it was to uproot all such relationships. But the object was broader than separating church and state in this narrow sense. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion."

With respect to the interrelationship of the Establishment and Free Exercise Clauses:

> "Our constitutional policy . . . . (D)oes not deny the value or necessity for religious training, teaching or observance. Rather it secures their free exercise. But to that end it does deny that the state can undertake or sustain them in any form or degree. For this reason the sphere of religious activity, as distinguished from the secular intellectual liberties, has been given the two-fold protection and, as the state cannot forbid, neither can it perform or aid in performing the religious function. The dual prohibition makes that function altogether private."

Stress is laid on the necessity of the neutral position of the State:

> "And a further reason for neutrality is found in the Free Exercise Clause, which recognizes the value of religious training, teaching and observance and, more particularly, the right of every person to freely choose his own course with reference thereto, free of any compulsion from the state. . . . The Free Exercise Clause . . . withdraws from legislative power, state and federal, the exertion of any restraint in the free exercise of

religion. Its purpose is to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority."

The Court then applies the Establishment Clause principles to the cases before them and finds that the States are requiring the selection and reading of verses from the Holy Bible and the recitation of the Lord's Prayer. Further, that the exercises are prescribed as part of the curricular activities of students who are required by law to attend school; that they are held in the school buildings under the supervision and with the participation of teachers employed in those schools. The Court finds that the exercises are of a religious character. "Given that finding the exercise and the law requiring them are in violation of the Establishment Clause."

> " . . . Nor are those required exercises mitigated by the fact that individual students may absent themselves upon parental request, for that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause."

It is clear that the exercises as set forth in Maine's statute (R. S. Me. ch. 41, § 145), and the statute itself, are unconstitutional and henceforth null and void.

One general inquiry to this office has been what may be done to nullify or override the opinion of the Supreme Court. The only answer is an amendment to the Constitution of the United States. This is, of course, an involved process which may not be accomplished by Maine citizens alone. The signing and presenting of petitions to officials of this State urging them to reconsider or even to ignore the decision are necessarily of no effect. Neither Education officials nor the Attorney General may violate the law of the land. We are sworn to uphold the Constitutions of this State and of the United States.

> "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to . . . freedom of worship . . . and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." (Jackson, J., in *West Virginia Board of Education v. Barnette*, 319 U. S. 624.) Cited in Schempp case.

Another question which has arisen is "May a teacher 'voluntarily conduct the reading of the Bible or recitation of prayers in our public schools?"

The answer is No.

The teacher is an agent of the state and carries out its policies. This, of course, places her in the "neutral" position as defined by the Court.

Mr. Justice Brennan in his concurring opinion states:

> " . . . (G)overnment cannot sponsor religious exercises in the public schools without jeopardizing that neutrality."

And Mr. Justice Goldberg adds:

> "The pervasive religiosity and direct governmental involvement inhering in the prescription of prayer and Bible reading in the public schools, during and as part of the curricular day, involving young impressionable children whose school attendance is statutorily compelled, and utilizing the prestige, power, and influ-

ence of school administration, staff, and authority, cannot realistically be termed simply accommodation, and must fall within the interdiction of the First Amendment."

The teacher has no inherent authority to conduct religious exercises and she may not effectuate a policy which is beyond the power of her employer to authorize, nor may she attempt to accomplish by indirection that which is directly forbidden by the law of the land. The law under which the teacher mandatorily conducted the religious exercise is no longer of any effect. Section 145, chapter 41, of Maine's Revised Statutes, was the sole authority for the carrying out of religious exercises in the public schools. The teacher's immediate employer, the superintending school committee, has no inherent authority to direct or allow the teacher to conduct such exercises. One of the prime duties of the local committee is to "Direct the general course of instruction . . . . " This duty relates solely to secular studies and in no manner gives the school committee authority to incorporate religious exercises in the public schools.

Most of the letters I have received bemoan the fact that children no longer may be subject to the practice of Bible reading and prayer recitation. There is some expression of fear that, because of the discontinuance of the practice, our children will be deprived of a vital religious indoctrination formally provided by the public school. This is the very nub of the decision, to keep government separate from religion. If we as a society have gone so far that we must depend upon our schools to provide the only touch of devotional exercise for our children, then we should admit to failure in parental and community guidance and leadership. Mr. Justice Brennan concludes his opinion in the Schempp case by quoting the words of a Chief Justice of the Pennsylvania Supreme Court a century ago. They are applicable today.

> "The manifest object of the men who framed the institutions of this country, was to have a *State without religion*, and a *Church without politics* — that is to say, they meant that one should never be used as an engine for any purpose of the other, and that no man's rights in one should be tested by his opinions about the other. As the Church takes no note of men's political differences, so the State looks with equal eye on all the modes of religious faith . . . . Our fathers seem to have been perfectly sincere in their belief that the members of the Church would be more patriotic, and the citizens of the State more religious, by keeping their respective functions entirely separate."

The devout believer should fear the secularization of a creed which becomes too deeply involved with and interdependent upon the government. Religion belongs in the home and in the church. The Court's ruling should focus our concern for our children upon this simple fact.

Finally, I am alarmed by those who urge defiance of the ruling of the Court.

Disagreement with the Court, or dislike of its rulings, is no excuse for defiance. Private citizens, as well as public officials, are bound by the law as pronounced by the highest court in the land.

> "Our individual preferences . . . are not the constitutional standard. The constitutional standard is the separation of church and state." *Zorach v. Clauson*, 343 U. S. 306.

We cannot properly educate our children, and we cannot demand of them respect and discipline, if we ourselves do not show respect for the law. To be responsible citizens we must practice what we preach and set the example by obeying the law.

Respectfully yours,

FRANK E. HANCOCK
Attorney General

November 7, 1963

To: Philip R. Gingrow, Banks and Banking

Re: Sales Finance Company License

Your memorandum of September 18, 1963, wherein you request an opinion under the Motor Vehicle Sales Finance Act, is hereby acknowledged.

Facts:

The Motor Vehicle Sales Finance Act, R. S. 1954, c. 59, sections 249 to 259, provides in Section 250 for licensing of sales finance companies and retail sellers. Subsection I of said Section 250 provides in part:

> "No person shall engage in the business of a sales finance company or retail seller in this State without a license therefor as provided in Section 249 to 259, inclusive."

Subsection III, paragraph B of said Section 250 relates to the amount of license fee and provides in part:

> "For a sales finance company, the sum of $100 for the principal place of business of the licensee within this State, and the sum of $25 for each branch of such licensee maintained in this State."

You state that a foreign corporation currently maintains two offices within this State through which it purchases conditional sales contracts on consumer goods, excluding motor vehicle transactions. The foreign corporation proposes to commence the purchasing of conditional sales contracts on motor vehicles sold in this State, but it hastens to add that all of this business will be done through an out-of-state office.

Question:

Is it necessary for this company to obtain a sales finance company license for their two Maine offices before they begin to engage in the business of buying conditional sales contracts on motor vehicles?

Answer:

Yes.

Opinion:

Your attention is directed to the opinion of James Glynn Frost, Deputy Attorney General, dated April 29, 1958, wherein it was held that a sales finance company which conducts its business outside the State of Maine and

maintains no office in this State may not be licensed as provided in Section 250 for the reason that the provisions of R. S. 1954, c. 59, Sections 249 to 259, contemplated that such licensee shall be doing business in the State of Maine and have officers and offices in the State of Maine.

A necessary corollary to that opinion would be that a sales finance company conducting a business outside the State of Maine whereby it purchases conditional sales contracts entered into in the State of Maine but maintaining offices in the State of Maine and doing business in the State of Maine must secure a license for the two offices in the State pursuant to section 250.

> "Foreign corporation, which had an arrangement with a resident motor vehicle concern whereby it bought notes which were taken from purchasers of automobiles, and which furnished blanks to the motor concern on which to make financial reports, held not "doing business" within the state, and hence it could maintain action on default payments on purchase-money note which it had bought." *Equitable Credit Co. v. Rogers*, 299 S. W. 747, 748, 175 Ark. 205; *Words and Phrases*, "Doing Business."
>
> "A foreign corporation engaged in financing mobile homes sold to dealers in Montana, was 'not doing business in the state,' within Montana statute pertaining to regulation of foreign corporations, and could enforce contracts with Montana dealers although it was not registered in Montana, where it did not have any office, place of business or resident agents or employees in the state, did not deal directly with any customers or purchasers, and conducted its business by mail pursuant to an agreement reciting that it was made and entered into outside the state." *Minnehoma Financial Co. v. Van Oosten*, D. C. Mont., 198 F. Supp. 200, 204, *Words and Phrases*, "Doing Business."

The cases deciding that corporations were not "doing business" within the state were cases in which the corporations never came within the boundaries of the state, maintained no offices in the state, and employed agents within the state on a commission basis in such a manner as to make them independent contractors, thereby bringing the cases within the opinion of James Glynn Frost, supra.

The Legislature did not intend to allow a situation to exist whereby a corporation could maintain offices in this state, purchase conditional sales contracts on motor vehicles ostensibly through an out-of-state office and not be required to obtain a license as a motor vehicle sales finance company. There would be nothing to prevent this company from processing such motor vehicle transactions through one of its local offices. As long as the corporation is doing business in the State of Maine and has officers or offices in the State of Maine, it must obtain a license under the Motor Vehicle Sales Finance Act if it purchases conditional sales contracts on motor vehicles sold in Maine, regardless of the location of the office handling such contracts.

CARL O. BRADFORD
Assistant Attorney General

November 8, 1963

To: Ernest H. Johnson, State Tax Assessor

Re: R. S., c. 17, s. 2, definition "sale price" — "allowance . . . pursuant to warranty."

Facts:

An assessment against Richard D. Gilman, Sr., Reg. #78012, is presently pending reconsideration. The assessment is based upon the purchase of a tractor by Gilman from Chadwick-BaRoss. The tractor apparently proved unsatisfactory, as a result of which we understand the manufacturer, through Chadwick-BaRoss, agreed to take back the machine; but while certain credit was given on the return, the full purchase price was not refunded.

Mr. Gilman's attorney, contends that the credits in question were given "pursuant to warranty"; and that even if it cannot be shown that there was an express written warranty, nevertheless the implied warranty referred to in section 15 of chapter 158 (the Uniform Sales Act) applies.

Question:

Whether the language in the definition of "sale price" in section 2 of Chapter 17 — " 'sale price' shall not include allowances in cash or by credit made upon the return of merchandise pursuant to warranty" — refers as well to the implied warranty set forth in section 15 of the Uniform Sales Act as it does to an express warranty.

Answer:

Yes.

Reasons:

Warranty defined:

> "Warranty is an engagement or undertaking, *express or implied*, that a certain fact regarding the subject of a contract is or shall be as it is expressly or impliedly declared or promised to be." *Christian v. City of Eugene*, 89 Pac. 419. Citing Webster's International Dictionary. 44 A Words and Phrases, p. 598. (Emphasis supplied).

It is well established that no particular words are required to constitute a warranty.

> "To constitute a warranty words 'warranty' or 'guarantee' need not be used." *44 A Words and Phrases, p. 642.*

This is true of an implied warranty as it is of an express warranty.

Under the Uniform Sales Act as found in the Maine Revised Statutes, Volume 4, Chapter 185, sections 13 through 16, there are several forms of implied warranties, briefly, in section 13 there is a provision for implied warranty of title, in section 14 an implied warranty in sale by description; an implied warranty of quality in section 15 and an implied warranty in sale by sample as enumerated in section 16.

Section 15 which is of importance here provides:

> "Subject to the provisions of this chapter and to any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract to sell of a sale, *except* as follows: (Emphasis supplied.)

I. Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment, whether he be the grower or manufacturer or not, there is an implied warranty that the goods shall be reasonably fit for such purpose."

The case of *Ross v. Diamond Match Co.*, 149 Me. 360 decided under the above section lays down what a claimant must prove to support recovery. 1. That he made known to the seller the particular purpose for which the goods were required; 2. that he relied upon the seller's skill or judgment; 3. that he used the goods purchased for the particular purpose which he made known to the seller; 4. that the goods were not reasonably fit for the purpose disclosed to the seller; and 5. that he suffered damage by breach of the implied warranty.

Sec. 15 continued.

"II. When the goods are bought by description from the seller who deals in goods of description, whether he be the grower or manufacturer or not, there is an implied warranty that the goods shall be of merchantable quality.

"III. When the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed.

"IV. In the case of a contract to sell or a sale of a specified article under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose."

(However, it does not follow that if an article purchased has a trade name and that it is bought thereunder, the buyer does not rely on the skill or judgment of the seller. See *Ross v. Porteous, Mitchell & Braun Co.*, 136 Me. 118).

"V. An implied warranty or condition as to the quality or fitness for a particular purpose may be annexed by the usage of trade.

"VI. An expressed warranty or condition does not negative a warranty or condition implied under the provisions of this chapter unless inconsistent therewith."

I assume the instances will be many where the vendor or vendee or both rely upon a situation wherein there is a return of goods pursuant to an implied warranty under sec. 15 and particularly subsection I. Since the decision as to whether or not there is an implied warranty is largely a factual one and is usually made as between the parties to a transaction, that is, the vendor and vendee, I would suggest that administrative guide lines be laid down providing that certain facts be established before there will be a finding by the Bureau of Taxation that an implied warranty exists.

I would recommend that the guide lines laid down in *Ross v. Diamond Match* above cited be utilized in establishing an administrative rule, with the addition thereto of the elements of allowance and return.

It would therefore seem that the definition of warranty as contained in Chapter 17, section 2 includes implied warranties. However, there must be a factual situation such as would give rise to an implied warranty under

the Uniform Sales Act — that is, a situation under section 15 or any other appropriate section wherein the vendee has placed reliance in the vendor as to the quality or the fitness of the goods and the vendee furnishes the goods which are later found to be defective and are returned because of the defect to the original vendor.

JON R. DOYLE
Assistant Attorney General

November 8, 1963

To: Paul A. MacDonald, Secretary of State

Re: Pin Ball Machine

Facts:

You have had some correspondence concerning a game known as "Japanese Pachinko." The game is non-coin operated and works by battery power. The player purchases 10 balls for 10 cents. A ball is inserted into the game and spun into action. There are 7 win and 1 lost pocket. There are 6 spin wheels and metal nails placed around the game area. When a ball drops in a win pocket additional balls drop out. The more balls a player obtains in this manner the better prize he wins.

Question:

Is this game a pin ball machine?

Answer:

No.

Opinion:

R. S. 1954, chapter 100, sections 68-A to 68-J provide for the licensing of pin ball machines by the clerk of the municipality where located.

> Section 68-B defines a pin ball machine as — " . . . only those machines nominally denominated as such which, upon the insertion of a coin, slug token, plate or disc, may be operated by the public generally for use as game, entertainment or amusement, whether or not registering a score, and which is operated for amusement only and does not dispense any form of pay off, prize or reward except free replays."

As pointed out by the inquirer the game of "Japanese Pachinko" is non-coin operated. The player inserts only the playing balls. Also the machine can be said to dispense a "form of pay-off, prize or reward" in the form of extra balls which may be converted into prizes.

We agree, therefore, with the inquirer that "Japanese Pachinko" is not a pin ball machine which must be licensed in the municipality where located.

This conclusion does not assist the inquirer. However, it must be pointed out that the pin ball machine licensing law is an exception to the laws forbidding gambling. Any device similar to a pin ball machine but not coming within its definition is a gambling device and illegal.

Our court in *State v. Livingston*, 135 Maine 323 and 324, has quite simply stated the nature of one type of gambling device.

"If the player wins, the machine ejects the number of slugs shown by the illuminated number. It may be readily seen to what an extent chance plays a part in the winning of the tokens. In the first place, the lighting of a number by a mechanism which is entirely beyond the operator's control, determines whether or not the operator may have the easy chance to put a ball in the 10,000 hole; in the second place, the number of the tokens which the operator will receive is entirely determined by chance. Whether or not the player wins depends to some extent on his skill, to a very large extent on chance; and the amount of his winnings, if he is successful, depends entirely on chance.

"It would seem obvious that this machine is a gambling device. It is nonetheless one because skill is a factor in the player's success. We might as well say that playing cards for money is not gambling because the result is in part dependent on a player's skill. The law in this state is well settled that such a machine as this is a gambling device and comes within the prohibition of the statute. *State v. Baitler*, 131 Me. 285, 161 A., 671."

GEORGE C. WEST
Deputy Attorney General

November 13, 1963

To: Captain Ralph E. Staples, Director
Division of Special Services, Maine State Police

Re: Automobile Junk Yard or Automobile Graveyard Law R. S. 1954, c. 100, § 138.

Facts:

Your memorandum dated November 8, 1963, wherein you request an opinion relative to automobile graveyards, is hereby acknowledged. One of your State Police Officers has a case pending in which there appears to be a question as to the fact situations to which the automobile graveyard law apply. You indicate that a ruling from this office would be of some assistance to the State Police.

Question:

Whether a pile of automobile engines consisting of more than three is considered a "junk yard" within the meaning of c. 100, § 138?

Answer:

Yes.

Opinion:

R. S. 1954, c. 100, § 138, as amended by P. L. 1963, c. 178, § 2, provides in part:

"No automobile junk yard or 'automobile graveyard' so called, where 3 or more unserviceable, discarded, worn-out or junked automobiles *or bodies or engines* thereof are gathered together, shall be established, operated or maintained, or permitted by the owner of any land to be established, operated or maintained . . . " (Emphasis supplied).

Any one of the following categories would constitute an automobile junk yard or "automobile graveyard:"

(a) 3 or more unserviceable, discarded, worn-out or junked automobiles

(b) 3 or more unserviceable, discarded, worn-out or junked automobile bodies

(c) 3 or more unserviceable, discarded, worn-out or junked automobile *engines*.

The reason for this is that the statute in question is set forth in the alternative and it is not necessary that the engines or bodies or both be assembled into automobiles before the statute applies. The purpose of the statute obviously was to include a pile of 3 or more automobile engines within its operation so that they would, standing alone, constitute an automobile graveyard.

Your attention is called to the provisions of R. S. 1954, c. 141, § 6, as amended by P. L. 1963, c. 305, wherein "any places where *one or more* old, discarded, worn-out or junked automobiles, or parts thereof are gathered together, kept, etc." are declared to be public nuisances. This might be a source of confusion since there are two chapters dealing with junked automobiles. The distinction is that one junked automobile or parts thereof may be declared a public nuisance under c. 141, § 6, but there is no provision for regulation. But 3 or more junked automobiles or bodies or engines thereof under c. 100, § 138 are not only a public nuisance but are also subject to regulation by requiring a license.

CARL O. BRADFORD
Assistant Attorney General

December 3, 1963

To: Richard E. Reed, Executive Secretary, Maine Sardine Council

Re: Market Classification of Puerto Rico

Facts:

P. L. 1963, chapter 338, provides for the development and expansion of foreign markets for sardines. The Sardine Council would like to expand the market for sardines into Puerto Rico.

Question:

Is Puerto Rico a foreign market within the provisions of P. L. 1963, chapter 338?

Answer:

Yes.

Opinion:

The emergency preamble states that the purpose of the statute is to expand markets for the benefit of the Maine sardine industry. Since the statute is beneficial in nature, it should be liberally construed.

One of the dictionary definitions of the word "foreign" is: "Situated outside a place or country." Another is: "Outside of any locality under consideration." Puerto Rico is physically separated from the continental United States and is not one of the States of the United States. In that sense, it falls within the above definitions.

This is so even though both the State of Maine and Puerto Rico come under the sovereignty of the United States. In a Pennsylvania case, decided when that State was still subject to Great Britain, it was held that the British West Indies was a foreign market as to exports from Pennsylvania. In that case the court said:

> "Construing the word 'foreign' with greater latitude, it might extend to all countries beyond sea, without considering whether subject to the same sovereign or not."

It is, therefore, the opinion of this office that Puerto Rico is a foreign market within the meaning of the statute.

LEON V. WALKER, Jr.
Assistant Attorney General

December 10, 1963

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

Re: Brokers' Clearinghouse

Facts:

A New York organization is desirous of establishing a nation-wide clearinghouse where member real estate brokers may exchange information concerning families who are relocating. The organization would not participate in any commissions, but would receive an annual fee from member brokers. The service rendered would be that of giving member brokers a central location for pooling of names of persons relocating. The organization would not deal with the actual listings of real property, but would merely disseminate names and addresses of prospective buyers and renters.

Question:

Whether this organization would be considered acting as a broker under the provisions of c. 84, § 2, R. S. 1954, as amended, thereby being required to qualify as a non-resident broker pursuant to the provisions of c. 84, § 10, R. S. 1954, as amended.

Answer:

No.

Opinion:

Pursuant to § 2, supra, a broker is defined as:

> "I. A 'real estate broker' is any person, firm, partnership, association or corporation who for a compensation or valuable consideration sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or rents or offers to 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. (1957, c. 32.) (1959, c. 363, § 40.)"

It is evident from the facts of this opinion that the prospective organization would neither sell nor offer to sell, nor buy nor offer to buy any real estate. The crux of the question evolves around the phrase "negotiates the purchase or sale or exchange of real estate." The organization in question could not be considered as negotiating the purchase or sale of anything. They

purport to act strictly as a "go-between," and as such would have no dealings, either directly or indirectly, with the actual sale or exchange of real property. Their function, construed strictly, would merely be to assist brokers from various parts of the country in coming in contact with each other relative to a relocating party or parties. They would not share in any commission. Their function is completed at the time that the contact is made between the two brokers, and the subsequent dealings of the parties would be of no concern to the organization.

In conclusion, we find nothing that would be construed to classify the above mentioned organization as a non-resident broker.

WAYNE B. HOLLINGSWORTH
Assistant Attorney General

December 18, 1963

To: Col. Robert Marx, Chief of State Police

Re: Application of Longevity Pay to Retired State Police Officers

Facts:

Private and Special Laws 1951, chapter 214, as amended by P. & S. 1953, c. 166, provides that retired members of the State Police shall after retirement, as provided in chapter 15, section 22, be entitled to certain increments in pay "to a member of their respective grades at the time of retirement."

Private and Special Laws 1963, chapter 202, provides for longevity pay for state employees.

Question:

Are State Police officers retired under chapter 15, section 22, entitled to an increase in retirement pay because of the longevity pay authorized by the legislature?

Answer:

No.

Reasons:

Members of the state police who were appointed on or before July 9, 1943, may retire after 20 or more years with a good record and receive "½ of the pay per year that is paid to a member of his grade at the time of his retirement." R. S. ch. 15, § 22.

Private and Special Laws 1951, chapter 214, as amended by P. & S. 1953, c. 166, says:

> "The retired members of the state police shall receive, in addition to their present retirement pay, such additional amounts as will equal ½ of the pay per year that is now paid *to a member of their respective grades* at the time of retirement . . . . (Emphasis supplied).
>
> "The provisions of this act shall become effective July 1, 1953."
>
> (The last paragraph was originally enacted in 1951 for a 2 year period. The 1953 amendment extended it indefinitely.)

This office in an opinion addressed to you under date of February 2, 1960, said of the 1951 law:

"This act, at the time of its enactment, could have resulted, and as we recall, did result, in increases to members in retirement, because the effect of the act was to give to a retired member not ½ the pay he received at the time of retirement, but ½ the pay that would be paid to *a member of the same grade* if he were to retire during the period which chapter 214 (P. & S. Laws 1951) would be in effect." (Emphasis supplied).

The underlined words "a member of their respective grades," in the law, and "a member of the same grade" in the opinion, are the key words. In other words, a Sergeant upon retirement under chapter 15, section 22, would receive ½ of the pay per year that is paid to all Sergeants. After retirement, if the pay of a Sergeant's *grade* was increased, the retired Sergeant would be entitled to a corresponding increase in pension.

In 1963, the legislature enacted chapter 202 of the Private and Special Laws.

"It is the purpose of this act to place into effect, as of applicable pay checks dated on or after January 1, 1964, longevity provisions for state employees.

"Said longevity provisions shall amount to a 5%, or a one-step increase as provided in the State Personnel Board's Compensation Plan for Classified Positions, after completion of 8 years of service with the State, . . . and an additional 5%, or one-step increase as provided in the State Personnel Board's Compensation Plan for Classified Positions, after 15 years of service with the State, ..."

This act is based solely on the length of service of an individual state employee. It has no relation to the position or grade which an employee holds. It applies equally to the highest or lowest paid state employee. In your organization one Sergeant (to continue use of the same example) may get no longevity, another may get a "5%, or a one-step increase" and a third may get the same as the second plus "an additional 5%, or one-step increase." In other words, you may have Sergeants with less than 8 years service, Sergeants with 8 to 15 years, and Sergeants with over 15 years service.

Longevity is, therefore, a recognition personal to an individual for his personal length of service. It, therefore, follows that it does not increase the salary of a specific position or grade. Hence, it cannot be considered for the purpose of increasing a retired state police officer's pension.

GEORGE C. WEST,
Deputy Attorney General

December 19, 1963

To: Joseph T. Edgar, Deputy Secretary of State

Re: Definition of "Consumer Goods" as Contained in the Uniform Commercial Code

Facts:

The 101st legislature passed the Uniform Commercial Code. Conditional sales contracts covering consumer goods are to be recorded with the Clerk

of the municipality in which the debtor resides unless he is not a resident of the state or resides in an unorganized place.

You wish to know your responsibility for recording contracts for sales of motor vehicles. You have asked two questions in one. We will divide the question into two parts.

Question No. 1:

Does the term "consumer goods" as used in section 9-401, (1) (b) of the Uniform Commercial Code include motor vehicles when such vehicles are purchased primarily for personal or family purposes?

Answer:

Yes.

Reason:

Section 9-109 (1) defines consumer goods as: "Goods are (1) 'Consumer goods,' if they are used or bought for use primarily for personal, family or household purposes;"

Section 9-105 (1) (f) defines "goods" as follows:

> "Goods includes all things which are movable at the time the security interest attaches or which are fixtures (section 9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action."

Motor vehicles are "things which are movable at the time the security interest attaches." Hence, it follows that motor vehicles are "goods" within the above definition.

From this premise the logical conclusion is that motor vehicles "used or bought for use primarily for personal, (or) family . . . purposes" are consumer goods.

In *Atlas Credit Corp. v. Dolbow* 165 A (2d) 704 (Penna Super Ct) the court said of a motor boat:

> "That the boat was consumer goods may be inferred from the uncontradicted testimony as to their (purchaser's) occupation, etc."

A motor vehicle purchased by a business firm would appear not to come within the definition of consumer goods. Normally, a motor truck would not, but under some circumstances it could be.

Question No. 2:

If the answer to Question No. 1 is in the affirmative, should the records of conditional sales involving such motor vehicles be filed with the Clerk of the municipality in which the debtor resides, rather than in the office of the Secretary of State, subject to the two exceptions as quoted in section 9-401 (1) (b)?

Answer:

Yes.

Reason:

The best reason for the answer is to quote from section 9-401. Under this section the proper place to file in order to perfect a security interest is as follows:

"(b) When the collateral is consumer goods, then in the office of the clerk of the municipality in which the debtor resides, or if the debtor (I) is not a resident of the State, or (II) resides in an unorganized place, then in the office of the Secretary of State;"

The Secretary of State is under no obligation to determine whether a recording is proper. In acting as a recorder the Secretary of State performs a mere ministerial act. He accepts and records what is presented to him. He does not question or advise on the validity of any recording made in his office.

GEORGE C. WEST
Deputy Attorney General

December 23, 1963

To: Steven D. Shaw, Administrative Assistant, Executive

Re: Conflict of Interests — Aeronautics Commission

Facts:

Chapter 24, section 4, provides that the aeronautics commission shall consist of 5 members. " . . . one member shall be regularly employed in the aviation trades." Appointment is by governor with the advice and consent of the council.

A candidate holds a sales franchise for a well-known airplane. Two questions may arise if he is appointed.

Question No. 1:

Can a member of the aeronautics commission, holding an airplane sales franchise, sell his product to the commission?

Question No. 2:

Can a member of the aeronautics commission, holding an airplane sales franchise, sell his product to other branches of the state government?

Answer To Both Questions:

No.

Reason:

R. S. 1954, chapter 135, section 17, provides, "No trustee, superintendent, treasurer or *other person holding a place of trust in any state office* or public institution of the state, . . . shall be pecuniarily interested directly or indirectly in any contracts made in behalf of the state or of the institution . . . in which he holds such place of trust, and any contract made in violation hereof is void;" (Emphasis supplied).

The above is the sole statute relating to this subject. The important phrase is that italicized. It is sufficient to bring the situation outlined in the facts and questions within its purview.

Certainly a member of the aeronautics commission is a "person holding a place of trust in any state office." The members of this commission are appointed by the governor with the advice and consent of the council. They are qualified to their office by an oath required and set forth in Article IX, section 1, of our Constitution. Each is appointed to an executive office and as such becomes a public officer.

"Furthermore, the statute was not intended as simply an affirmation of a principle of the common law, but as a more comprehensive legislative rule founded in public policy. The legislature must be presumed to have had in contemplation all of the contracts which might have been made by the different State officers, and to have enacted the statute for the purpose of removing any temptation on their part to bestow reciprocal benefits upon each other, and of preventing favoritism, extravagance and fraudulent collusion among them under any circumstances which might be reasonably anticipated as likely to arise under different State governments in the years to follow. . . . But it was obviously impracticable to anticipate and specify in the statute the great variety of situations that might arise, and in order to accomplish the purpose of the statute and prevent the mischief designed to be remedied, *the legislature was compelled to declare in general terms that no State officer should have a pecuniary interest in 'any contract' made in behalf of the state.*" (Emphasis supplied). *Opinion of the Justices*, 108 Maine 545 at 552. See also *Lesieur v. Rumford*, 113 Me. 317 at 322.

From the foregoing it becomes obvious that any contracts that might be made by the state with a member of the aeronautics commission would be void.

GEORGE C. WEST
Deputy Attorney General

January 6, 1964

To: Miss Edith L. Hary, Consultant
Informal Committee on Legislative Apportionment
State House
Augusta, Maine

Dear Miss Hary:

Re: Apportionment of House of Representatives

Facts:

The 101st Legislature approved amendments to the Constitution creating a new method of apportioning the House of Representatives. This was chapter 75, Resolves of 1963. These amendments were ratified by the people in November, 1963.

An informal committee was appointed to prepare a suggested apportionment resolve to be acted upon at a special session in January, 1964. Two questions have arisen as a result of the committee's deliberations.

Question No. 1:

Does the constitutional provision re apportionment (Const. Art. IV, Part First, Sec. 3) permit the combination of a town — or towns — not containing the county unit base number with a municipality which does fully contain the county unit base number one or more times?

Answer:

No.

Opinion:

The last sentence of section 2, Part First, Article IV of the Constitution reads as follows:

> "The number of Representatives shall at the several periods of making such enumeration, be fixed and apportioned by the Legislature among the several counties, as near as may be, according to the number of inhabitants. Each county shall be entitled to that number of Representatives which is in the same proportion to the total number of Representatives as the number of inhabitants of the county bears to the number of inhabitants of the State, fractional excesses over whole numbers to be computed in favor of counties having the larger fractional excessses."

The above provision sets forth the method by which is determined the number of Representatives to which each county is entitled.

Article IV, Part First, section 3, of the Constitution reads as follows:

> "Section 3. Apportionment of representatives within each county shall be made by dividing the total number of inhabitants in the county by the number of Representatives to which the county is entitled to determine a unit base number. Each city or town having a number of inhabitants greater than the *unit base* number shall be entitled to as many representatives as the number of times the number of its inhabitants fully contains the unit base number; and the remaining cities, towns and plantations within the county which have inhabitants in numbers less than such unit base number shall be formed into representative class districts in number equal to the remainder of county representatives unallocated *under the foregoing procedure* by grouping whole cities, towns and plantations as equitably as possible with consideration for population and for geographical contiguity. Provided, however, that no such representative district shall contain fewer inhabitants than the largest fraction remaining to any city or town within such county after the allocating of one or more representatives *under the foregoing procedure*; and, provided further, that additional representatives, drawn from the remainder of county representatives unallocated *under the foregoing procedure*, shall be allocated to cities or towns having the largest fraction remaining after the allocation of one or more representatives *under the foregoing procedure* if such be necessary to insure that no such representative district contain fewer inhabitants than the largest fraction remaining to any city or town within such county after the allocating of one or more representatives *under the foregoing procedure.* Cities and towns entitled to two or more Representatives *under the foregoing procedure* may, by affirmative vote of two-thirds of both Houses of the Legislature, be organized into single member districts whereby each legally qualified elector therein is entitled to vote for only one Representative, provided that all such cities and towns are so organized."

The second sentence contains a part of the answer. A city or town having more inhabitants than the unit base number is entitled to as many representatives as the number of times the number of its inhabitants fully contains the unit base number. After this the "*remaining* cities, towns and plantations" smaller than the unit base number are grouped into representative class districts. This wording clearly states that the cities and towns entitled to one or more representatives cannot then be grouped with smaller communities into a representative class district.

Question No. 2:

Does the constitutional provision re apportionment (Const. Art. IV, Part First, Sec. 3) prohibit the combination of municipalities which do not contain the county unit base number into a representative district which exceeds the unit base number?

Answer:

No.

Opinion:

Actually section 3 uses the "unit base number" for only one purpose.

> "Each city or town having a number of inhabitants greater than the *unit base number* shall be entitled to as many representatives as the number of times the number of its inhabitants fully contains the *unit base number*;" (Emphasis supplied).

The unit base number is used only to determine what municipalities are entitled to one or more representatives. Once that fact is determined and the number of representatives for such municipalities is determined, the unit base number is no longer used.

In representative class districts there are two limitations. Such districts shall not "contain fewer inhabitants than the largest fraction remaining to any city or town within such county" after determining the representatives to which municipalities having population greater than the unit base number are entitled.

The other limitation is the "grouping whole cities, towns and plantations as equitably as possible with consideration for population and for geographical contiguity."

There is nothing said about the relationship of the unit base number to representative class districts. Hence, a representative class district may have more or less population than indicated by the unit base number.

GEORGE C. WEST

Deputy Attorney General

January 6, 1964

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

Re: Classification Of and Price For Milk Which Has Been Or Which Will Be Transported In Interstate Commerce

Facts:

In recent years, bulk milk traffic has increased both in imports and exports among certain licensed Maine dealers. Historically, this milk has

taken the lower (Class II) classification because of a judgment to the effect that the Commission has no jurisdiction over milk engaged in interstate commerce. Without question, at least a portion of this milk is channeled into Class I or fluid use and would, under normal circumstances, command a higher return to producers. Additionally, dealers have imported milk from foreign markets which has been purported to be for Class I utilization. These imports, as such, displace the Maine dealers' Class I sales by an identical volume as the amount imported and have the effect of diluting the blended prices payable to local Maine producers.

Question:

Whether the Commission may, under the existing statutes, establish the classification and price for milk engaged in interstate commerce?

Answer:

Although the Commission may not burden interstate commerce, it can establish the classification and price of milk which has been or which will be transported in interstate commerce.

Reason:

Your memorandum states that it is the position of the Commission that the facts reported in a Pennsylvania case, *Milk Control Board of the Commonwealth of Pennsylvania v. Eisenberg Farm Products*, 306 U. S. 346 (1939), are parallel to those facts stated above and, therefore, that the Commission can "regulate the price paid to Maine producers for milk purchased in Maine for shipment to any out-of-state market."

In *Milk Control Board v. Eisenberg Farm Products*, supra., the Board conceded (for purposes of the case) that "the purchase, shipment into another state, and sale there of the milk" constituted interstate commerce. The respondent contended that an act which required it to obtain a license, file a bond for the protection of milk producers, and *to pay the farmers the prices prescribed by the Board*, unconstitutionally burdened interstate commerce. The United States Supreme Court held otherwise.

Earlier opinions from this office to the Commission (upon related matters) indicated that the Commission may legally establish the classification and price of milk in Maine notwithstanding the milk has been or will become the subject of interstate commerce. On March 25, 1949, we said that "the Maine State Control Board has authority to enforce its prices for milk sold in open markets when such milk is received at a country plant in intrastate commerce, even though it is subject to the Boston pool which is under the Massachusetts Administrator." We said, on August 31, 1935, that a Maine dealer who purchases milk from a New Hampshire dealer was considered the first handler in Maine and subject to the hundredweight fees. Our opinion dated October 25, 1962 contained the following sentence: "A regulation prohibiting the reduction of the Class I price by a purchase of milk from an out-of-state dealer would not be viewed as an unlawful regulation of interstate commerce."

In *Eisenberg Farm Products* the court recognized that "the activity affected by the regulation is essentially local in Pennsylvania" and that "the Commonwealth does not essay to regulate or to restrain the shipment of the respondent's milk into New York or to regulate its sale or the price at which respondent may sell it in New York." In the present matter the particular

activity is likewise of a local nature having no effect upon what has or what may have occurred elsewhere.

Certainly, the Commission's classification of milk according to its various usages in Maine is a lawful and authorized action even though the milk has, at some time in the past, been in interstate commerce. We thus incorporate our expression quoted in the opinion dated October 25, 1962. The particular usage will most likely occur *after* interstate commerce has come to an end. See: *Hunnewell Trucking v. Johnson*, 157 Me. 338 wherein our Law Court held taxable (sales tax) materials and supplies purchased outside Maine and brought into this State (in interstate commerce) for use upon motor trucks engaged in interstate business.

Directing attention to the exporting of milk by dealers from this state, the Commission is authorized to establish the minimum prices to be paid to producers and dealers in Maine. The statute predicates Commission authority upon the occurrence of acts within the industry in Maine, i. e., "received, purchased, stored, manufactured, processed, sold, distributed or otherwise handled within the State." We thus adopt the principle expressed in *Eisenberg Farm Products.*

Your second and third questions relating to an amendment of the Maine Milk Law for the purpose of authorizing Commission classification and pricing of that milk mentioned in the opinion are rendered moot.

Note:

CASE EXCERPTS

The Shepardizing of *Eisenberg Farm Products* reveals the existence of numerous United States Supreme Court decisions upholding the principle expressed in the Case.

> " . . . State regulation, based on the police power, which does not discriminate against interstate commerce or operate to disrupt its required uniformity, may constitutionally stand." (citing cases) *Huron Cement Co. v. Detroit,* 362 U. S. 440 (1960).
>
> "The Commerce Clause gives to the Congress a power over interstate which is both paramount and broad in scope. But due regard for state legislative functions has long required that this power be treated as not exclusive. Cooley v. Port Wardens, 12 How. 299 (1851). It is now well settled that a state may regulate matters of local concern over which federal authority has not been exercised, even though the regulation has some impact on interstate commerce." (citing cases) *Cities Service Co. v. Peerless Co.*, 340 U. S. 179.

See also: *Parker v. Brown,* 317 U. S. 341; *Southern Pacific Co. v. Arizona,* 325 U. S. 761; *Hood & Sons v. Du Mond,* 336 U. S. 525.

Respectfully submitted,

JOHN W. BENOIT
Assistant Attorney General

January 13, 1964

To: Paul A. MacDonald, Secretary of State

Re: Registrations as Dealers in New or Used Motor Vehicles

In your memo of December 31, 1963, you have asked four questions. Each question has a specific factual situation related to it. Consequently it will be necessary to set forth the applicable facts, questions, answers, and reasons separately.

Facts No. 1:

A dealer in Maine since 1922, who has a franchise to sell trucks and has all the other requirements of the law except a mechanic, has requested a renewal of his dealer registration. He states that his repair work is referred to repair shops in the area and although his customers have the services of a trained mechanic, he does not "keep employed at least one mechanic . . . . "

Question No. 1:

Must a dealer in new motor vehicles keep a mechanic employed full time in order to qualify for plates, under this statute?

Answer No. 1:

Yes.

Reasons No. 1:

The answer to the question asked is contained in the language of R. S. chapter 22, section 26. The pertinent parts are quoted:

> "Every . . . dealer in new . . . motor vehicles may, . . . make application upon a blank provided by the Secretary of State for a general distinguishing number, color or mark . . . . The board, if satisfied that the applicant maintains a permanent place of business in the State where said applicant will be engaged in the business of buying and selling of motor vehicles, . . . and if satisfied that *the applicant meets the minimum standards herein set forth*, shall order the Secretary of State to issue a certificate of registration . . . . To qualify as a dealer in new motor vehicles . . . an applicant must *possess a franchise contract from a manufacturer of motor vehicles* . . . ; must have *proper facilities for the display and storage of new and used motor vehicles, a repair department capable of taking care of at least 2 motor vehicles simultaneously*, exclusive of grease pit or rack; must *maintain an office and parts department suitable to conduct business*; must *possess sufficient tools and equipment for proper servicing* and *keep employed at least one mechanic having a thorough knowledge of the product handled*, ... " (Emphasis supplied).

The legislature has stated that a dealer in new motor vehicles may have dealer plates, so-called, when he is able to comply with certain standards it has established. It follows that if he cannot comply with those standards, he is not eligible for dealer plates for new motor vehicles.

One of the standards set up by the legislature is that an applicant must "keep employed at least one mechanic having a thorough knowledge of the product handled." If a dealer does not comply with *all* the "minimum standards herein set forth" he is not eligible for dealer plates.

There will be hardship cases, but the board cannot waive the provisions of the statute. It must follow the law and can issue dealer plates only in accordance therewith.

See Reasons No. 4 for more detailed discussion of board's duties.

Facts No. 2:

The statute sets forth certain requirements for used car dealers with so-called grandfather rights applying to present holders of dealer or transit registration plates who have made 12 bona fide sales during the 12 months preceding the effective date of the act.

The exception pertains to repair and servicing facilities and mechanics. There seems to be no exception as to the necessity for:

(a) Proper facilities for the display of motor vehicles.

(b) A suitable office in which to conduct business.

(c) A suitable sign identifying the place of business.

Question No. 2:

Is it necessary for a used car dealer who has grandfather rights to comply with (a), (b) and (c), as listed above?

Answer No. 2:

Yes.

Reasons No. 2:

This question is based on provisions contained in R. S., ch. 22, sec. 26. The pertinent parts are quoted:

> "Every . . . dealer in . . . used motor vehicles may, . . . make application . . . for a general distinguishing number, color or mark. . . . The board, if satisfied that the applicant maintains a permanent place of business in the State where said applicant will be engaged in the business of buying and selling of motor vehicles, . . . and if satisfied that the applicant meets the minimum standards herein set forth, shall order the Secretary of State to issue a certificate of registration. . . . To qualify as a dealer in used motor vehicles, . . . an applicant must have *proper facilities for the display of used motor vehicles, a suitable office in which to conduct business*, and *a suitable sign identifying the place of business; must maintain a repair department capable of taking care of at least 2 motor vehicles simultaneously*, exclusive of grease pit or rack, and *sufficient tools and equipment for proper servicing*; and must *keep employed at least one mechanic* having a thorough knowledge of the product handled;" (Emphasis supplied).

Thus, the legislature has laid down certain minimum standards for the board to use in determining when a dealer is eligible for used motor vehicle dealer plates. In this particular category the legislature has granted to those dealers or holders of transit registration plates, who have filed evidence of at least 12 bona fide sales during the calendar year 1963, certain exemptions from these minimum standards.

The exemptions are limited to those "pertaining to repair and servicing facilities and mechanics." A dealer in used motor vehicles who had dealer or transit plates before January 1, 1964, and sold 12 motor vehicles in

1963, is exempt from the three items quoted. He is not exempt from "proper facilities for the display of used motor vehicles, a suitable office in which to conduct business and a suitable sign identifying the place of business." If he does not have the last three items listed, the board cannot issue him registration plates as a dealer in used motor vehicles.

See Reasons No. 4 for more detailed discussion of board's duties.

Facts No. 3:

In some instances an individual has made more than 12 sales in the preceding 12 months but has recently incorporated or joined in a partnership, or, in some cases, dissolved a partnership; so that the latest entity has not made the necessary 12 sales.

Question No. 3:

Are the rights derived under the statute assignable or transferable to the corporation or later legal entity?

Answer No. 3:

No.

Reasons No. 3:

This question concerns the so-called grandfather clause relative to used car dealers which has been set forth and discussed in the previous question. The particular portion of the statute reads: "present holders of motor vehicle dealer registration plates, or to holders of transit registration plates."

The answer depends of the words "present holder" and "holder." The statute speaks as of its effective date. The "present holder" of a motor vehicle dealer plate and the "holder" of a transit plate is the person, corporation, partnership or other legal entity to whom such plates were issued in 1963. That legal entity is the one entitled to the benefit of the grandfather clause, so-called. If an individual held plates and has now become a partnership or corporation, then the new entity must qualify as a used motor vehicle dealer without benefit of the so-called grandfather clause. The reverse is also true.

Such rights are very strictly personal to the "holder" of the plates. These plates are no different from the plates on a personal car. If the car is sold or ownership transferred, the car must be reregistered. In short, any rights derived under the statute are not assignable or transferable.

Facts No. 4:

An applicant has had transit plates in 1963 and unquestionably qualifies as a used car dealer so far as facilities for display, office, sign, repair department, tools and mechanics are concerned but has reported no sales during the year 1963, although he claims to have twenty vehicles for sale at the present time.

Question No. 4:

Under Section 27, would the Board be justified in refusing to give him used car plates because of his inactivity as a dealer, on the grounds that he is not a manufacturer or dealer in motor vehicles, as enumerated in the first sentence of Section 26?

Answer No. 4:

See Reasons for answer.

Reasons No. 4:

Under R. S., ch. 22, section 27:

> "The board, after examining an application for dealer or transporter registration plates, may order the Secretary of State not to issue same stating the reason therefor."

The authority of the board to issue motor vehicle dealer registration plates is found in section 26 which has been quoted extensively in this opinion. Now we look at another angle of this section. The board in order to issue such plates must be satisfied of three things:

(1) " . . . that the applicant maintains a permanent place of business in the State where said applicant *will be engaged in the business of buying and selling of motor vehicles*, and

(2) " . . . with the other facts stated in the application, and

(3) " . . . that the applicant meets the minimum standards herein set forth." (Emphasis supplied).

It is one of the functions of the board to examine the evidence in each case to satisfy itself as to whether or not the applicant "*will be engaged* in the business of buying and selling of motor vehicles."

It should be noted, from the statement of facts, that although the applicant has sold no motor vehicles in 1963, he claims to have 20 vehicles *for sale* at the present time. The board is not bound by the activity, or lack of activity, in the past. The board must determine if the applicant "*will be engaged* in the business of buying and selling of motor vehicles." This means that the board shall be satisfied that he will buy and sell motor vehicles in the coming year. It should examine all the evidence in making its determination.

At the present time there is evidence that he has bought 20 motor vehicles. Presumably he will sell some or all in the future.

Further, if the board is satisfied that *all three conditions* are met by the applicant it "*shall* order the Secretary of State to issue a certificate of registration." Thus, issuance is mandatory when all statutory conditions are met to the satisfaction of the board. When the board cannot order issuance of a certificate of registration, it must order the Secretary of State not to issue the same.

GEORGE C. WEST
Deputy Attorney General

January 16, 1964

To: David Garceau, Commissioner, Banks and Banking

Re: Sales of Negotiable Checks and Money Orders by Agents of Banks

Facts:

The 101st Legislature enacted P. L. 1963, chapter 176, "An Act Relating to Sale of Negotiable Checks and Money Orders." This act exempted "financial institutions" and "national banking associations" from its provisions.

One of the exempted classes proposes to sell negotiable checks and money orders through agents. This bank and places of business enter into an "agency agreement" whereby the agent sells the negotiable checks and money orders for the bank as principal. Proper safeguards for the protection of the public appear to be made in the "agency agreement."

Question:

May a store or place of business, as an agent of a financial institution or a national bank, sell or issue registered checks or money orders without a license?

Answer:

Yes.

Reason:

A portion of P. L. 1963, chapter 176, which enacted chapter 59, section 199-A, states:

> "Financial institutions as defined by section 1-B, subsection IV, and national banking associations may engage directly in the business of selling, issuing or registering checks or money orders. No person other than the foregoing shall engage in such business directly or indirectly unless he files with the commissioner on or before January 15th in each year a sworn statement setting forth his name and address, the names and addresses of his agents, other than a financial institution or national banking association . . . . "

The above-quoted portion of the statutes clearly sets forth the exemption of financial institutions and national banking associations from the purview of the law. It even allows such organizations to be an agent without licensing.

The wording of the statute can be interpreted in no other way than that such organizations may have agents selling or issuing registered checks or money orders. It follows, logically, that all checks or money orders issued by such agents should clearly show on their face that they are issued by an agent of the financial institution or national banking association. This does not preclude the agent from having his name and address on the instrument but does mean that the relationship must be clearly shown.

It should be further pointed out that any advertising by the agent should clearly indicate his relationship to the financial institution or national banking association.

We cannot legislate, nor interpret into the statute, provisions not included by the legislature. Neither can you, as commissioner, require anyone to do anything not required by the law. It would make enforcement of the statute more simple if it did require all agents to be listed in the records of the Banking Department.

Perhaps an agreement can be worked out with the financial institutions or national banking associations to keep you informed of their agents and any changes.

GEORGE C. WEST
Deputy Attorney General

January 17, 1964

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

Re: Dissolution of Community School District; Effective Date

Your memorandum of January 9, 1964 is acknowledged.

Facts:

The 101st Legislature enacted Chapter 78 of the Private and Special Laws of 1963 to authorize certain enumerated municipalities comprising a community school district to form into a school administrative district. The Act authorized the towns "to proceed pursuant to section 111-F to 111-U-1 to form a school administrative district providing that the municipalities, upon voting to form said district, shall vote to assume the entire outstanding indebtedness of said Community School District #1." Further language of the Act is as follows:

> "Upon formation of the School Administrative District, said Community School District #1 shall cease to have any responsibility for the education of the pupils of said Community School District #1 and the board of trustees shall continue to function only in that capacity necessary to retire any outstanding bonds or notes of the Community School District #1."

Question:

Whether Community School District #1 ceased to exist as a community school district upon the formation of the School Administrative District, or remains in existence until the date the outstanding bonds of the Community School District are retired?

Answer:

Although the creation of the school administrative district relieved the community school district of the responsibility for the education of certain school children, the community school district continues in existence as an entity "only in that capacity necessary to retire any outstanding bonds or notes."

Reason:

Our Legislature, in Chapter 78 of the 1963 Private and Special Laws, authorized certain of the towns comprising Community School District #1 "to proceed pursuant to Section 111-F to 111-U-1 to form a School Administrative District." One of the district towns that did not favor reorganization was directed (by the Act) to "assume full responsibility for the education of its secondary pupils." The mandate of the Legislature that the community school district "shall cease to have any responsibility for the education of the pupils" in the district; that the school administrative district shall "assume the entire outstanding indebtedness" of the community school district; that "the board of trustees shall continue to function *only* in that capacity necessary to retire any outstanding *bonds* or *notes*" of the community school district, evidences an intention that the school administrative district (upon its creation) replace the community school district. (Emphasis supplied.) Note that the trustees continue to function if only for the purpose of retiring bonds or notes notwithstanding that all of the obligations of the community school district are assumed by the school administrative district.

Although the community school district be relieved of certain obligations relative to the education of students the district continues to function in a limited fashion; to liquidate the bonds and notes. *R. S., c. 41*, § *112* ("a community school district which shall be a body politic and corporate"); § *115* ("bonds and notes of the district") § *121* (no withdrawal of towns permitted when outstanding indebtedness of district exists).

JOHN W. BENOIT
Assistant Attorney General

January 28, 1964

To: Ernest H. Johnson, State Tax Assessor

Re: Sales Tax Exemption — Boy Scouts of America

I received your memorandum of January 17, 1964, enclosing material from the Pine Tree Council, Inc. of the Boy Scouts of America in which the question is raised whether the Boy Scouts of America is entitled to exemption on purchases insofar as the Maine sales and use tax is concerned.

You state that some years ago it was ruled that the American Red Cross was entitled to exemption as an instrumentality of the Federal Government on the basis of its Congressional charter.

The attached material contains a letter from Robert W. Cameron, Assistant Scout Executive of the Pine Tree Council, Inc. in which he seeks interpretation of the Boy Scouts' charter and bylaws which he enclosed with the hope that they may be exempted from the State sales and use tax act law.

I have examined the constitution and bylaws of the Boy Scouts of America which you submitted with the material which Mr. Cameron mailed you and also the pamphlet on the procurement of donated surplus military personal property by the Boy Scouts of America and I have also examined the charter and Act of Congress of the American Red Cross which is tax exempt as an instrumentality of the Federal Government.

This was decided by the Supreme Court of the United States in *Standard Oil Company of California v. Johnson*, 316 U. S. 481, and the Act of Congress was passed to act in matters of relief under the Treaty of Geneva of August 22, 1864, makes the American National Red Cross an instrumentality of the United States and is exempt from the Maine sales and use tax under section 10, subsection II, Chapter 17, Revised Statutes 1954.

The American National Red Cross headquarters are located in Washington, D. C. and the United States Government, by Act of Congress, made available the land and buildings but they remain the property of the United States and the United States audits its annual accounts.

The Boy Scouts of America is a private corporation and the principal office is located in New Brunswick, New Jersey.

True, the Charter was granted by Act of Congress in 1916 by private incorporators and in our opinion it is not an agency or instrumentality of the Federal Government and is not entitled to exemption under the Maine Sales and Use Tax Act and the local corporations, namely Pine Tree Council,

Inc. and Katahdin Council, Inc., are entitled to the same treatment as the parent corporation.

Where a corporation claims immunity from the common burdens of taxation, which rest equally upon all, such corporation must bring itself clearly within the exemption; and the language relied upon as creating such exemption must be strictly construed.

RALPH W. FARRIS
Assistant Attorney General

January 29, 1964

To: Mrs. Alice B. Mann, Secretary, State Board of Barbers

Re: Lapsed Barber Licenses

Facts:

There are within the state some persons who have, in the past, been licensed as barbers. For one reason or another they have not annually renewed their license. In particular, some have not been licensed in the year 1963.

Question No. 1:

Does a person who has failed to renew his barber license in any year, including 1963, have to pass a regular examination in order to have a license?

Answer No. 1:

Yes.

Reason:

The 101st legislature enacted P. L. 1963, c. 102, which replaced the last paragraph of c. 25, § 230-K, to read:

> "Any registered barber who fails in any year to renew certificate to practice barbering shall successfully pass a regular examination conducted by the Board of Barbers before a new certificate may be issued."

This new enactment became effective September 21, 1963. The licensing year is the calendar year, *c. 25, § 230-K.* Hence, any barber who had not renewed his license prior to December 31, 1963, must successfully pass a regular examination before being granted a license for 1964. The same would be true in any succeeding year.

Question No. 2 and 3:

If a barber has failed to renew his license in any year would he be eligible for a permit to practice barbering until the next examination?

If so, would he be required to work under the supervision of a master barber while using this permit?

Answer No. 2 and 3:

Yes.

Reason:

Revised Statutes, c. 25, § 230-J, in the second paragraph provides in part:

> "If any applicant to practice barbering . . . qualifies for examination, the board may issue to such applicant, until the

results of the applicant's examination have been given, a permit to practice barbering under the supervision of a person registered to practice barbering . . . . "

As stated in § 230-K, a barber who fails to renew his license in any year must take an examination. Hence, he is qualified for examination and, if he satisfies the residence requirement, he may be issued a permit which is good until the results of the examination have been given.

There is no expression such as "master barber" in the statute. Hence, it is assumed that it is meant to include a "person registered to practice barbering." The formerly licensed barber who operates under the permit authorized by § 230-J must operate under the supervision of "a person registered to practice barbering."

GEORGE C. WEST
Deputy Attorney General

February 4, 1964

To: Philip R. Gingrow, Director, Banks and Banking

Re: Validity of Retail Installment Contracts Subject to MVSF Act Entered Into by Unlicensed Retail Sellers

Facts:

During the examination of a trust company recently by our examiners it was observed that the institution had purchased retail installment contracts, the subject matter of which was motor vehicles, from an unlicensed retail seller.

Question:

Does the purchase of a motor vehicle retail installment contract by a sales finance company from an unlicensed retail seller void the contract?

Answer:

No.

Reason:

R. S. 1954, ch. 59, sections 249 to 260, known as The Motor Vehicle Sales Finance Act sets up a licensing procedure for certain sales finance companies and retail seller. Banks, trust companies and industrial banks, though defined as sales finance companies and subject to sections 249 to 260, are not required to be licensed.

Any sales finance company or retail seller who engages in their respective businesses without a license may be punished by a fine not exceeding $500, section 258, I.

In the langage of the court in *Burbank v. McDuffee*, 65 Me. 135, "It (the statute) does not make the sale void, unless by implication, and that a forced one. But forfeitures and the confiscation of honest debts are not to be implied. They must be the results of express legislation, and not a matter of inference."

Hence, it follows that the contract is valid, even though the retail seller may be fined for failing to have a license.

Note:

Section 250 I, requires a retail seller to be licensed.

Section 250 II, requires him to file application.
Section 250 III, specifies his license fee.
Section 250 IV, requires a license to be conspicuously displayed.
Section 250 V, provides for the Bank Commissioner to issue a license to "a sales finance company." No mention is made of issuing a license to a retail seller.

GEORGE C. WEST
Deputy Attorney General

February 5, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Responsibility for Education of Trainable Children

Your memorandum of January 29, 1964 is acknowledged.

Facts:

The 1954 Revised Statutes, Chapter 41, Sections 207-A to 207-I, inclusive, exist for the expressed purpose of providing educational opportunities for handicapped or exceptional children.

> "Sec. 207-A. Purpose. It is declared to be the policy of the state to provide, within practical limits, equal educational opportunities for all children in Maine able to benefit from an instructional program approved by the state board of education. The purpose of sections 207-A to 207-I is to provide educational facilities, services and equipment for all handicapped or exceptional children below 21 years of age who cannot be adequately taught with safety and benefit in the regular public school classes of normal children or who can attend regular classes beneficially if special services are provided. Special classes in public schools are to include educable children only."

The responsibility of administrative units (hereinafter called 'units') in this area is delineated as follows:

> "Sec. 207-F. Responsibility of administrative units. Every administrative unit is responsible for appropriating sufficient funds to provide at least the same per capita expenditure for the education of handicapped or exceptional children as is provided for the education of normal children. This appropriation is to be expended for programs of special education at either the elementary or secondary level under the supervision of the superintending school committee or school directors or for other programs approved by the Commissioner."

A number of handicapped and exceptional children who reside in a particular unit are attending a special school sponsored and operated by a corporation located outside the unit's school system; which special school in no way is connected with any public school system. The Department of Education has approved the programs of the school being attended by the pupils. Although the school has billed the unit pursuant to Section 207-F (quoted above), the unit has refused payment; and has claimed that its responsibility is limited to educable children and that the special school is not under its supervision.

Question:

Whether the unit is liable to the school for payment of the local per capita cost of these pupils residing in the unit and attending the school?

Answer:

Yes.

Reason:

The unit's refusal to pay is based upon two reasons; (1) Its responsibility is limited to educable children; and (2) The school is not under the unit's supervision.

Reference to "educable children" is found in section 207-A: "Special classes in public schools are to include educable children only." This reference cannot be taken as a restriction upon an administrative unit's responsibility delineated in Section 207-F.

The program of the school has been approved by the Commissioner; and such approved program is but one of the means made available to handicapped and exceptional children through which educational facilities are realized. Section 207-F.

That the Legislature did not intend to leave the education of handicapped or exceptional children entirely with administrative units is amply expressed in Sections 207-A to 207-I. The Legislature acknowledged the possibility that administrative units could not cope with Legislative directive in Section 207-A; and, thus, authorized the Commissioner to approve programs existing apart from a unit's school system. Such programs would be available to children of several administrative units; thereby assuring a sufficient attendance as to make more practicable the existence of the program.

The unit has failed to show a reason why it should not remit to the school those moneys for which every administrative unit is held accountable pursuant to Section 207-F.

JOHN W. BENOIT
Assistant Attorney General

February 10, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Purchase of Liability Insurance by Town for Protection of Teachers; Use of Public Funds.

Your memorandum of January 29, 1964 is acknowledged.

Facts:

Your memorandum states that this Office, on two occasions (October 16, 1946; September 1, 1949), rendered opinions to your Department outlining the subject of the liability of school officials and teachers. You state that these opinions indicate that a teacher and public official may be held liable for acts of negligence and also for negligent inaction. You indicate you are mindful of *Brooks v. Jacobs*, 139 Me. 371, and of its holding that the relationship of teachers to their pupils is one of "in loco parentis" and that a school teacher is liable for personal acts of misfeasance or non-feasance if he fails to discharge a duty owed to an injured person.

Some Maine communities purchase insurance covering teachers and officials; and such expense is later included with school expenditures reported to the State for subsidy purposes.

Question:

Whether the State is authorized to expend subsidy to administrative units upon the cost of liability insurance acquired by the units for the protection of their teachers?

Answer:

No.

Reason:

The State expends subsidy pursuant to R. S., c. 41, § 237-A to 237-H, as amended. The plan is denoted a "foundation program"; and such program is defined in § 237-C. That section does not authorize the payment of subsidy by the State for insurance expense of an administrative unit incurred by the unit for the protection of its teachers.

Please note our opinion forwarded to your Department January 16, 1962 stating, among other things, that:

> "An amendment to Section 237-A of Chapter 41, R. S. 1954, would be necessary to include such annuity premiums as part of the foundation program for subsidy."

JOHN W. BENOIT
Assistant Attorney General

February 13, 1964

To: Wallace E. Brown, Deputy Secretary of State, Automobile Division

Re: Conviction of Motor Vehicle Laws by Plea of Nolo Contendere

Facts:

A person was charged with a violation of a motor vehicle operation law. He appeared in a municipal court and pleaded "Nolo Contendere." The judge filed the case upon payment of costs assessed at $10. The Secretary of State's office has assessed points based on a conviction and has given notice of hearing to suspend his license for excess points. The person protests that he was not "convicted" of a violation.

Question:

Does the entering of a plea of nolo contendere and its acceptance by the judge constitute a conviction?

Answer:

Yes.

Reasons:

Our court has stated in a number of cases that a plea of nolo contendere has the same effect as a plea of "guilty." In *State v. Cross*, 34 Me. 594, the court said:

> "No person can be punished for crime, except upon the verdict of a jury, or upon a plea of guilty or of nolo contendere."

Probably the best and most clear statement of the effect of this plea is set forth in *State v. Herlihy*, 102 Me. 310.

> "The plea of nolo contendere is an implied confession of the offense charged, the judgment of conviction follows that plea as well as the plea of guilty. And it was not necessary that the court should adjudge that the party was guilty, for that follows by necessary legal inference from the implied confession. *Commonwealth v. Horton,* 9 Pick. 206. A plea of nolo contendere, when accepted by the court, is, in its effect upon the case, equivalent to a plea of guilty. . . . If the plea is accepted it is not necessary or proper that the court should adjudge the party to be guilty, for that follows as a legal inference from the implied confession." *Commonwealth v. Ingersoll,* 145 Mass. 381.

The fact that the judge took some action following the plea is clear indication that he accepted the plea. It was not necessary that he make a formal finding of "guilty" or that he assess a large fine or a jail sentence.

The offering of the plea and its acceptance by the judge constituted a conviction. Hence the action of Secretary of State's office was proper.

It is very obvious that a plea of "guilty" will produce the same results.

GEORGE C. WEST
Deputy Attorney General

February 24, 1964

To: Frank T. Kelly, Executive Secretary, Board of Hairdressers

Re: Notice of Examination for Instructor of Hairdressing

Facts:

An applicant for an examination as an instructor was given an examination without the 10-day notice as stated in chapter 25, section 224. Apparently two members of the board were in agreement about giving the examination. The third member was not in accord.

Question:

Must an applicant for any instructor's examination be given the 10-day notice stated in chapter 25, section 224?

Answer:

No.

Opinion:

The purpose of a notice of the holding of an examination is to apprise all persons interested of the time and place of holding such examination. It is in the law to prevent the board from holding surprise examinations and preventing some applicants from participating because of no knowledge of the holding of an examination.

However, chapter 25, section 224 applies only to examinations of applicants for registration as hairdressers. It does not apply to examinations for instructors' certificates of registration.

Section 222 in the 4th paragraph provides in the first sentence:

> "The board shall make rules and regulations for the examination of applicants for certificates of registration as instructors of hairdressing and beauty culture."

The legislature, knowing that applicants for registration as instructors would not be as numerous as applicants for registration as hairdressers, has left the matter of examinations up to the rule-making power of the board. The board may make reasonable rules.

Specifically as to notice, the board is only required to be sure that the applicants have sufficient notice of the examination to allow them to be ready and present. The board cannot raise the question as to validity of a notice. Only an applicant can do that.

GEORGE C. WEST
Deputy Attorney General

February 25, 1964

To: Ernest H. Johnson, State Tax Assessor

Re: Sales Tax Exemption to Out-of-State Educational Institutions and to Municipalities Outside Maine

Your memorandum of February 10, 1964 poses two questions.

Question No. 1:

You ask whether subsection II of section 10 of Chapter 17 exempting "Sales to the State or any political subdivision . . . ." exempts only sales to the State of Maine or political subdivision of the State of Maine and whether sales to other states or municipalities are excluded.

Answer:

The answer is yes.

Reasons:

The words "in this State" or "in the State" which are similar in import to the words "the State" are defined in section 2 of the Sales and Use Tax Law to refer specifically to the State of Maine.

It is significant that the legislature used the words "the State" in making specific reference to the entity entitled to the exemption. This phrase indicates an intent to exempt a particular state. Had the legislature intended otherwise it doubtless would have used the word "states" or other similar words to refer to other than a particular state.

The provision indicates an intent to exempt sales to the State of Maine or political subdivisions thereof.

Support for this result is found in Regulation No. 2 of the Maine Sales and Use Tax Law which provides:

> "Sales made directly to the Federal Government, *this State or any political subdivision of this State*, or to any agency of the above, are exempt from sales tax. In addition to the Federal Government, the State of Maine, and any county, city, town or plantation in the State of Maine, this exemption covers sales to . . . . " (Emphasis supplied).

I conclude therefore that the exemption only applies to the State of Maine or to political subdivisions of the State of Maine.

Question No. 2:

You also ask whether subsection XVI of section 10 of Chapter 17 which exempts sales to certain educational institutions, is restricted to institutions existing or incorporated in Maine.

Answer:

The answer is no.

Reasons:

That subsection exempts:

> "Sales to . . . schools . . . . 'Schools' mean incorporated non-stock educational institutions, including institutions empowered to confer educational literary or academic degrees, which have a regular faculty, curriculum and organized body of pupils in attendance throughout the usual school year, which keep and furnish to students and others records required and accepted for entrance to schools of secondary, collegiate or graduate rank, no part of the net earnings of which inures to the benefit of any individual." *R. S. 1954, Ch. 17, sec. 10, XVI.*

There is no express language limiting the operation of this language to Maine "schools."

The question really is whether there is an inherent limitation of this sort, restricting the operation of the exemption provision to Maine "schools."

Generally speaking taxation is the rule and exemption the exception, (see *157 A. L. R. 806, 807*) the presumption being against any surrender of taxing power unless the legislature has indicated a deliberate purpose to do so. See *1 A. L. R. 2d 466.*

As to the particular problem of whether a nonresident entity comes within an exemption provision in a taxing statute when there is no express provision therefor, the courts are divided.

> "Where tax exemption laws affecting charitable and benevolent institutions contain no express provision as to whether or not foreign corporations shall be exempt it has been both affirmed and denied that foreign charitable corporations or institutions fall within the benefit of exemption laws." *84 C. J. S., sec. 282, p. 539.*

Some courts, e. g., Kansas, in the case of *Morgan v. Atchison, Topeka & Santa Fe Railway Co.* (1924), 225 P. 1029, have said:

> "Taxes must be raised for the support and conduct of the government. Exemption to charitable, educational, and religious organizations is bottomed upon the fact that they render service to the state, for which reason they are relieved of certain burdens of taxation. The effect of an exemption is equivalent to an appropriation. It cannot be said to have been the intent of the Legislature to make appropriation for the benefit or maintenance of foreign charities which, at best, have a remote chance only of benefiting the citizens of this state." *Morgan v. Atchison, Topeka & Santa Fe Railway Co.* (Kan. 1924) 225, p. 1029.

There is no Maine law strictly in point. The case of *Everett v. Herrin*, 46 Me. 357 (1859) is, however, of some help.

That case involved the question of whether or not a nonresident "debtor" could avail himself of the benefit of a statute exempting certain personal chattels from attachment.

The court said in holding the exemption applicable to nonresidents as well as residents:

> "The statute exempts certain property of the 'debtor' and does not limit the exemption to the property of a citizen . . . . " *Everett v. Herrin*, supra.

Clear legislative intent to limit exemptions can be found in other sections of the Sales and Use Tax Law (see discussion above re exemption of municipalities, etc.) and in other Maine statutes.

Such an intent is spelled out in R. S. Chapter 91-A, section 10, II. These provisions are property tax provisions but are nonetheless expressive of clear legislative intent providing:

> "The real estate and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions *incorporated by this State*, and none of these shall be deprived of the right of exemption by reason of the source from which its funds are derived or by reason of limitation of the classes of persons for whose benefit such funds are applied . . . . No such institution shall be entitled to tax exemption if it is in fact conducted or operated principally *for the benefit of persons who are not residents of Maine*. . . . " (Emphasis supplied).

Noting that there is no restrictive language in the exemption, the cases above cited, the probable impact of the above cited Maine case and other statutory expressions of legislative intent, I conclude that the exemption applies as well to "schools" not existing or incorporated in Maine.

JON R. DOYLE
Assistant Attorney General

March 17, 1964

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

Re: Purchase of Assets of Small Loan Company by Industrial Bank

Facts:

A recently organized industrial bank seeks approval of the Department of Banks and Banking to purchase the assets of a small loan company licensed and operating under R. S., c. 59, secs. 210-227, as amended. The small loan company and the industrial bank are controlled by the same corporation. It is the intent of the industrial bank, if purchase of the assets is allowed, to notify the borrowers of the small loan company of the purchase and to encourage them to refinance their loans with the industrial bank; and to segregate and then liquidate, as rapidly as possible, the existing loans of the small loan company.

Question No. 1:

Can purchase of the assets of the small loan company be made by the industrial bank?

Answer:

Yes, with qualifications.

Opinion No. 1:

Pertinent sections and portions of sections of R. S., c. 59 are quoted:

> "Sec. 202. Government — Except as herein otherwise provided, such corporations shall be governed and conducted in the manner

provided by law for corporations, generally insofar as not inconsistent with the provisions of sections 200 to 208, inclusive."

> "Sec. 205. Powers — In addition to the powers conferred upon corporations by the general corporation law, . . . "

Reading these sections together it is apparent that an industrial bank has general corporate powers and may properly exercise these powers insofar as they are not inconsistent with the provisions of R. S., c. 59, sections 200 to 208, inclusive.

R. S., c. 53, sec. 19, which is one of the sections dealing with the powers conferred upon corporations by the general corporate law, reads in part:

> "Any corporation may purchase mines manufactories and other property necessary for its business . . . "

The purchase of assets necessary for the industrial bank's business is legally authorized, subject of course to consistency with sections 200 to 208, inclusive.

R. S., c. 59, secs. 210 to 227, inclusive, deal with the licensing and operation of small loan companies. Section 225 reads as follows:

> "Exceptions. — Sections 210 to 227, inclusive, *shall not apply to* any person, copartnership or corporation doing business under any law of this State or of the United States relating to national banks, savings banks, *industrial banks*, trust companies or loan and building associations." (Emphasis added).

Any restrictions on sale of the assets by the small loan company would appear not to apply to those specifically excepted by c. 59, sec. 225.

Question No. 2:

When an industrial bank purchases the assets of a small loan company what limitations as to the assets purchased and their use must be made, including the rate of interest that may be charged?

Opinion No. 2:

As noted in Opinion No. 1, the purchase of the assets cannot be inconsistent with c. 59, sections 200 to 208, inclusive. It is essential that the assets which are purchased are not used in a manner contrary to these sections.

The corporate powers of an industrial bank are set out in R. S. 1954, c. 59, sec. 205. This section reads in part:

> "Sec. 205. Powers — In addition to the powers conferred upon corporations by the general corporations laws every industrial bank shall have the following powers:
>
> . . . .
>
> V. To purchase, invest in, hold and sell such notes, bonds and securities as are legal for investments of deposits in savings banks.
>
> . . . . "

Under subsection V quoted above a very definite limitation is placed upon notes which may be purchased by industrial banks. These notes must be legal investments for savings banks.

R. S., c. 59, sec. 19-I, as amended, provides the legal authorization for the investment of funds of savings banks in securities. Therefore, this section also establishes the legal authorization for investment of funds of industrial banks in securities as provided by R. S. 1954, c. 59, sec. 205, sub-

section V. Only in subsections XVIII and XIX of R. S. 1954, c. 59, sec. 19-I, as amended, does there appear to be some authorization for investment in the notes of a small loan company. These subsections read as follows:

> "XVIII. Securities approved by bank commissioners. In such securities as may be approved as suitable investments for savings banks by the bank commissioner provided he has received a written recommendation of such securities from a special committee of the savings banks association of Maine appointed or elected for such purpose.
>
> Not more than 5% of the deposits of a bank shall be invested in securities coming within the coverage of this subsection."
>
> "XIX. Other securities. In such other securities as the trustees of a bank may consider to be sound prudent investments.
>
> Not more than 5% of the deposits of a bank shall be invested in securities within the coverage of this subsection."

All of the provisions of the above quoted subsections must be complied with including the percentage restriction as to the amount which may be invested.

Provided the investment is a legal investment as authorized by c. 59, sec. 205 when read in conjunction with c. 59, sec. 19-I, as amended, there are still further restrictions on the purchase of the notes of the small loan company.

Chapter 59, section 205, reads in part:

> "Powers. — In addition to the powers conferred upon corporations by the general corporation law, every industrial bank shall have the following powers:
>
> > "I. To borrow money, to lend money and discount notes and bills of exchange, including trade acceptances, and to deduct interest thereon in advance at a rate no greater than 12% annually; . . .
> >
> > . . . . "

There is stated in the above quoted section a definite limitation on the rate of interest that may be charged on loans by industrial banks.

The amount of interest on loans which can be legally charged by a properly licensed small loan company is found in c. 59, sec. 217 which reads in part:

> "Amount of loan and rate of interest. — Every person, copartnership and corporation licensed under the provisions of sections 210 to 227, inclusive, may loan any sum of money, goods or choses in action not exceeding in amount or value the sum of $2,500, any lower limitation of amount in its charter notwithstanding, and may charge, contract for and receive thereon interest at a rate not to exceed 3% per month on that part of the unpaid principal balance of any loan not in excess of $150, 2½% per month on that part of the unpaid principal balance in excess of $150, but not exceeding $300, and 1½% per month on any remainder of such unpaid principal balance; provided, however, that a minimum charge of not exceeding 25c shall be allowable in all cases.
>
> . . . . "

From a reading of this section it is clear that a small loan company has the legal authority to make loans exceeding a 12% annual rate. It is fair to assume that the existing loans of the small loan company in question exceed the 12% annual rate limitation placed on industrial banks. Notwithstanding that the notice is given to the borrowers of the small loan company and encouragement given to them to refinance the loans with the industrial bank, and even though those loans which are not refinanced are segregated and liquidated as rapidly as possible, the rate of interest received by the industrial banks on these segregated assets undoubtedly would exceed the 12% annual limitation established by c. 59, sec. 205, part 1 and would be manifestly in conflict with the power given to industrial banks.

When those assets which represent the existing small loans are sold to the industrial bank, said bank must immediately reduce interest charges so as not to receive interest payments that exceed the statutory limitation of 12% per annum.

It is also noted that c. 59, sec. 206-II states:

> "No industrial bank shall:
>
> . . . .
>
> "II. Make any loans for a longer period than two years from the date thereof, except in the case of loans that are eligible for insurance under the National Housing Act and for the insurance of which under that Act, seasonable application is made pursuant to the provisions of Title I of the National Housing Act.
>
> . . . ."

This is an additional limitation on the assets which may be purchased. This section is construed to mean that any existing small loan which has more than two years to run cannot be purchased by the industrial bank unless it meets the pertinent requirements of the National Housing Act.

JEROME S. MATUS
Assistant Attorney General

March 18, 1964

To: L. H. Stanley, Director, Civil Defense & Public Safety

Re: County Commissioners' Responsibility for Civil Defense and Public Safety in Unorganized Territories

Facts:

The Civil Defense Director for Oxford County has asked for a clarification of that portion of R. S. 1954, c. 12, sec. 9, as amended, which states "counties shall have concurrent responsibilities for civil defense and public safety in the unorganized territories within the respective counties."

Question No. 1:

Do county commissioners have full responsibility for civil defense and public safety in unorganized territories pursuant to R. S. 1954, c. 12, sec. 9, as amended?

Answer No. 1:

Yes, but not exclusive and final responsibility.

Opinion No. 1:

The term "concurrent" in c. 12, sec. 9 refers to the responsibilities of the State of Maine and its political subdivision, a county, within whose borders lies an unorganized territory.

The term "concurrent" does not refer to responsibilities of a political subdivision other than a county.

> "Unorganized towns have no officers such as selectmen or assessors who would be responsible for such organization and operation of civil defense programs. No doubt a properly organized county program would incorporate within its framework programs in relation to unorganized towns." *Attorney General's Opinion,* July 2, 1958.

The word "concurrent" in its literal or primary sense means running together or running with. *15 C. J. S. 805.*

Our Supreme Judicial Court has said:

> "The word 'concurrent' does not mean exclusive and final." *Norris v. Moody, 120 Me. 151, 153 (1921).*

Chapter 12, section 9, reads in part:

> "Local organization for civil defense and public safety. — Each political subdivision of this State is authorized to establish and *shall establish* a local organization for civil defense and public safety in accordance with the State Civil defense and public safety plan and program. . . . " (Emphasis added).

The words "shall establish" in the above-quoted section is a command by the legislature. The political subdivision must organize a local organization in accord with the state civil defense and public safety plan and program.

The responsibility of the political subdivision, in this case a county, is complete. The responsibility runs with and is shared by the State. If the State should determine that changes should be made in the civil defense organization in unorganized territories functioning of its civil defenses and public safety plan and program, the county as a political subdivision must conform to such changes. The State's responsibility is concurrent with that of the county and the State's authority is final.

County Commissioners are the proper officials to exercise the concurrent responsibility of the county. They are the executive heads of the governing body of the political subdivision known as a county. R. S. 1954, c. 12, sec. 2, states in part:

> "Policy and purpose. — The purpose of the provisions of this chapter is to create a state civil defense and public safety agency, and to authorize the creation of local organizations for civil defense and public safety in the political subdivisions of the State; to confer upon the Governor and upon *the executive heads of governing bodies of the political subdivisions* of the State the emergency powers provided herein; . . . " (Emphasis supplied).

The general rule as to authority of county commissioners is stated in *Watts Detective Agency Inc. v. Inhabitants of County of Sagadahoc,* 137 Me. 233 - 238 (1941).

> "Except as otherwise provided by law, a board of county com-

missioners or county supervisors ordinarily exercises the corporate powers of the county. It is in an enlarged sense the representative and guardian of the county, having the management and control of its property and financial interests, and having original and exclusive jurisdiction *over all matters pertaining to county affairs.*" (Emphasis supplied).

Question No. 2:

Do the County Commissioners have authority to authorize the duly appointed County Civil Defense Director to go into unorganized territories, and have the County Civil Defense Director

a. appoint Civil Defense Directors for unorganized territories within the county;
b. recommend the appointment by the County Commissioner of Civil Defense Directors for unorganized territories within the county; and
c. supervise the Civil Defense Directors for the unorganized territories within the county?

Answer No. 2:

a. No.
b. Yes.
c. Yes.

Opinion No. 2:

The full responsibility for appointing a director of a local organization must lie in the executive officers of governing body of the political subdivision.

The pertinent portion of R. S., c. 12, sec. 9, is as follows:

"Each local organization for civil defense and public safety shall have a director *who shall be appointed by the executive officers or governing body of the political subdivision*; and who shall have direct responsibility for the organization for civil defense and public safety, *subject to the direction and control of such executive officer or governing body.*" (Emphasis supplied).

Since the county commissioners are the executive heads of the political subdivision, known as a county, these are the sole persons who shall appoint heads of local organizations. The appointing of a Civil Defense Director for an unorganized territory is not a ministerial act which can be delegated to the County Civil Defense Director.

While the full responsibility lies with the County Commissioners to make the appointment of a Civil Defense Director for an unorganized territory, the County Civil Defense Director if requested by the County Commissioner certainly has the duty to recommend the individual who in his opinion can best fill the position.

Since the County Civil Defense Director and a Civil Defense Director for an unorganized territory are local directors, they are equally subject to the direction and control of the County Commissioners. If the Commissioners believe that for the proper functioning of civil defense and public safety programs the County Civil Defense Director should supervise and train the Civil Defense Director for an unorganized territory, the County Commissioners have the authority to so direct to the extent which they feel is necessary.

JEROME S. MATUS

Assistant Attorney General

March 24, 1964

To: Captain R. E. Staples, State Police

Re: Weight violations by dump trucks, tractor dump trucks and transit-mix concrete trucks.

Facts:

The 101st Legislature amended Revised Statutes, c. 22, § 111-A by adding the words "or dump trucks, tractor dump trucks or transit-mix concrete trucks carrying highway construction materials" in the first sentence. A question has arisen concerning the interpretation of this new provision.

Question:

Does section 111-A require that highway construction materials be transported to a highway project for the granted tolerance to be effective?

Answer:

No.

Opinion:

It is necessary to ascertain legislative intent. That is the basis for proper interpretation of statutes. In this particular case the legislative history of the 1963 amendment shows clearly the intent of the legislature.

The amendment to Revised Statutes, c. 22, § 111-A, was introduced in Legislative Document No. 895, "An Act Relating to Weight Tolerances of Vehicles Loaded with Construction Materials." It read, in the pertinent part:

> "The operation on the highways of any vehicle loaded entirely with firewood, pulpwood, logs, ~~or~~ bolts *or construction materials* shall not, etc."

This Legislative Document was referred to the Committee on Highways. That Committee reported the bill out in a New Draft, Legislative Document No. 1558, with the following wording:

> "The operation on the highways of any vehicle loaded entirely with firewood, pulpwood, logs or bolts *and highway construction materials carried in dump trucks, tractor dump trucks or transit-mix concrete trucks* shall not, etc."

On the floor of the House another amendment was offered, being House Amendment "A." This amendment was accepted and became the language finally passed as P. L. 1963, chapter 313:

> "The operation on the highways of any vehicle loaded entirely with firewood, pulpwood, logs or bolts *or dump trucks, tractor dump trucks or transit-mix concrete trucks carrying highway construction materials* shall not, etc."

Thus, we see the whole picture of what happened in the legislature concerning this statute. Incidentally, it should be noted that the title of the bill was never changed. This fact is conclusive of nothing, but is noted as possibly reflecting legislative thinking, in the drafting.

Clearly, the initial bill sought to expand the materials eligible for weight tolerance when loaded on "any vehicle." Had the bill as introduced been accepted then "construction materials" loaded on "any vehicle" would have been eligible for the 10% tolerance. This would have been consistent with the latter portion of section 109 wherein it speaks of "3-axle trucks with brakes on the wheels of all axles hauling *construction materials* . . . . "

However, the legislature was not willing to grant the weight tolerance to "any vehicle" loaded with "*construction materials.*" The legislature limited the tolerance to "*dump trucks, tractor dump trucks or transit-mix concrete trucks carrying highway construction materials.*"

The place to which these "*highway construction materials*" are being carried is of no importance. If one of the three named types of truck is carrying "*highway construction materials*" it is entitled to the tolerance stated in section 111-A.

See section 16, III-B, fifth and seventh paragraphs for wording showing legislative intent as to place of operation.

GEORGE C. WEST
Deputy Attorney General

March 25, 1964

To: Colonel Robert Marx, Chief of State Police

Re: Possession of New Hampshire Sweepstakes Acknowledgment of Purchase

Facts:

The State of New Hampshire has legalized a sweepstakes based upon the outcome of a certain horse race. All tickets must be purchased in the State of New Hampshire. The purchaser fills out a form contained in a machine, with his name and address. He receives from the machine a piece of paper with his name and address as he printed it on the original. Below the purchaser's name and address appears the following statement:

> "This is only an acknowledgment of purchase. It need not be retained or presented for payment. Prizes will be awarded on the basis of the name and address on each winning sweepstakes ticket in possession of New Hampshire Sweepstakes Commission."

Question:

Does the possession of such a receipt constitute any breach of Maine law?

Answer:

No.

Opinion:

The statute involved is Revised Statutes, ch. 139, § 18, the pertinent part of which reads as follows:

> "Every lottery . . . is prohibited; and whoever is concerned therein, directly or indirectly, by making, writing, printing, advertising, purchasing, receiving, selling, offering for sale, giving away, disposing of or *having in possession with intent to sell or dispose of, any* ticket, certificate, share or interest therein, slip, bill, token or other *device purporting or designed to guarantee or assure to any person* or to entitle any person to *a chance of drawing or obtaining any prize or thing of value to be drawn in any lottery*, policy, policy lottery, policy shop, scheme or device of chance of whatever name or description;"

The above-quoted portion must be read with the supplied emphasis. It is most important to the answer of the proposed question.

Any ticket, certificate, slip, bill or token must purport or be designed to guarantee or assure the holder a chance of drawing or obtaining a prize drawn in a lottery. It must be admitted that the New Hampshire Sweepstakes is a lottery. But does the paper possessed by the purchaser of a chance purport to, or is it designed to, guarantee or assure the holder of a chance of obtaining a prize?

The wording on the paper is self-explanatory. It is a mere acknowledgment of purchase and "need not be retained or presented for payment." The New Hampshire Sweepstakes Commission holds possession of all sweepstakes tickets.

Therefore, the mere possession of a New Hampshire Sweepstake acknowledgment, receipt (or whatever it may be denominated) does not constitute a breach of Maine law.

FRANK E. HANCOCK
Attorney General

March 27, 1964

To: Governor John H. Reed

Re: Appointment, Motor Vehicle Dealer Registration Board.

You have asked about the legality of appointing a certain individual to the Motor Vehicle Dealer Registration Board.

The Board is composed of "5 members, 2 of whom shall be new motor vehicle dealers, 2 of whom shall be used motor vehicle dealers and one of whom shall be a person other than a motor vehicle dealer." *Ch. 22, § 21.*

There is a vacancy to be filled by a "used motor vehicle dealer." The person in question is President and a Director of a Maine corporation having a new car franchise. He is also Treasurer and a Director of a Maine corporation selling used cars exclusively. This information is obtained from the corporation records of the Secretary of State's office.

The legislative intent is easily ascertainable to be that of an equal number of persons representing new car and used car dealers with a non-dealer holding the balance. To allow an executive officer of two corporations, one selling new cars and one selling used cars, to be appointed would create an unbalanced board. Such a person would be trying to serve two masters which is bad.

Such a person is not eligible for appointment to the Maine Motor Vehicle Dealer Registration Board.

GEORGE C. WEST
Deputy Attorney General

April 2, 1964

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

Re: Power and Duty of Board of Construction Safety Rules and Regulations to Adopt Rule

Facts:

The Board of Construction Safety Rules and Regulations has requested an interpretation of that portion of Public Laws, 1955 c. 462, § 5 establishing the Board's duties and powers.

Question:

Can the Board of Construction Safety Rules and Regulations adopt a rule requiring that anyone doing "electrical work" must be a licensed electrician?

Answer:

No.

Opinion:

The portion of P. L. 1955 c. 462, § 5 establishing the duties and powers of the Board of Construction Safety Rules and Regulations is found in R. S. c. 30, § 88-C, as amended, and reads in part:

> "The board shall formulate and adopt reasonable rules and regulations for safe and proper operation in construction within the state. The rules and regulations so formulated shall conform as far as practicable to the standard safety codes for construction. . . . "

"Electrical work" falls within the definition of construction. The portion of P. L. 1955 c. 462, § 5, as amended, defining the terms of that statute is found in R. S. c. 30, § 88-B, as amended, and reads in part:

> "Definitions. — Under sections 88-A to 88-D, the following words shall have the following meanings:
>
> . . . .
>
> "IV. Construction. — 'Construction' shall mean and include forming, erection, demolition, dismantling, alteration, repair and moving of buildings and all other structures and all operations in connection therewith; and shall also include all excavation, roadways, sewers, trenches, tunnels, pipe lines and all other operations pertaining thereto. The term 'construction' shall apply to persons and corporations engaged for hire, or by virtue of a contract. The term 'construction' shall not apply to construction for self use where the number of persons engaged for hire, or by virtue of a contract, does not exceed 5. . . . "

While there could be argument that "forming, erection, demolition, dismantling, alteration, repair and moving" are not terms that include "electrical work"; a fair interpretation of the phrase "and all operations in connection therewith" would include "electrical work." A strict interpretation of the words "excavation, roadways, sewers, trenches, tunnels, pipe lines" might exclude "electrical work"; but a reasonable interpretation of the subsequent phrase "and all operations pertaining thereto" would bring "electrical work" within the purview of the definition of construction.

The Board therefore has the power and duty to formulate and adopt rules and regulations for "electrical work" that relate to safe and proper operation provided the rules are reasonable, with the reservation that the rules and regulations do not apply to "electrical work" for "self use where the number of persons engaged for hire, or by virtue of contract, does not exceed 5." *R. S. c. 30, §88-B, IV*, supra.

The Board's power and duty is limited in that it may not establish rules or regulations limiting, expanding, or contravening State of Maine statutes. The Maine Legislature pursuant to R. S. c. 82, as amended, has spoken as to the requirements for the licensing of electricians. The Legislature is the sole body which has the power to modify the criteria in the statutes. Therefore, the promulgation of a rule by the Board of Construction Safety Rules and Regulations requiring that anyone doing "electrical work" must be a licensed electrician is clearly outside the administrative powers and duties of the Board.

JEROME S. MATUS
Assistant Attorney General

April 2, 1964

To: Joseph A. P. Flynn, Director of State Fire Prevention

Re: Mechanical Rides — Purview of Definition

Facts:

The Director of State Fire Prevention has requested an interpretation of the definition of "mechanical ride" as set forth in R. S. 1954, C. 100, § 69-A.

Question:

Do motorized Go-Karts and motorized Snow Travelers, utilized in motor vehicle races, come within the meaning and intent of "mechanical ride" as defined in R. S. 1954, c. 100, §69-A?

Answer:

No.

Opinion:

Motorized Go-Karts and motorized Snow Travelers utilized in motor vehicle racing are not "mechanical rides" within the intent and meaning of R. S. 1954, c. 100, § 69-A which states:

> " 'Mechanical ride' means a power-operated device by which a person is conveyed, where control by the rider over the speed or direction of travel is incomplete. It does not include a vehicle or device the operation of which is regulated as to safety by any other provision of law except a municipal ordinance under Chapter 90-A, section 3."

Although it is arguable, motorized Go-Karts or motorized Snow Travelers are not power-operated devices within the context of R. S. 1954, c. 100, § 69-A to 69-F. "Power-operate" is defined as follows:

> "To operate (a machine of thing) by mechanical power."

Webster's International Dictionary, 2nd Ed. Unabridged, p. 1937.

In the context of the statute, a power-operated device must have a source of power from a mechanism outside the device in which the person is being conveyed.

However, even if motorized Go-Karts or motorized Snow Travelers used in motor vehicle racing were considered power-operated devices, they would still be outside the purview of the definition of "mechanical rides." In every

instance there would be at least one rider who has full control over speed and direction of travel, namely the operator or driver. Lack of full control by a rider is a prerequisite for a "mechanical ride."

JEROME S. MATUS
Assistant Attorney General

April 7, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Responsibility of an Administrative Unit for Educable Children

Facts:

A municipality has adopted a regulation that pupils must be seven years of age in order to be eligible for admission to an educable class. The reason given by the administrative unit for the promulgation of such a regulation is that the school officials feel that such children are too young, mentally, to profit from special class education.

An educable child who is over five years of age, but who is less than seven years old, is in attendance at an approved private school which conducts classes for exceptional or handicapped children, including classes for educable children. The child's parents are requesting that the municipality pay tuition to the private school. Tuition is an item subsidized by the State.

Question:

Whether the administrative unit's regulation is valid so that the entity avoids payment of tuition?

Answer:

No.

Reason:

Applicable statutory provisions are:

"*Sec. 207-A. Purpose.* It is declared to be the policy of the State to provide, within practical limits, equal educational opportunities for all children in Maine able to benefit from an instructional program approved by the State Board of Education. The purpose of sections 207-A to 207-I is to provide educational facilities, services and equipment for all handicapped or exceptional children below 21 years of age who cannot be adequately taught with safety and benefit in the regular public school classes of normal children or who can attend regular classes beneficially if special services are provided. Special classes in public schools are to include educable children only."

"*Sec. 207-B. Definitions.* The term 'handicapped or exceptional child' shall mean any child under 21 years of age able to benefit from an instructional program approved by the State Board of Education whose parents or guardian maintains a home for his family in any administrative unit within the State, and whose educational needs cannot be adequately provided for through the usual facilities and services of the public schools, because of the physical or mental deviations of such child."

"*Sec. 207-C. Administration.* The general supervision of the education of all children of school age in the State, including handicapped or exceptional children, is the responsibility of the Commissioner of Education. . . . "

"*Sec. 207-D. Instruction.* The Commissioner may approve the attendance of handicapped or exceptional children at special schools such as the Maine School for the Deaf, Pineland Hospital and Training Center and Perkins Institute for the Blind in Watertown, Massachusetts, or at such other schools or institutions as he may designate. He may also approve education at either the elementary or secondary level for handicapped or exceptional children through home instruction, hospital instruction or special services."

"*Sec. 207-F. Responsibility of administrative units.* Every administrative unit is responsible for appropriating sufficient funds to provide at least the same per capita expenditure for the education of handicapped or exceptional children as is provided for the education of normal children. This appropriation is to be expended for programs of special education at either the elementary or secondary level under the supervision of the superintending school committee or school directors or for other programs approved by the Commissioner."

"*Sec. 44. School age.* . . . In the public schools of the State only those children who are or will become 6 years of age on or before October 15th of the school year shall be admitted to grade one.

In schools which offer a one-year childhood education program prior to grade one, only those children who will be 5 years of age on or before October 15th, of the school year shall be admitted.

In schools which offer a 2-year childhood education program prior to grade one, only those children who will be 4 years of age on or before October 15th of the school year shall be admitted. All children who have been enrolled in one or more years of childhood education programs prior to grade one before July 1, 1956, shall be allowed to continue regular advancement notwithstanding the provisions of this section.

Subject to the provisions of this section and subject to such reasonable regulations as the superintending school committee or school directors shall from time to time prescribe, every person between the ages of 5 and 21 shall have the right to attend the public schools in the administrative unit in which his parent or guardian has residence. . . . "

As Commissioner of Education, you are charged (by legislative mandate) with the general supervision of the education of handicapped or exceptional children, inter alia. *R. S., c. 41, § 207-C.* An appreciation of that responsibility has caused you to inquire whether the municipality's regulation is proper. We answer in the negative.

The Legislature, in defining a handicapped or exceptional child, used the words "any child under 21 years of age." *R. S., c. 41, § 207-B.* Too, this same age reference is found in Section 207-A. Thus, the matter of age requirement is settled by the Legislature.

In Maine, a school committee's duties are prescribed by statute; and those duties do not permit that committee to alter the age requirements prescribed by the Legislature. *R. S. c. 41, § 54.*

In the absence of an express age limitation, a school committee may fix the age requirement. *79 C. J. S., Schools and School Boards, § 448.* But the Maine Legislature has set statutory age requirements. *R. S., c. 41, § 44, § 207-A, § 207-B.*

The regulation promulgated by the municipality, when practiced, works to the detriment of the exceptional and handicapped children of the community. Too, promulgation of the regulation necessarily resulted in the school committee applying itself to a field of endeavor (mental health) without first having acquired the requisite experience.

> "In an increasing number of jurisdictions the responsibility of the local board does not end with exclusion of an exceptional child. Often it must send the child to a neighboring district where facilities are available. Payment of expenses for tuition and transportation in such cases is normally determined by the statutes." *Legal Aspects of School Board Operation*, Hamilton and Reutter, 1958, Columbia University.

Tuition expended by the municipality pursuant to R. S., c. 41, § 207-A - § 207-H is a subsidizable item.

JOHN W. BENOIT
Assistant Attorney General

April 9, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Teacher Retirement

Facts:

A local school committee has promulgated a regulation providing for the compulsory retirement of public school teachers prior to age 70. The Maine Revised Statutes, Chapter 63-A, decrees a statutory procedure for retirement entitled "Maine State Retirement System"; and this System, inter alia, sets the compulsory retirement age at 70. *R. S., c. 63-A, § 6, I, B.*

Question:

Whether a local school committee has the authority to legally establish and enforce a regulation making public school teacher retirement compulsory prior to age 70?

Answer:

No.

Reason:

Applicable provisions of law taken from Chapter 63-A are set forth below:

> "*Sec. 1. Definitions.*

. . . .

> " 'Employee' shall mean any regular classified or unclassified officer or employee in a department, including teachers in the state teachers colleges, and for the purposes of this chapter, teachers in the public schools. . . . "

. . . .

"'Teacher' shall mean any teacher, principal, supervisor, school nurse, school dietitian, school secretary or superintendent employed in any public school, including teachers in unorganized territory."

. . . .

"*Sec. 3. Membership.*

. . . .

"IV. The board of trustees may in its discretion, deny the right to become a member to any class of employees whose compensation is only partly paid by the State, *with the exception of teachers*, or who are serving on a temporary or other than per annum basis.

"V. . . . For the effective handling of this subsection, the commissioner of education shall furnish this information (employee statistics) to the board of trustees for all teachers."

. . . .

(Emphasis and parenthesis supplied).

Chapter 63-A of the Maine Revised Statutes is a measure providing a retirement system for specified employees; and the legislative expression in the Statute evidences the intention that public school teachers are employees in the system. *R. S., c. 63-A, § 1; § 3; 6, V; § 13, I.* This legislative mandate provides, inter alia, that members in the system may retire at age 60 and must retire at age 70. *R.S., c. 63-A, § 6, I, A and B.* It is our opinion that with the enactment of Chapter 63-A, the State of Maine has pre-empted the field of retirement with respect to teachers, that the laws of the State of Maine are paramount, and that all rules and regulations pertaining to teachers made by municipalities must be consistent with the Maine Laws relating to the same field.

We do incorporate by reference, our opinion of January 25, 1952, wherein this Office rendered an informal opinion of the same tenor as expressed herein.

Respectfully yours,

JOHN W. BENOIT
Assistant Attorney General

April 10, 1964

To: Asa Gordon, Coordinator of Education

Re: Formation of School Administrative Districts

Facts:

Recently, we learned from town officials that an administrative unit voted upon the question of district formation. Two other municipalities also voted upon the same question; and these two municipalities favored formation. The town in question did not approve formation of the school administrative district. Subsequently, the town again voted on the question and favored formation of a district. Now, the town is to vote a third time upon the question of the creation of a school administrative district. These sev-

eral town meetings are being conducted pursuant to a single petition filed with the State Department of Education.

Question:

Whether plural action of the town upon the question of district formation is supported by legislative mandate?

Answer:

No.

Reason:

Section 111-F, IV, of chapter 41, Revised Statutes, provides that the Department of Education (successor to the School District Commission) shall direct petitioning municipalities to vote "in favor of or in opposition to" prescribed articles. Section 111-G of the aforementioned chapter prescribes that the Department of Education shall make a finding of fact upon the vote. Because the vote is designated as the basis for the finding of fact, plural voting implies plural, independent finding of fact.

Appreciation of the practical problems involved in plural voting necessitates our advising the State Board of Education that findings of fact are to be based upon the initial vote of the petitioning municipalities; and that they are to remain passive with respect to plural voting by the municipalities. If municipalities desire to re-vote the question of district formation, they should again petition the State Board of Education pursuant to R. S., c 41, § 111-F.

JOHN W. BENOIT
Assistant Attorney General

April 24, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Legal School Entrance Age

Facts:

A Maine town has requested permission (of the Department of Education) to conduct a special one-year childhood education program for children who will be five years of age between October 15 and December 31 of the school year. Children would be tested and evaluated, and those children meeting prescribed standards would be allowed to attend the special program to be conducted concurrently with the regular kindergarten classes. Children completing the special program, who are adjudged sufficiently prepared and matured for admission to grade one, would be admitted to grade one even though they would not attain six years of age on or before October 15.

Questions:

(1) Whether such a project is legally permissible under R. S., c. 41, § 44?

(2) Whether it is legal to place a pupil, who has participated in this special project and who is judged sufficiently prepared and matured, in a grade-one class the following year even though the pupil will not be six years of age by October 15?

Answers:

(1) No.

(2) No.

Reason:

Applicable provisions of law are:

"*Sec. 44. School age; kindergartens.* In the public schools of the State only those children who are or will become 6 years of age on or before October 15th of the school year shall be admitted to grade one.

"In schools which offer a one-year childhood education program prior to grade one, only those children who will be 5 years of age on or before October 15th of the school year shall be admitted.

"In schools which offer a 2-year childhood education program prior to grade one, only those children who will be 4 years of age on or before October 15th of the school year shall be admitted. All children who have been enrolled in one or more years of childhood education programs prior to grade one before July 1, 1956 shall be allowed to continue regular advancement notwithstanding the provisions of this section.

"Subject to the provisions of this section and subject to such reasonable regulations as the superintending school committee or school directors shall from time to time prescribe, every person between the ages of 5 and 21 shall have the right to attend the public schools in the administrative unit in which his parent or guardian has residence. . . . " *R. S., c 41.*

A one-year childhood educational program (prior to grade one) can legally admit only those children attaining five years of age on or before October 15th of the school year. Thus, because the proposed project is to be a one-year course, the statute has not been met for the reason that the plan would admit children not attaining age five until after October 15th of the school year. *R. S., c. 41,* § *44* (second paragraph). We answer your first question by stating that a program of one year does not conform to the statute. *R. S., c. 41,* § *44.*

A child not attaining age six on or before October 15th of the school year cannot be admitted to grade one. R. S., c. 41, § 44 (first paragraph). The answer to your second question is in the negative.

Question:

Your memorandum poses a further question not related to the above facts:

Whether a pupil who has completed the childhood educational program (sub-primary) in regular course; who is of legal age to enter grade one; who has been promoted to grade one; and who is considered advanced for grade one work, may be advanced to grade two without completing a year in grade one?

Answer:

Yes.

Reason:

The Maine Statutes provide as follows:

"*Sec. 54. Duties.* Superintending school committees and school directors shall perform the following duties:

"VIII. Determine what description of scholars shall attend each school, classify them and transfer them from school to school where more than one school is kept at the same time." *R. S., c. 41.*

We advance the following material located in a leading text in the field of Law:

"Sec. 484. Grades or Classes and Departments.

"c. Assignment of Pupils to Grades or Classes. Under a power to prescribe necessary rules and regulations for the management and government of the schools, a school board may require a classification of the pupils with respect to the branches of study they are respectively pursuing and with respect to the proficiency or degree of advancement in the same branches, having regard also to their physical and mental capacity, and may make rules governing methods of school work; and a parent has no right to interfere with the board's exercise of its discretion and demand for his children instruction in certain classes or grades against the judgment of the board. . . . "

"d. Promotion and Demotion.

"Under its general power to prescribe rules for the school government, a school board may prescribe rules governing tests and examinations for promotion. Double promotion of a pupil from one grade to the second higher grade without attendance in the intervening grade is discretionary with the board, ... " *79 C. J. S., Schools and School Districts.*

In view of the statutory expression located in R. S., c. 41, § 54, VIII, and the developed case law reported in Corpus Juris Secundum, the local school board possesses authority to promote a qualified student from one grade to the second higher grade without attendance in the intervening grade.

JOHN W. BENOIT
Assistant Attorney General

May 5, 1964

To: Earle H. Hayes, Executive Secretary, Maine Retirement System

Re: Status of Employees of Soil Conservation Districts

Facts:

Revised Statutes, chapter 34, creates a state soil conservation committee and soil conservation districts. By statute, the districts "constitute an agency of the state and a public body corporate and politic." The districts are given authority to employ personnel, if and when funds are available.

Question:

Are the employees of a soil conservation district eligible for membership in the Maine State Retirement System?

Answer:

Yes.

Reason:

The retirement law, chapter 63-A, sets forth, in general, three classes of persons who are eligible for membership.

1. Regular classified or unclassified officer or employee in a department. *C. 63-A § 1*, "employee."

2. Teachers in the state teachers colleges and public schools. *C. 63-A* *§ 1*, "employee."
3. Employees of any county, city, town, water district, public library corporation or any other quasi-municipal corporation, civilian employees of the Maine National Guard, or of the Maine Municipal Association. *C 63-A* *§ 17*.

A department is defined as "any department, commission, institution or agency of state government" *C. 63-A*, *§ 1*, "department."

> "A soil conservation district organized under this chapter shall constitute an agency of the state . . . . " *C. 34*, *§ 7*.

Hence, it follows that a soil conservation district being an "agency of the state" is a "department" within the definition in C. 63-A, § 1, and its employees are eligible for membership in the Maine State Retirement System.

GEORGE C. WEST
Deputy Attorney General

May 12, 1964

To: Governor John H. Reed

Re: Sardine Tax Law

Facts:

A sardine packer has asked you about the possibility of packing sardines for export only. Such sardines would be packed in a can of the approximate size of the familiar sardine can. The only difference in size would be a difference in depth between .913" (¼ size can) and .788" (proposed can). The length and width would be identical. The packer proposes to pack 3¼ oz. contents.

The can would be labeled "sardines" but would also state "for export only." The packer wishes to be relieved of the tax of $0.25 a case placed on the privilege of packing sardines.

Question:

Does the changing of the depth of a can by .125" and packing 3¼ oz. contents remove the can from the sardine tax?

Answer:

No.

Opinion:

The particular tax law is chapter 16, and particularly the definition in section 261, I. This subsection defines a "case of sardines" as:

> "I. 100 one-quarter size cans of sardines . . . . "

A very full and complete discussion of this law is contained in the case of *State of Maine v. Vogl*, 149 Me. 99. In that case the Riviera Packing Co. unsuccessfully sought to avoid the same tax by circumventing the definition of section 261, III. That subsection defines "15-ounce oval cans." The Riviera sought to pack what it called a "1# oval." It used the same can but sought to pack 1# contents. The court said:

> "It is the opinion of the court that there can be no valid reason to doubt what was the intention of the Legislature. The statute

is not ambiguous. The Legislature clearly intended to tax cases of sardines in three instances only, based upon the number and size of the cans in the case. The cans were to be cans built for, and capable of containing, *approximately* one pound (subsection III), or *approximately* twelve ounces (subsection II), and *approximately* four ounces (subsection I) whatever they may have been labelled and whatever (*more or less*) net amounts of fish were actually contained in the respective cans."

. . . .

"Were the contentions of the defendant valid, it would absurdly follow that if the defendants had packed and labelled these 1# ovals or 15-ounce oval cans '15¼ ounces,' they would not be taxable. The court sees no magic in any such deviations, and the legislative will cannot be thwarted by legerdemain." (Emphasis supplied).

So in the instant case, the packer says by reducing the depth of a can by .125" and packing 3¼ ounces in such cans he should be exempt from the sardine tax. It should be noted that some packers now pack 3¼, 3¾, or 4 ounces in the ¼ size can.

The ¼ size can is something known and recognized in the trade and has been for many years. See *State v. Kaufman*, 98 Me. 546 (1904) where reference is made to one-quarter size cans of sardines. In construing a statute, technical or trade expressions should be given a meaning understood by the trade or profession. *State v. Vogl*, supra, and cases cited therein.

For the purposes of chapter 16, the pack proposed is a ¼ size can and, therefore, would be taxable.

GEORGE C. WEST
Deputy Attorney General

May 14, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Compulsory Retirement of State Teachers' College Presidents by Regulation of State Board of Education.

Facts:

On June 22, 1959, the Maine State Board of Education adopted the following regulation:

"Those persons serving as administrative heads of institutions operated by the State Board of Education shall terminate their service with the Board and retire at the completion of the school year in which they reach their 65th birthday, the school year being defined as July 1 - June 30.

"Any extension of service beyond the school year in which the 65th birthday is reached shall be based on a request by the Board that the incumbent continue in his position. Said continuance shall be on a year-to-year basis with an affirmative vote of the entire Board required for authorization in each instance."

The Legislature has enacted the following provisions of statutory law:

"A. Any member who at the attainment of age 60 is in service may retire at any time then or thereafter on a service retire-

ment allowance upon written application to the Board of Trustees setting forth at what time he desires to be retired. Any member not in service may retire at age 60 or thereafter on a service retirement allowance upon written application to the Board of Trustees setting forth at what time he desires to be retired, provided that he has at least 10 years of creditable service, any part of which service must have been rendered when he was, or could have been under then existing law, a contributing member to any publicly supported contributory retirement system sponsored by the State of Maine, provided further that at the effective date of the retirement allowance, his contributions are on deposit in the Members Contribution Fund.

"B. Any member specified in paragraph A of this subsection who attains age 70 shall be retired forthwith on a service retirement allowance on the 1st day of the next calendar month; except that any member who is an elected official of the State or an official appointed for a term of years may remain in service until the end of the term of his office for which he was elected or appointed. Notwithstanding the foregoing, on the request of the Governor with the approval of the Council, the Board of Trustees may permit the continuation for periods of 1 year, as the result of each such request, of the service of any member who has attained the age of 70 and who desires to remain in service. Requests for extension of service for employees in participating local districts shall be filed directly with the Board of Trustees by the proper municipal officers and such requests shall not be referred to the Governor and Council," *P. L. 1955, c. 417, § 1; R. S., c. 63-A, § 6, I, A and B.*

Question:

Whether the Board's regulation is legal?

Answer:

No.

Reason:

The word "employee," as defined in the Maine State Retirement System, embraces State Teachers' College presidents. They are officers in a "department."

" 'Employee' shall mean any regular classified or unclassified officer or employee in a department. . . . " *R. S., c. 63-A, § 1* "Employee."

A "department" means, inter alia, an agency of the State.

"Department shall mean any department, commission, institution or agency of the state government." *R. S., c. 63-A, § 1,* "Department."

State Teachers' Colleges have been designated as agencies of the State. *Orono v. Sigma Alpha Epsilon Society*, 105 Me. 214 (Dictum). To conclude this paragraph, the presidents of the State Teachers Colleges qualify for membership in the Maine State Retirement System.

Membership in the System necessarily incorporates the provisions of the Maine State Retirement System as enumerated in R. S., c. 63-A. One of those provisions is Section 6 wherein our Legislature has decreed a dis-

cretionary retirement age of 60, at which age the member "may retire at any time then or thereafter"; and a mandatory retirement age of 70, at which age the member "shall be retired forthwith" (with exceptions enumerated therein).

The Maine State Retirement System is a statutory directive of our Legislature (P. L. 1955, c. 417, § 1) which must be considered as having pre-empted the field of retirement. The Laws of the State of Maine are paramount; and the regulations of the State Board of Education must not be inconsistent therewith.

This Office has rendered earlier opinions of the same tenor; January 25, 1952, and April 9, 1964 (Superintending school committees' regulations re compulsory retirement prior to age seventy).

JOHN W. BENOIT
Assistant Attorney General

May 19, 1964

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

Re: Trailer — Purview of definition

Facts:

A commercial fisherman collects sea moss and sells the moss to businesses that use the moss to pack lobsters and other sea foods. In the course of his business the commercial fisherman intends to store and transport moss or other property in a 1948 Chevrolet chassis which has had its engine and seats removed and which chassis will be towed by a truck by means of a tow bar.

Question No. 1:

Does a chassis as so described and utilized for the purpose of storage and transportation in the course of a business, come within the meaning and intent of a "trailer" as defined in R. S. 1954, c. 22, § 1?

Answer No. 1:

Yes.

Opinion No. 1:

R. S. 1954, c. 22, § 1 defines trailer as follows:

> " 'Trailer' shall mean any vehicle without motive power, designed for carrying persons or property and for being drawn by a motor vehicle, not operated on tracks, and so constructed that no part of its weight rests upon the towing vehicle;"

The definition requires a trailer must be a vehicle. A vehicle is defined by R. S. 1954, c. 22, § 1 as follows:

> " 'Vehicle' shall include all kinds of conveyance on ways for persons and for property, except those propelled or drawn by human power or used exclusively on tracks;"

A 1948 Chevrolet chassis used for carrying sea moss and towed by a truck on ways would be a conveyance on ways for property propelled or drawn by some means other than by human power and the conveyance would not be used exclusively on tracks. It must follow that such a chassis would be a vehicle.

There are five criteria that must be met before a vehicle can be classified as a trailer, to wit:

1. The vehicle must be without motive power.
2. The vehicle must be designed for carrying persons or property.
3. The vehicle must be designed for being drawn by a motor vehicle.
4. The vehicle must not be operated on tracks.
5. The vehicle must be so constructed that no part of its weight rests upon the towing part of the vehicle.

The first criterion is met in that the motor has been removed from a 1948 Chevrolet and there has not been placed within the chassis any other motive power.

The second criterion is satisfied in that the vehicle is designed to carry sea moss. A design to carry property is manifested by the removal of the seats from the vehicle with the expressed intention of the removal to make room for sea moss that is to be transported.

The third criterion is met by a modification of the chassis which will allow a truck to tow the vehicle by means of a tow bar. It is assumed in this opinion that a modification has been made to permit towing. The word "designed" has been defined as follows:

> "*Designed.* Contrived or taken to be employed for a particular purpose. People v. Dorrington, 221 Mich. 571, 191 N. W. 831, 832. Fit, adapted, prepared, suitable, appropriate. Thomas v. State, 34 Okl. Cr. 49, 244 P. 816." *Black's Law Dictionary*, 4th Edition, 533, 534.

A modification of the chassis that will allow a tow bar to be fitted or attached would be a modification contrived or taken to be employed for a particular purpose. It would therefore be designed.

Vehicles may be operated on tracks part of the time within the definition of a vehicle but a trailer is a type of vehicle that must not be operated on tracks at any time. The fourth criterion is satisfied in that the 1948 Chevrolet chassis is not to be operated on tracks at any time.

The fifth criterion is also satisfied in that no part of the 1948 Chevrolet chassis will rest upon the towing vehicle.

Since the five criteria have been met such a chassis would come within the meaning and intent of a trailer as defined in R. S. 1954, c. 22, § 1.

It should be noted that there must be compliance with the provisions of R. S. 1954, c. 22, § 141, as amended by P. L. 1955, c. 83, which states in part:

> " . . . A trailer having more than 2 wheels shall be connected to the towing vehicle by at least 1 chain, in addition to the hitch bar, of sufficient strength to hold the trailer on a hill if the hitch bar becomes disconnected, or shall be provided with some other adequate holding device."

Question No. 2:

Since the answer to Question No. 1 was yes, should the style indicated on the registration be a "box trailer" or a "four wheel box trailer?"

Answer No. 2:

See opinion for answer.

Opinion No. 2:

There is no provision in the motor vehicle laws for the styling of trailers as "box trailers" or "four-wheel box trailers." The manner of such a styling is an administrative decision of the Registry of Motor Vehicles. It would be suggested that a styling such as a "four-wheel trailer" would be more appropriate than a "box trailer" or a "four-wheel box trailer."

Assuming the 1948 Chevrolet chassis has a gross weight of over 2,000 pounds; and since it is not a farm trailer, boat trailer, house trailer, nor camp trailer of the covered wagon type, the trailer must be classified and rated, for purposes of registration fees, as a truck. R. S. 1954, c. 22, § 16, III, as amended. Further assuming that such a chassis would have a gross weight of not more than 6,000 pounds, the registration fee would be $15.00. *R. S. 1954, c. 22, § 19,* as amended.

JEROME S. MATUS
Assistant Attorney General

May 22, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Extra-Construction of Building on Property Held by Maine School Building Authority

Facts:

The Maine School Building Authority (hereinafter called Authority) has received a request from the appropriate officials of a Maine town requesting permission to construct a school building, at the Town's own expense, on land presently owned by the Authority. The Authority favors the granting of a portion of its land to the Town for such use, thereby foreclosing the necessity of the Authority taking title to and responsibility for the new structure. Presently the Town and the Authority are parties to an agreement drawn pursuant to R. S., c. 41, § 243 to 259.

Questions:

1. Whether the Authority may legally grant (deed) to the Town a portion of land which presently is the subject matter of the procedure decreed in R. S., c. 41, § 243 - 259?

2. If not, may the Authority legally authorize the Town to construct a school building on said land?

Answers:

1. No.
2. No.

Reason:

Applicable statutory provisions are as follows:

"*Sec. 247. Definitions.*

" 'Project' or the words 'school project' shall mean a public school building or buildings or any extension or enlargement of the same, including land, furniture and equipment for use as a public school or public schools, together with all property, rights, easements and interests which may be acquired by the Authority for the construction or the operation of such project." *R. S., c. 41.*

"*Sec. 252. Remedies.* Any holder of bonds issued under the provisions of section 243 to 259, inclusive, or any of the coupons appertaining thereto, and the trustees under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the state or granted hereunder or under such trust agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by sections 243 to 259, inclusive, or by such trust agreement or resolution to be performed by the Authority or by any officer thereof." *R. S., c. 41.*

Applicable provisions of the Trust Agreement existing between the Authority and the Corporate Trustee are:

"ARTICLE I.

"DEFINITIONS.

"Section 101. . . . .

"(c) The word 'Project' shall mean any school project (as defined in the Enabling Act) which shall be financed by revenue bonds issued under the provisions of this Agreement and which shall be leased to any town or community school district.

. . . .

"ARTICLE VII.

"PARTICULAR COVENANTS.

" . . . .

"*Section 707.* The authority covenants that, except as provided in Section 505 of this Agreement, it will not sell, lease or otherwise dispose of or incumber any Project or any part thereof and will not create or permit to be created any charge or lien on the rentals derived therefrom." (Section 505 provides for the conveyance of the project to the town or district when all bonds have been paid.)

Article VII, § 707 of the Trust Agreement executed February 1, 1952, by and between the Authority and the Corporate Trustee prohibits the Authority from selling any portion of any 'Project.' The term 'Project,' as defined by the applicable statutory provision (R. S., c. 41, § 247) and the Trust (Article I, § 101, [c]), means a public school building, "including land." The answer to the first question must be in the negative.

Article VII, § 707 of the said Trust Agreement also prohibits the Authority from allowing an incumbrance to exist against any Project. Our Supreme Judicial Court has defined an incumbrance as "an embarrassment of an estate or property, so that it cannot be disposed of without being subject to it." *Newhall v. Union Mutual Fire Insurance Co.*, 52 Me. 180, 181. The same Court, in *Campbell v. Hamilton Mutual Ins. Co.*, 51 Me. 69, 72, adopted the definition of the term incumbrance as stated in Worcester's Dictionary: "Incumbrance — liabilities resting upon an estate." The contemplated construction would constitute an incumbrance upon the Project. Article XIII, § 1303 of the Trust Agreement characterizes bondholders as being third-party beneficiaries concerning the provisions of the Trust.

Note, too, that the Legislature has decreed upon the status of bondholders respecting remedies available to them for default of Trust provisions, inter alia. *R. S., c. 41, § 252.* The answer to the second question must also be in the negative.

JOHN W. BENOIT
Assistant Attorney General

June 3, 1964

To: Philip R. Gingrow, Banks and Banking

Re: Collection of small loans made in other states.

Facts:

From time to time small loan companies in other states make loans to individuals, resident in another state. The individual, before completing payment of the loan moves to Maine. The loan company then sells the loan to its Maine corporation. In one instance the so-called parent corporation has two Maine corporations. One Maine corporation is a licensed small loan company. The other is a corporation engaged in purchasing sales contracts and making loans in excess of $2,500.

A question has arisen around the purchase in Maine, of pre-computed or add-on loans by the non-licensed corporation.

Question:

Do Sections 222 and 224 require that a person or corporation be licensed under Sections 210-227 before being permitted to collect loans of the amount of $2,500 or less, for which a greater rate of interest, consideration or charges than is permitted by Sections 210-227 has been charged, contracted for or received when such loan was made in another state which has in effect a regulatory small loan law similar in principle to Section 210-227.

Answer:

No.

Opinion:

The answer to this question is found in R. S., C. 59, § 224.

> "No loan of the amount of $2,500 or less, for which a greater rate of interest, consideration or charges than is permitted by section 210 to 227, has been charged, contracted for, or received, wherever made, shall be enforced in this State. Every person in anywise participating therein in this State shall be subject to sections 210 to 227. The foregoing shall not apply to loans legally made in any state to a person who is at that time a resident of that state, which has in effect a regulatory small loan law similar in principle to sections 210 to 227."

The above section was completely rewritten by P. L. 1963 C. 141, § 5. Prior to September 21, 1963 a loan bearing interest greater than allowed by sections 210 to 227 "wherever made" was not enforceable in this state. Although the wording of the first two sentences above quoted is somewhat changed, the intent is not. However the third sentence which has been added now changes the whole concept of section 224 as it was previously worded.

The legislative intent is clearly expressed. There is no ambiguity. By the use of the word "foregoing" the legislature clearly stated that loans bearing interest in excess of that permitted by sections 210 to 227 may be enforced under the particular circumstances stated in the third sentence. Further than that by the use of the words "The foregoing shall not apply" the legislature also stated that enforcement of such loans may be by any person, whether licensed by sections 210 to 227 or not. The word "foregoing" must refer to both preceding sentences. It cannot be interpreted otherwise.

It is concluded that a person or corporation need not be licensed under sections 210 to 227 to enforce a loan made legally in another state having a law similar in principle to Maine, to a person then a resident of that state and now a resident of Maine.

GEORGE C. WEST
Deputy Attorney General

June 12, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Compulsory School Attendance

Facts:

In June, 1964, an elementary school student will complete the eighth grade and will attain 15 years of age in September, 1964. The student's parent (father) has notified the superintendent of schools that his son will not attend school after June, 1964; and that he will tutor his son through use of the American School Correspondence courses. The family lives in a School Administrative District, #28, which has a contract with the Town of Bucksport for secondary school privileges. Conveyance is provided to Bucksport High School.

The Maine Statute requiring school attendance is R. S., c. 41, § 92:

> "Every child between the 7th and 15th anniversaries of his birth and every child between the 15th and 17th anniversaries who cannot read at sight and write legibly simple sentences in the English language and every child between the 15th and 16th anniversaries who has not completed the grades of the elementary schools shall attend some public day school during the time such school is in session. . . ."

You state in your memorandum that the Department of Education has interpreted Section 92 to require all children between the 7th and 15th anniversaries of their birth to attend secondary school even though the elementary school program may have been completed prior to age 15.

You also state that in administrative units where no secondary school is operated or where no such school is provided, it has been the opinion that attendance outside the unit could not be compelled. In the present case, District #28 holds a contract with Bucksport for secondary school privileges, which contract provides for school attendance in the same fashion as though a secondary school were operating within the confines of the District. Transportation is provided by the District; and a pupil is under no hardship in attending secondary school.

Question No. 1:

Is attendance at a secondary school required for a pupil who has completed the elementary school program and who is under 15 years of age?

Answer:

Yes.

Reason:

The applicable provision of statutory law (quoted above) sets forth three classifications of children required to attend school:

(1) Children between the ages of 7 and 15 years;

(2) Children between the ages of 15 and 17 years who cannot read at sight and write legibly simple sentences in the English language;

(3) Children between the ages of 15 and 16 years who have not completed the grades of the elementary school.

The given facts place the boy in the first classification. As to these classifications, the Legislature has decreed that they "shall attend some public day school during the time such school is in session, and an absence therefrom of one-half day or more shall be deemed a violation of this requirement."

Question #2:

Is such attendance required when a school administrative district has a contract with a neighboring administrative unit for secondary school privileges in the unit's public high school and provides transportation thereto?

Answer:

Yes.

Reason:

School directors of a school administrative district are authorized by Maine Statute to contract for school privileges in a nearby administrative unit.

> "Sec. 105. Pupils in administrative units having no approved secondary schools. Any administrative unit which does not maintain an approved secondary school may authorize its superintending school committee to contract for one to 5 years with and pay the superintending school committee or school directors of any nearby administrative unit, or the trustees of any academy located within such town or in any nearby town or towns, for the schooling of all or part of the pupils within said administrative unit in the studies contemplated by section 98. The school directors of any school administrative district may enter into similar contracts. . . . "
> *R. S., c. 41.*

And when such a contract exists, the school privileges are offered to the District pupils as though originating in the District. In *Maine Central Institute v. Inhabitants of Palmyra*, 139 Me. 304, our Supreme Judicial Court stated, inter alia, that a high school pupil, residing in a town which contracted for school privileges with an adjoining town, was not entitled to attend another school at his town's expense.

Question No. 3:

Would taking a correspondence course without approval of district directors and Commissioner be the equivalent of school attendance and satisfy the compulsory attendance statute?

Answer:

No.

Reason:

R. S., c. 41, § 92, after stating the requirement of compulsory attendance, provides in part:

> " . . . Such attendance shall not be required if the child obtains equivalent instruction, for a like period of time, in a private school in which the course of study and methods of instruction have been approved by the Commissioner, or in any other manner arranged for by the superintending school committee or the district directors with the approval of the Commissioner. . . . "

If the proposed home instruction has not been "arranged for by the school directors with the approval of the Commissioners," it does not constitute the equivalent of a compulsory school attendance. *79 C. J. S. Schools and School Districts, § 468, n. 10.*

JOHN W. BENOIT
Assistant Attorney General

June 16, 1964

To: Asa A. Gordon, Director, School Administrative Services

Re: School construction aid on additional equipment

Facts:

A town has recently completed the construction of a gymnasium annex, and on November 1 will make application to the State for construction aid pursuant to R. S., c. 41, § 237-H. Too, it now appears that additional shop equipment is necessary due to an increase in school enrollment.

Question:

"Can this expenditure for additional shop equipment be included in the total cost of the present project legally become eligible for school construction aid?"

Answer:

No.

Reason:

School construction aid is expended by the State pursuant to R. S., c. 41, § 237-H. Such moneys are paid for "capital outlay purposes." "Capital outlay purposes" is defined as including "major alteration." (The other elements of the definition of the term ["capital outlay purposes"] are not applicable to the given facts.)

"Major alteration" is defined as follows:

> "The term 'major alteration' as used in this section shall mean the cost of converting an existing public school building to the housing of another or additional grade level group, or providing additional school facilities in an existing public school building but shall not include the restoration of an existing public school building or piece of equipment within it, to a new condition of completeness or efficiency from a worn, damaged or deteriorated condition." *R. S., c. 41, § 237-H.*

The courts recognize the distinction between the act of increasing the number of components of an existing group as against the act of establishing a new group. *State ex rel. Knight v. Cave*, 52 P. 200, 20 Mont. 468. An example of the former would be an increase in the inventory of units of shop equipment; and an example of the latter would be the original establishment of an inventory of shop equipment. The former would not constitute the providing of "additional facilities," the latter would.

An authorization of State subsidy pursuant to the given facts would mean that the State would subsidize purchases of property by schools in this State even though said provisions would not amount to the providing of additional school facilities. Our Legislature has not yet authorized such expenditure of State subsidies.

JOHN W. BENOIT
Assistant Attorney General

June 16, 1964

To: Ruth A. Hazelton, Librarian

Re: Municipal Appropriations to Private Libraries

Facts:

A recently enacted Federal law which provides financial assistance to public libraries has raised a question as to the right of municipalities to appropriate funds to privately owned or controlled libraries.

Question:

May a municipality make a general appropriation to a privately owned or controlled library?

Answer:

Yes. See opinion for conditions.

Opinion:

There can be no question of the power of a municipality to raise and appropriate money for public libraries. This is clearly provided in ch. 42, § 29, and in ch. 90-A, § 12, III, A. A village corporation may do the same. *Ch. 42, § 30.* Also, *ch. 42, § 31*, provides that a municipality may raise and appropriate money to secure for its inhabitants free use of a library located in an adjoining municipality. Two or more towns may unite in establishing and maintaining a library. *Ch. 42, § 32.*

The crux of the matter is an interpretation of ch. 42, § 34. This section reads:

> "Any town or city in which there is a library owned or controlled by a corporation or association or by trustees may levy and assess a tax and make appropriation therefrom annually to procure from such library the free use of its books for all the inhabitants of the town or city, under such restrictions and regulations as shall insure the safety and good usage of the books; and such library shall then be considered a free public library within the meaning of this chapter and said town or city shall be entitled to the benefits of the preceding section."

A careful reading indicates that a municipality may, by an appropriation, purchase for its inhabitants the free use of the books owned by a private library. If the library upon assurance of an appropriation from the municipality makes its books freely available to the inhabitants, then it is considered a free public library. The law does not limit the use to which the municipal appropriation may be made. Its use is within the discretion of the managing board of the library.

GEORGE C. WEST
Deputy Attorney General

June 22, 1964

To: George F. Mahoney, Commissioner, Insurance

Re: Brokerage Firm to handle state insurance and commission fund to pay deductible losses.

Facts:

The Chairman of the Governor's Committee to study insurance on State-owned property has submitted two questions propounded by a member of his Committee relating to the study of the Committee.

Question No. 1:

Within the framework of present insurance statutes and regulations, can an insurance brokerage firm be created and licensed to deal only with insurance on property in which the State has an insurable interest?

Answer:

Yes.

Opinion:

There is no statutory prohibition to the creation and licensing of a brokerage firm to deal only with insurance on property in which the State has an insurable interest.

A partnership, company, or corporation may be licensed as an agency or broker provided it meets the organization license requirements as set forth in R. S. Me. 1954, c. 60, § 273-E, as amended. Subsection V of this section provides:

> "A person authorized to transact business for the organization must comply with the requirements of section 273-D."

R. S. Me. 1954, c. 60, § 273-D, as amended, establishes the requirements for the obtaining of an individual license as an agent, broker, or adjuster.

R. S. Me. 1954, c. 60, § 273-G, as amended, states in part:

> "If the applicant complies with the pertinent requirements of sections 273-D and 273-E, the commissioner shall issue him the license for which he applies."

There are no requirements of §§ 273-D and 273-E which could not be complied with by a brokerage firm created to handle only state insurance; and if the requirements of §§ 273-D and 273-E are complied with, the Commissioner shall issue the license.

There are no administrative rules or regulations of the insurance department which would prohibit the licensing of a brokerage firm created to handle only insurance on state property.

Question No. 2:

Can the brokerage firm licensed to deal only with insurance on property in which the state has an insurable interest allow its commissions to accrue to pay the State's losses uncollectible because of policy deductibles?

Answer:

No.

Opinion:

A brokerage firm establishing a fund from commissions received for fire and liability insurance on state property and from which fund losses would be paid up to the amount of the deductible in the insurance policies is in direct violation of R. S. Me. 1954, c. 60, § 298. The pertinent portion of the section reads as follows:

> "No insurance company transacting fire or liability insurance in this state and no agent or broker transacting fire or liability insurance, either personally or by any other party, shall offer, promise, allow, give, set off or pay, directly or indirectly, as an inducement to fire or liability insurance on any risk in this state, now or hereafter to be written, any rebate of or part of the premium payable on any policy or of the agent's commission thereon; . . . "

The establishment of such a fund would contravene § 298 as it would be a direct offer or promise on the part of a broker transacting fire or liability insurance to rebate at least a part of the agent's commission as an inducement to the writing of fire and liability insurance on risks in this state. Such a payment from the fund would be a violation of the statute.

JEROME S. MATUS
Assistant Attorney General

June 24, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Tuition Charges; Attendance at Portion of Term

Facts:

Your memorandum acknowledges the existence of two opinions directed to your Department by this Office under the dates of January 4, 1950, and April 5, 1957. These opinions deal with the question whether a full-semester tuition charge may be made by the receiving school although the student does not complete a full semester of study. You state that while the reference opinions appear to be closely related, there seems to be a difference of expression on the question.

The amount of State subsidy expended to administrative units is based (in part) on amounts paid or received for tuition.

Question:

May a receiving school charge a full semester's tuition for pupils who enroll late or leave the school before the end of the period?

Answer:

No.

Opinion:

Section 107, Chapter 41, of the 1954 Maine Revised Statutes provides, in part, that "free tuition privilege shall continue only so long as said youth shall maintain a satisfactory standard of deportment and scholarship." The January 4, 1950, opinion gave recognition to such provision of law by stating "that the law does not permit high schools and academies to charge tuition for pupils who are not receiving instruction, any rule by an academy to the contrary notwithstanding, because if the pupil is not in school, as you state, satisfactory standards of scholarship obviously cannot be maintained. Therefore, any charge for tuition after a pupil has left the institution would be illegal." The writer concluded that a full-term tuition charge by the receiving school was illegal when the tuition student attended but four weeks of the term.

The April 5, 1957, opinion made no mention of either the existence of the January 4, 1950, opinion or the provision of law recited in that opinion. Instead, the writer recognized that the particular facts presented to him revealed the existence of a contract between the sending and the receiving schools which provided, in part, that one-half of the term's tuition cost was to be payable to the receiving school in the event that a pupil was in attendance for more than one week of the term but attended less than one-half of the term. That provision in the contract was based upon a school board regulation existing in the receiving town. The writer determined that tuition paid pursuant to the contract was proper.

The January 4, 1950, opinion appears to be supported by at least one jurisdiction. In *Kerr v. Perry School Tp.*, 162 Ind. 310, 70 NE 246 the court said, inter alia, that "if the child transferred is enrolled for only six months in the schools of the creditor corporation, and the term of such school is nine months, then the debtor corporation is required to pay the per capita cost for six months only. Or, in other words, it would be required to pay for what it received, and no more."

In conclusion, we reaffirm the principle expressed in the opinion dated January 4, 1950; and rescind the opinion dated April 5, 1957.

Respectfully yours,

JOHN W. BENOIT
Assistant Attorney General

June 30, 1964

To: Asa A. Gordon, Director, School Administrative Services

Re: Formation of School Administrative Districts by Special Act of Legislature; Discretion of State Board of Education

Facts:

In 1961, the Legislature authorized the formation of a school administrative district comprising the municipalities of Etna and Plymouth. *P. L. 1961, c. 214.* In 1963, the Legislature authorized the formation of a school administrative district comprising the municipalities of Detroit, Etna, Plymouth, Dixmont, and Stetson. *P. L. 1963, c. 170.* The enactment of such special legislation is contemplated in the general law. *R. S., c. 41, § 111-D, V.*

Question No. 1:

When the Legislature, through a special act, authorizes the formation of a school administrative district, does the State Board of Education have the authority to refuse to permit the formation of such a district?

Answer:

Yes.

Reason:

The reason for the enactment of the legislation is stated in the preamble of each Act as follows:

> "Whereas, the Maine School District Commission cannot approve the formation of this proposed district under the criteria set out in the Revised Statutes of 1954, chapter 41, section 111-E;"

Note that each Act, authorized the Maine School District Commission (now State Board of Education; *R. S., c. 41, § 111-B*) to " . . . proceed pursuant to said chapter 41, section 111-E-1 to 111-U-1. . . . " Thus, the special legislation incorporated the applicable general law by a reference thereto. According to the general law, the State Board of Education may disapprove the applications submitted by local school committees. *R. S., c. 41, § 111-D, V; § 111-F, II.*

Question No. 2:

Does the 1963 Act render the 1961 Act obsolete and useless?

Answer:

No.

Reason:

Neither Act contains a statutory reference of limitation on municipal action. The two Acts are not repugnant, one to the other in their provisions.

Presently, the provisions of both Acts remain effective by reason of the fact that no district has been created pursuant to either measure.

JOHN W. BENOIT
Assistant Attorney General

July 2, 1964

To: C. Wilder Smith, Deputy Commissioner, Labor and Industry

Re: Commissions as Wages

Facts:

A question has arisen concerning the proper interpretation of the word "wages" as used in Revised Statutes 1954, chapter 30, section 50. Some employees are paid on a "commission" basis as opposed to an hourly, daily, weekly or annual salary basis. The question concerns the person, usually a salesman, who receives "commissions" on his sales.

Question:

Does the word "wages" include "commissions"?

Answer:

See opinion for answer.

Opinion:

A portion of R. S. 1954, chapter 30, section 50, provides,

> "Every corporation, person or partnership engaged in . . . (here follows enumerated classifications of businesses) shall pay weekly each employee engaged in his or its business the wages earned by him to within 8 days of the date of such payment;"

This section further provides for county and municipalities to pay wages weekly unless requested otherwise by the employee. True records must be kept by the employer showing earnings and date of payments. Certain exceptions to the provisions concerning weekly payment of wages are also provided. Vacation pay is accorded the same status as wages earned. A violation of the section "shall be punished by a fine of not less than $25 nor more than $50."

The failure to obey any provision of section 50 is punishable by a fine. So this section must be construed as a part of the criminal law. A basic tenet of statutory construction is that criminal statutes shall be strictly construed.

In many fields "commissions" have been held to be "wages." See Words and Phrases, volume 44-A "Wages." These include cases involving bankruptcy, unemployment compensation, Federal Insurance Contributions Act, receiverships; and in some instances "commissions" are held to be "wages" subject to garnishment. In some states "commissions" are not subject to garnishment as "wages."

Because this statute is a criminal statute and must be strictly construed, it cannot be categorically stated that all "commissions" are "wages." To do so would place an employer in a position of being subjected to a criminal penalty in situations where it would be impossible for him to comply with the statute.

The statute requires that an employer of a specified nature "shall pay weekly each employee . . . the wages earned by him . . . . " To say that in every instance "commissions" are "wages" would require an employer to pay weekly when an employee has not earned anything. This the statute does not contemplate. This would be the case of salesmen working on straight commission and selling large and expensive items. In such cases the number of sales are small and irregular, hence cannot be fitted into a weekly payment schedule.

However, when an employee is working in a business specified in the statute where sales or services are regular, recurring, and the employee is making daily or weekly sales, then the employer does come within the purview of the statute. Each case must be judged on its facts. Whenever an employee is earning on a weekly basis, payments must be made on a weekly basis.

In your memo you included section 50-A. I have not covered this section in my answer above. This section is also a criminal statute, to be strictly construed. However, no reference is made to "wages" in that section. The section provides,

> "Any employee, leaving his or her employment, shall be paid in full within a reasonable time after demand at the office of the employer where payrolls are kept and wages are paid."

In short, section 50-A provides that an employee upon termination of employment shall be paid in full. This would appear to cover any and all forms of compensation due the employee at the end of his employment.

GEORGE C. WEST
Deputy Attorney General

July 13, 1964

To: Joseph T. Edgar, Deputy Secretary of State

Re: Voting Registration by a Minor

Facts:

A resident of the State who is now 20 years of age will become 21 before the November election. He is a college student and will be out of State at the time he becomes 21. He wishes to register now so he can vote in the November election.

Question:

May a minor who will be 21 years of age on or before election register while still a minor?

Answer:

Yes.

Opinion:

The above question is not clearly and positively answered in our statutes. The nearest to a direct answer appears to be chapter 3-A, section 80 III. This provision relates to office hours of the registrar of voters on election day. In part it provides:

> "He shall accept the registration of a person who becomes 21 years of age on election day or after the close of registrations prior to it, in any municipality."

This provides for the registration of voters who become of age on election day or in the few days prior thereto when the office of the registrar is not open. It can be reasoned that by such a provision the legislature intended that no person can register until he actually becomes 21 years of age. However, section 10 must be considered.

> "A person may register as a voter by appearing before the registrar, proving that he is *qualified as provided in section 24*, subsections I to IV, and filing an application provided by the registrar containing the information required by section 23.
>
> "II. . . . The register shall place the name of the applicant on the voting list *as soon as he has qualified*." (Emphasis supplied).

Section 24, referred to above, states:

> "A person who meets the following requirements *may vote* in any election in the municipality in which his residence is established." (Emphasis supplied).

There follows five requirements: (1) Citizenship; (2) Ability to read; (3) Age — "He must be at least 21 years of age." (4) Residence; (5) "Must be registered to vote in the municipality." Thus, a voter must be 21 years of age on or before election day to vote. By section 10, to register he must be qualified by section 24 to vote on election day.

Further, section 10, II, provides as quoted above, that the applicant's name shall be placed on the voting list "as soon as he has qualified."

It appears that the legislature has tried to make provision that each person who may be eligible to vote on election day will be given an opportunity to exercise his franchise. Hence, it is apparent that a minor may register although his name cannot be placed on the voting list until he reaches the age of 21 years.

Note: The same reasoning can be applied to the matter of residence.

GEORGE C. WEST
Deputy Attorney General

July 14, 1964

To: Paul A. MacDonald, Secretary of State

Re: Use of Used Car Dealer Plates on Motorcycles

Facts:

A used car dealer has been using his dealer plates on motorcycles. It is not certain whether the motorcycle was being offered for sale.

Question:

May a dealer use his dealer plates on a motorcycle?

Answer:

No.

Opinion:

Such practice is contrary to the statutes. Chapter 22 contains the motor vehicle laws. All references to sections herein are part of said chapter.

Section 26 makes references to "motor vehicles" and "vehicles." Section 1 in its definition of "motor vehicle" includes motorcycles by specific reference. This would appear to give credence to the claim that a used car dealer may use his plate on a motorcycle. However, it is necessary to consider all the motor vehicle laws and not one or two sections.

Section 1 also contains a separate definition of a motorcycle. Section 16, IV, sets up a fee for registration of a motorcycle. Section 64 provides for a separate license to operate motorcycles. The license to operate a motor vehicle does not carry authorization to operate a motorcycle. Section 33 provides for a fee to be paid upon transfer of ownership and registration of a different motorcycle. All of these sections taken together indicate a legislative intent to treat motorcycles differently from other motor vehicles. In addition to all the foregoing, the legislature has also enacted section 30 providing for motorcycle dealer plates.

> "Every manufacturer or dealer in motorcycles shall annually pay a fee of $15 for a registration certificate to handle, demonstrate, sell and exchange motorcycles. The Secretary of State shall furnish the manufacturer of, or dealer in, motorcycles with 3 sets of distinguishing plates free of cost and additional sets for $5 per set."

This section clearly indicates the legislative intent that motorcycle dealers shall have their own dealer plates separate and distinct from other motor vehicle dealer plates.

There can be no other conclusion than that used or new car dealer plates cannot be used on motorcycles.

GEORGE C. WEST
Deputy Attorney General

July 30, 1964

To: Paul A. MacDonald, Secretary of State

Re: Registration of Tractor Unit owned by nonresident

Facts:

A Massachusetts corporation with vehicles registered in Massachusetts, operates an interstate trucking business from a point outside the state to a point inside the state and return.

On occasion, however, in order to keep the same driver on the same tractor, a driver will bring a semi-trailer load from Presque Isle, for example, to Portland, and meet a driver bringing a load of merchandise in from New York. They will switch semi-trailers and the Massachusetts registered tractor returns to Presque Isle with the semi-trailer load of merchandise that was picked up in Portland.

Question:

Is this operation of such an intrastate character as to require registration in Maine?

Answer:

Yes.

Opinion:

The applicable statutory reference is C. 22, s. 67. This section provides for reciprocity with those states which grant like privileges as determined by the Secretary of State. An exception is contained in subsection IV in this language:

> "No truck, tractor or trailer owned, leased or operated by a nonresident shall be operated under this section in transportation of merchandise or material in intrastate commerce, nor in interstate commerce unless the point of actual receipt or delivery of any merchandise or material so transported is without the State. Except that a nonresident owned semi-trailer operated by a Maine registered power unit shall be permitted to transport merchandise or material in intrastate commerce."

Whether a given activity is "intrastate" commerce or "interstate" commerce has for years been the subject of many court cases. Hundreds of opinions have been written by hundreds of judges, state and federal. There is no clearly defined line that can be easily discerned by the human eye or mind. Each case apparently must be determined on its own facts and merits.

Here we are faced with a license problem. Licenses are privileges granted by the state. They are subject to change by legislative act. Each legislature may grant, withhold, limit, expand or rescind the privilege. Running through the legislative right to regulate motor vehicle licensing, however, is the thread of the federal power to regulate interstate commerce

and the corresponding lack of the right of the state to impede or stem the normal flow of such commerce. This thread may not be broken by state action.

In this particular case the thread would not be broken if the tractor owned by the nonresident and operated between points within the state were licensed in Maine. Under the last sentence of subsection IV the tractor, registered in Maine, can haul a semi-trailer in intrastate commerce.

The arrangement pictured in the facts is solely for the benefit of the nonresident owner. He could have the driver bring his rig from the north and simply swap over and drive the northbound rig back. He prefers, however, to have the driver use the same tractor within two points in the state.

See *Hunnewell v. Johnson*, 157 Me. 338 at 345 for statement:

> "In the case before us the break in transit was not caused by exigencies over which the taxpayer had no control, but was purely for the convenience or business profit of the appellant."

Under these circumstances the tractor must be registered in Maine as it is engaged in intrastate commerce. In no way can it be said that the state is impeding or throwing up a barrier to interstate commerce.

GEORGE C. WEST
Deputy Attorney General

September 8, 1964

To: Keith L. Crockett, Executive Director of Education
Division of Field Services

Re: Eligibility of Gymnasium Divider for School Construction Aid

Facts:

It is the intention of the school department of a Maine city to install a mechanical, folding partition in the high school gymnasium for the purpose of making two physical education teaching stations available for use at the same time, i. e., one for the boys, one for the girls. During major athletic events, the partition would be folded away to allow full use of the gymnasium.

Question:

1. Does the folding partition qualify for state construction aid pursuant to R. S., c. 41, § 237-H?

2. Would materials such as drapes, nets, etc. (of less permanent nature than a folding partition) be eligible for construction aid pursuant to R. S., c. 41, § 237-H?

Answer:

1. Yes.

2. Other materials would qualify for aid if their use provided an additional school facility. Each situation must be decided upon its own facts.

Reason:

The existence of the partition will allow plural use of the gymnasium. Because two physical education teaching stations will be made available for simultaneous use, one station for the boys and one station for the girls, there is created an additional school facility where, before, there existed but one facility.

See our May 16, 1963 opinion wherein we made reference to *State v. Cave*, 20 Mont. 468, 52 P. 200. *State v. Cave*, supra, defined "additional school facilities" as "facilities in addition to or beyond those already possessed." The case held that: "To provide, when reasonably necessary or convenient, more school rooms, is to furnish additional school facilities."

JOHN W. BENOIT
Assistant Attorney General

September 10, 1964

To: Harold E. Bryant, Consultant, Maine Potato Commission

Re: Use of Potato Tax Money

Facts:

A cooperative composed of a group of potato growers has been formed. It is one of several such cooperatives now in existence in the state. The latest cooperative has indicated that it will ask the Maine Potato Commission to pay its operating expenses from the potato tax.

Question:

May the Maine Potato Commission use potato tax money to pay operating expenses of a potato growers cooperative?

Answer:

No.

Opinion:

The answer to this question is found in R. S., Ch. 16 § 231. The section states the purposes for which potato tax money may be used. There are four purposes listed.

1. Collection of tax and enforcement of sections 222 to 223.
2. At least $50,000 for investigating and determining better methods of production, shipment and merchandising of potatoes and for the manufacture and merchandising of potato by-products.
3. At least 25% of the money collected shall be used for the general purpose of merchandising and advertising Maine potatoes for food and seed.
4. Remaining funds may be used to carry out 2 and 3 above. Also, the commission may spend not over $10,000 for the enforcement of the potato branding law.

It might also be pointed out that the potato tax is paid by all potato growers in the state. The use of the money is for the general benefit of all potato growers. It cannot be used for the benefit of a few growers.

In view of the wording of section 231 and the purpose of the tax, it would be improper for the Maine Potato Commission to use potato tax money for the operating expenses of any one cooperative.

GEORGE C. WEST
Deputy Attorney General

September 18, 1964

To: Philip R. Gingrow, Director, Personal and Consumer Finance

Re: Loans by Mail Made by Small Loan Licensees Within the State

Facts:

In May of 1964 you asked this office for an opinion on the general question of small loan licensees making loans by mail. On May 27, 1964, this office answered your question in an opinion stating that such practice was not permitted by the small loan law.

Since that opinion, one of the larger small loan licensees has submitted to you a memorandum of law opposing that position. The licensee has requested that this office reconsider its opinion as it relates to small loans made by small loan licensees to residents of the State.

Question:

May small loan licensees of the State of Maine make loans by mail to residents of the State within the State?

Answer:

Yes.

Opinion:

Basically, the reason for the question is Ch. 59, § 213, which provides in the first sentence:

> "*No person*, copartnership or corporation *licensed* under the provisions of section 211 *shall make any loan* or transact any business provided for by sections 210 to 227, inclusive, under any other name or *at any other place of business than that named in the license.*" (Emphasis supplied).

The memorandum of law submitted in support of the proposition that loans by mail are legal, cites in general, three reasons for its position.

First, neither the Maine law nor the Bank Commissioner specifically precludes the making of loans by mail.

Second, loans by mail do not violate the public policy behind the small loan law.

Third, loans by mail are permitted in other states with similar legislation.

It must be admitted that the Maine Small Loan Statute does not contain any language specifically permitting or prohibiting the making of loans by mail. The statute is quite silent on the matter.

Whether the Bank Commissioner has "long been aware of the practice" does not seem to be borne out by the fact that an inquiry dated May 12, 1964, from a small loan licensee caused the question to be referred to this office. This resulted in the opinion of May 27, 1964. The Bank Commissioner accepted this opinion and acted so that the present controversy arose.

The memorandum of law then goes into the matter of general Maine law and concludes that loans by mail are consummated at the office of the licensee. The theory presented is that the filing of application by a borrower is an offer and that the licensee accepts the offer by approving the loan and mailing the check.

We do not disagree with the theory of law but with its application to the facts. We believe that the mailing of an application and note by a

licensee constitutes an offer to loan a specified sum of money at a specified rate of payment. This offer is accepted by the borrower when he signs the note, completes the application and mails it to the licensee. The sending of the check is the first step on the part of the licensee in the performance of the contract. Hence, it would appear that the contract is executed at the place where the note is signed.

The second argument is concerned with the public policy on which the small loan law is based. There can be no serious quarrel with the arguments advanced on this phase as long as loans are confined to so-called "intrastate" transactions. There can be no doubt that the fundamental theory of the small loan law is of a remedial nature. Generally, remedial statutes are liberally construed. A liberal construction of the Maine Small Loan Law would authorize intrastate loans by mail.

The third argument that other states have interpreted similar laws to allow such transactions is entitled to some weight. Such interpretations may well be considered as legal precedents.

To say that loans must be made in the office of a licensee is straining the language of section 213. One cannot overlook another portion of that section. There is the wording "or transact any business," etc. To look at this realistically, we have to recognize that a small loan company must occasionally go to the home or place of employment of a borrower to collect payments. At times it may be necessary to repossess collateral. This is done where the collateral is located.

It is obvious that the law must contemplate the transaction of certain phases of business outside the confines of the company's office. This being so, it must be said that the making of a loan by mail is not prohibited. To say otherwise would strain the wording of the statute.

To the extent that this opinion states that "intrastate" loans by mail to Maine residents by Maine licensees is permissible, the previous opinion of May 27, 1964, is superseded.

GEORGE C. WEST
Deputy Attorney General

September 25, 1964

To: Ernest H. Johnson, State Tax Assessor

Re: R. S., Chapter 17, section 2, definition of "storage" and "'storage' or 'use'"

Facts:

Pioneer Plastics Corporation purchases from out-of-state printers certain advertising and promotional materials and pamphlets. These are then shipped by the printers to Pioneer Plastics Corporation in Sanford. From Sanford, these materials are shipped out to various distributors and retail dealers which handle products of Pioneer Plastics Corporation.

The corporation contends that the purchase of these materials is not subject to use tax in Maine because the materials are "brought into this State for the purpose of subsequently transporting (them) outside the state" and hence come within the exclusion in section 2 of the law.

Question:

Whether the goods come within the exclusion provision.

Answer:

No.

Law:

"'Storage' includes any keeping or retention in this State, *except subsequent use outside of this State,* of tangible personal property purchased at retail sale." *R. S. 1954, Ch. 17, sec. 2.* (Emphasis supplied).

"'Storage' or 'use' does not include keeping or retention or the exercise of power over tangible personal property brought into this State *for the purpose of subsequently transporting it outside the State." R. S. 1954, Ch. 17, sec. 2.* (Emphasis supplied).

"A tax is imposed on the storage, use or other consumption in this State of tangible personal property . . . . " *R. S. 1954, Ch. 17, sec. 4.*

"When a business which operates from fixed locations within and without this State purchases supplies and equipment in this State, and subsequently withdraws them from inventory for use at a location of the business in another state without having made use other than storage within this State, it may request a refund of Maine sales tax paid at the time of purchase . . . . " *R. S., 1954, Ch. 17, sec. 12-A.*

Reasons:

In order to arrive at the purpose and meaning of the section in question, we must view the statute in its entirety.

"The purpose of a statute is to be gathered from the whole act." *Alexander v Casden Pipe Co.*, 290 U. S. 484.

The particular section is properly denominated an "exclusion" section; since to exclude means to exempt it will be treated as an exemption provision and strictly construed against the taxpayer.

Section 2 applies to use tax; section 12-A of the law cited above contains a provision similar in import but applicable to sales tax. This section was enacted subsequent to section 2.

Section 12-A provides generally that if a business purchases supplies and equipment, pays a tax thereon, places them in inventory and without use other than storage, subsequently ships them to a location of the business in another state, it may request a refund of the sales tax paid.

Clearly, this provision can only be used where the taxpayer ships the goods to another location of *his* business; it is a provision personal to the taxpayer and can only be utilized by him.

It would not apply, for example, if he made a gift of the goods to an out-of-state customer.

The question here really is whether such legislative intent can be read into the definition of "storage" in section 2, considering this operation of section 12 and the purpose of the statute as a whole.

I consider that it can. The use tax has always been considered as a complement to the sales tax. Its purpose was that of equalization of the tax burden so that one merchant who might be liable for a sales tax would

not have to compete with another who might be able to avoid a sales tax. The use tax is designed so as to equalize the burden of tax.

The taxing statute must be read as a whole. The Legislature in section 12-A gives tax relief to a Maine vendor who pays the tax, holds the property in inventory, withdraws it for use at a location of the business in another state. It would be inconsistent to allow a resident taxpayer to buy outside the state — tax free — hold the property in inventory, withdraw it, package it, and ship it to other than a location of the business out of state without paying a tax.

The reason for the exclusion in 12-A is that the user himself who has paid the tax intends to use it, himself, outside the state. I believe that the definition of "storage" in section 2 should be read consistently with that in 12-A to provide an exclusion only where the last use does not occur in Maine, i. e., where the taxpayer ships to another location of his business. I believe the exclusion to be inherently personal.

The sales tax law has numerous provisions excluding from tax sales made to nonresidents who intend to use the property (automobiles, aircraft, boats) outside the state. Nowhere does this exclusion extend farther than the immediate purchaser. It is my interpretation that it was the intent of the legislature to provide exclusions or exemptions from tax in such situations only where the property was to be so used by the immediate purchaser. The "user" would be subject to tax if *he* "used" the property in the state — if *he* uses it outside the state there is no tax.

There does not seem to be any problem with Federal constitutional provisions. If property was being held temporarily in the State in the course of through-state shipment it would have immunity and not be taxable. This is true when there is no intrastate use of the property — when, however, "use" is made, it loses this protection.

Here Pioneer is removing the property from inventory, re-packaging it and shipping it, presumably free of charge to out-of-state customers. In actuality it is making a gift of the property. In delivering the property to the carrier the donor (Pioneer) is divesting itself of control over the property in Maine and is making no subsequent use of the property outside the State.

> "And the use tax is valid if imposed upon local storage or use . . . despite intended subsequent use (not immediate or direct use) in interstate commerce." *Prentice-Hall, State and Local Taxes, Sales Tax, Para. 92, 600.*

The act of re-packing the property and delivering it to the carrier (thus, completing the gift) constitutes an exercise of a right or power over the property so as to result in a taxable use of the property.

> "If petitioner exercises in this State any right or power incident to its ownership . . . (of the property) the tax is imposed. The tax does not rest upon the sum total of rights and powers incident to ownership, but upon any right or power." *Trimount Co. v. Johnson,* 152 Me. 109.

JON R. DOYLE
Assistant Attorney General

October 13, 1964

To: Paul A. MacDonald, Secretary of State

Re: Eligibility for Dealer Plates of Farm Machinery or Heavy Equipment Dealers.

Facts:

Certain dealers in farm machinery or heavy equipment buy and sell self-propelled vehicles as part of their businesses.

Question:

May farm machinery dealers or heavy equipment dealers who buy and sell self-propelled vehicles as part of their businesses be entitled to dealer registration plates for use on the self-propelled vehicles?

Answer:

See opinion.

Opinion:

R. S. Me. 1954, c. 22, § 26, as amended sets forth the criteria which an applicant must meet to obtain dealer registration plates. There is no reference in § 26 to the type of motor vehicle which must be bought and sold by the applicant. A motor vehicle is defined by R. S. Me. 1954, c. 22, § 1, as amended, as follows:

> "Motor vehicle shall mean any self-propelled vehicle not operated exclusively on tracks, including motorcycles."

The pertinent part of R. S. Me. 1954, c. 22, § 26 setting forth the criteria for obtaining dealer plates is as follows:

> " . . . The board, if satisfied that the applicant maintains a permanent place of business in the State where said applicant will be engaged in the business of buying and selling of motor vehicles, and is satisfied with the other facts stated in the application, and if satisfied that the applicant meets the minimum standards herein set forth, shall order the Secretary of State to issue a certificate of registration."

It therefore follows that an applicant is entitled to dealer plates regardless of the fact that he deals in farm machinery or heavy equipment provided he maintains a permanent place of business for the buying and selling of self-propelled vehicles that fall within the definition of a "motor vehicle," as well as satisfying the dealer board as to the other facts stated in his application and fully meeting the minimum standards set forth in R. S. Me. 1954, c. 22, § 26, as amended.

It should be noted that holders of motor vehicle dealer registration plates are subject to the limitations of the use of said plates established by R. S. Me. 1954, c. 22 § 29.

JEROME S. MATUS
Assistant Attorney General

October 22, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: "Shared Time" Program

Facts:

Appropriate school officials of an administrative unit wherein a public high school is maintained has presented a proposed "shared time" program to the State Department of Education for approval. Under the plan, Sanford High School would provide instruction in its classrooms for parochial school students residing in Sanford who normally attend St. Ignatius High School. The proposed plan encompasses two regular courses taught at Sanford High School, i. e., calculus and pre-nursing science.

Questions:

1. Is it legal for a school committee of an administrative unit to admit and provide instruction in calculus and pre-nursing science for resident students who are regularly enrolled in a private school which maintains a course of study and methods of instruction which have been approved by the Commissioner of Education?
2. Whether general purpose subsidy may be legally paid to an administrative unit participating in a "shared time" program as set forth in the given facts, so that the administrative unit realizes subsidy concerning the expenditures incurred relative to said program?
3. Whether construction subsidy can be legally paid to an administrative unit participating in a "shared time" program?

Answer:

The answers are given in the Reason.

Reason:

The Constitution of the State of Maine contains the following mandate upon the subject of education:

"ARTICLE VIII

"Literature

"A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important object, the legislature are authorized, and it shall be their duty to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools; and it shall further be their duty to encourage and suitably endow, from time to time, as the circumstances of the people may authorize, all academies, colleges and seminaries of learning within the state: *provided*, that no donation, grant or endowment shall at any time be made by the legislature to any literary institution now established, or which may hereafter be established, unless at the time of making such endowment, the legislature of the state shall have the right to grant any further powers to alter, limit or restrain any of the powers vested in, any such literary institution, as shall be judged necessary to promote the best interests thereof." *Constitution of the State of Maine.*

The Legislature, in its performance of that duty imposed by Constitutional decree, has enacted plural laws in the field of education. So it is, inter alia, that every administrative unit is required to raise and expend

monies for the support of their public schools. *R. S., c. 41, § 28*; and that all administrative units are required to provide school books, apparatus, and appliances for the use of pupils in their public schools. *R. S., c. 41, ¶ 34*. An examination of the State of Maine Laws relating to education reveals that the Legislature has not enacted legislation authorizing either the Commissioner of Education or the State Board of Education to approve "shared time" programs between school officials in administrative units and school officials of private schools.

Presently, limited attendance is authorized between the public schools in the area of "occupational courses."

> " . . . . 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." *R. S., c. 41, § 107.*

Surely, if legislation is necessary to authorize a limited attendance program between public schools, legislation is certainly required to authorize a limited attendance program between a public school and a private school.

Our Supreme Judicial Court, in *Squires, et al. v. City of Augusta*, 155 Me. 151, at page 159, stated a principle of law which seems both applicable and appropriate to the present matter.

> "From our study of the laws pertaining to education, we are convinced that the Legislature which enacted the various provisions intended that no municipality should regulate by ordinance or order any subjects which would affect or influence general education unless permitted to do so by an express delegation of power. To determine otherwise would be to disregard the clear intent of the Legislature and invite an interference on the part of any municipality within the State with the State's responsibility and constitutional duty to exert its 'full power' over the subject matter of schools and of education . . . "

Continuing, the Court in *Squires v. City of Augusta*, supra, held that "the State educational policy cannot and must not be interfered with by any subordinate governing body."

In answer to the first question, the State of Maine Laws relating to education do not authorize either the Commissioner of Education or the State Board of Education to approve the proposed "shared time" program; and, that being so, general purpose subsidy may not legally be paid to an administrative unit concerning the expenditures incurred by said unit relative to such program. Because the given facts do not indicate that construction subsidy is involved, the third question is moot.

In drafting this opinion, we are mindful of R. S., c. 41, § 37 wherein an administrative unit is authorized to "raise and appropriate money for the support of evening schools, day schools, classes and educational activities" for persons over 16 years of age "who are not in attendance at another

public school." Because section 37 permits an administrative unit to present a program which is supplementary to regular public school programs, it would be error to extend the import of the reference section.

JOHN W. BENOIT
Assistant Attorney General

November 5, 1964

To: George F. Mahoney, Commissioner of Insurance

Re: Division of Commissions Among Licensed Maine Insurance Agencies

Facts:

Many insurance coverages formerly supplied through the purchase of separate policies can now be obtained through the purchase of a so-called "package policy." There are insureds who purchased separate policies from different licensed Maine agencies but now find it to their advantage to purchase a "package policy" from one agency. Some of the insureds still desire to favor agencies from whom they had previously purchased separate policies. These insureds may direct the agency that writes the package policy to divide the commission on the package policy among such other agencies as the insured may designate. In many instances no actual service may be performed for the insured by an agency other than the policy writing agency.

Question:

Without violating Maine Statutes or acts of the United States Congress may commissions be divided among licensed Maine insurance agencies designated by an insured in those instances when such agencies do not issue policies or perform any other service for the insured?

Answer:

Yes.

Opinion:

The division of commissions among licensed Maine agencies without the issuance of a policy or performance of service by other than the policy writing agency is not violative of either federal or state law. In arriving at this conclusion, the first point to be decided is whether or not a division of commissions constitutes a doing of business in interstate commerce, and therefore could be subject to federal regulation. Although not stated in the given facts we are assuming that the commissions to be divided are paid by a foreign insurance company to a resident licensed Maine agency on the sale of a so-called "package policy" issued by the foreign insurance company.

In 1868, the United States Supreme Court held that insurance was not commerce and that insurance contracts were not interstate transactions even though the parties to the contracts were domiciled in different states in *Paul v. Virginia*, 75 U. S. (8 Wall) 168. This view was maintained by the United States Supreme Court until 1944 when in the Landmark Case of *U. S. v. South-Eastern Underwriters Association*, 322 U. S. 533, the Court found the South-Eastern Underwriters Association and its membership of nearly two hundred private stock fire insurance companies and twenty-seven individuals in violation of the Sherman Anti-Trust Act and held inter alia that

the commerce clause granted to Congress the power to regulate insurance transactions stretching across state lines. In reaching the conclusion that the insurance business was interstate commerce and subject to federal regulation the Court reasoned:

> " . . . . We may grant that a contract of insurance, considered as a thing apart from negotiation and execution, does not itself constitute interstate commerce. Cf. Hall v. Geiger-Jones Co., 242 U. S. 539, 557-558. But it does not follow from this that the Court is powerless to examine the entire transaction, of which that contract is but a part, in order to determine whether there may be a chain of events which becomes interstate commerce. Only by treating the Congressional power over commerce among the states as a 'technical legal conception' rather than as a 'practical one, drawn from the course of business' could such a conclusion be reached. Swift & Co. v. United States, 196 U. S. 375, 398. In short, a nationwide business is not deprived of its interstate character merely because it is built upon sales contracts which are local in nature. Were the rules otherwise, few businesses could be said to be engaged in interstate commerce." *U. S. v. South-Eastern Underwriters Association*, supra. 546-547.

The above rational brings us to the conclusion that an agreement to divide commissions even though among licensed insurance agencies in one jurisdiction would be considered in a chain of events constituting interstate commerce.

One of the results of the *South-Eastern* decision was the passage in 1945 of the McCarran-Ferguson Act, 15 U. S. C. A. §§ 1011-1015. The purpose of this Act was to protect the continued regulation and taxation of the insurance business by the states. The Act, in light of the *South-Eastern* decision, recognizes that the federal government has a limited role to play in the regulation of insurance. The section of the McCarran-Ferguson Act which sets forth the respective roles of the federal and state governments in the regulation of insurance is as follows:

> "(a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several states which relate to the regulation or taxation of such business.
>
> "(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided*, That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law. Mar. 9, 1945, c. 20, § 2, 59 Stat. 34; July 25, 1947, c. 326, 61 State 448." *15 U.S.C.A. 520, § 1012.*

Subsection B, supra, as above, limits the federal regulation of insurance to two areas.

The first area of regulation comes into operation when there is federal enactment specifically relating to the business of insurance and there is no proviso that state regulation would take precedence.

The second area of regulation is encompassed by federal enactments covering situations where there has been a lack of regulation by state law and the federal acts are made applicable to the extent that such insurance business is not regulated by state law. The McCarran-Ferguson Act may require three steps to be taken to establish whether or not an insurance practice is violative of federal or state law. The first of these steps falls into the first area of federal regulation set forth in 15 U. S. C. A. § 1012, subsection b. This step is to determine whether or not there has been a violation of a federal act which specifically relates to the business of insurance and has no proviso as to the precedence of state law. We have found no such federal act with a provision prohibiting the practice of the division of commissions among licensed agencies where no services are rendered by one or more of the licensed agencies.

Therefore, it is necessary to take the second step and determine whether or not there is a state law regulating the insurance practices in issue. We are not unmindful of R. S. Maine, 1954, chapter 60, § 298 which deals with discrimination or rebates on premiums for fire or liability insurance. In most jurisdictions a rebate statute does not apply to an agreement whereby commissions are to be divided among others than the insured, as between insurance brokers. *5 Couch on Insurance 2d 567*, § 30: 53. A careful reading of § 298 indicates that the State of Maine is in accord with most jurisdictions and this situation does not apply to a division of commissions among licensed Maine agencies. We are also of the opinion that R. S. Maine 1954, chapter 60, § 273-K, subsection 3 is not applicable to the given fact situation.

Having satisfied ourselves that there is no state statute regulating this insurance practice a third step must be taken. This third step falls into the second area of regulation encompassed by federal enactments. 15 U. S. C. A. § 1012, subsection b, supra, provides in effect that after June 30, 1948 the Sherman Act, as amended, the Clayton Act, as amended and the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by state law. We have checked these three acts as amended and have found no section to be applicable to the given facts situation. We are not unmindful of 15 U. S. C. A., § 13 (c) which reads as follows:

> "(c) It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid."

This section is a portion of the Robinson-Patman Anti-Discrimination Act, which Act was an amendment to the Clayton Act. 15 U. S. C. A. § 13 (c) is section 2 (c) of the Robinson-Patman Act. The following is an explanation of this section in a publication of the Joint Committee on the Continuing Legal Education of the American Law Institute and the Ameriian Bar Association.

> "Section 2 (c) is commonly known as the 'brokerage section.' It prohibits the payment by a seller of any compensation in the nature of a brokerage or commission for or on the sale of goods, or any allowance or discount in lieu thereof, to the buyer or to a buying agent, broker or other intermediary acting for the buyer or subject to his control. The buyer is also prohibited from receiving such commissions or discounts." *Price Discrimination and Problems under the Robinson-Patman Act*, 2d Revised Edition, June, 1959, at pages 2 and 3.

It is clear that this section relates to transactions between sellers of goods and buyers, their agents, broker or other intermediary acting for the buyer or subject to his control. This section cannot be applicable to the given fact situation because a licensed Maine insurance agency having performed no personal services and having received a portion of the commission is neither the buyer, the buyer's agent, a broker or other intermediary acting for the buyer or subject to his control.

We are satisfied that there is no federal or state regulation preventing the practice of dividing commissions on a package policy among licensed agencies even though one or more agency will have performed no service.

JEROME S. MATUS
Assistant Attorney General

November 17, 1964

To: Ernest H. Johnson, State Tax Assessor

Re: Taxation of Bean Property in A 2 Grafton, Oxford County

Facts:

State of Maine, grantee, purchased a certain lot or parcel of land in an unorganized township from Ervin Bean, grantor, on which there is a building. The grantor reserved the building on the premises which was to remain the grantor's personal property and reserved to the grantor and his spouse, a so-called life interest in the premises. There is also included in the deed five restrictions which are as follows:

1. No additional building, nor additions to the existing building, are to be erected without written permission of the State of Maine, its successors or assigns, acting through the State Park and Recreation Commission.
2. The premises are not to be used for commercial purposes but only for residential purposes. Renting the building for residential use is deemed to be a commercial purpose.

   Violation of this restriction shall immediately forfeit the right of the grantor and surviving spouse to occupy said premises.

3. The building is to be kept in a reasonable state of repair and appearance. The State Park and Recreation Commission shall notify the building owner or surviving spouse, in writing, of any condition requiring repair; and if the owner or surviving spouse have not made such repairs within 90 days thereafter, or come to an agreement with the Commission as to a definite date when such repairs will be made, the Commission may remove or demolish such building.
4. The building is to be occupied during some portion of each year, and if not so occupied by the owner or surviving spouse for two (2) consecutive calendar years, the Commission may remove or demolish same, and the grantor shall not again occupy said premises.
5. The grantor and surviving spouse shall not sell any building on said premises except upon condition that it be removed from the premises within 90 days after such sale, or within such date as may be agreed to by the Commission; the Commission may demolish and remove same, and if the building so demolished or removed is the dwelling, the grantor and surviving spouse shall not again occupy said premises.

   It is a condition of this grant that the premises shall not be used by the grantee, its successors or assigns, for camp sites or picnic grounds for so long as the grantor is entitled to occupy same, except by consent of grantor.

Question No. 1:

Whether or not the interest in this property retained by the grantor is subject to property taxation?

Answer:

Yes.

Reasons:

The pertinent law in question here is section 4 of Chapter 91-A, Revised Statutes, which states in part as follows:

> "Real estate, for the purpose of taxation, shall include all lands in the state, all buildings, . . . ; *interest and improvements in land, the fee of which is in the state* . . . . " (Emphasis supplied).

In looking at the conveyance in question here we find the following paragraph says:

> "Excepting and reserving the building on said premises which is to remain the personal property of the grantor; and reserving to the grantor . . . , the right to occupy said land and building for the remainder of their natural lives . . . "

It can be seen from the preceding, and the deed in general, that the grantor conveyed a fee simple to the grantee reserving in the grantor an "interest in the land, the fee of which is in the state."

This therefore satisfies the requirement of property taxable as real estate under Chapter 91-A, section 4 of the Revised Statutes.

Question No. 2:

Whether or not this interest in property being taxable should be taxed as real estate, or as real estate insofar as it relates to the land, and personal property insofar as it relates to the building, or as personal property?

Answer:

Real estate is taxable as real estate. Building is taxable as personal property.

Reasons:

Since the grantor here retains a life estate subject to a special limitation this would be considered to be an interest in land of which the fee is in the state and therefore would, for the purpose of taxation, be taxable as real estate under Chapter 91-A, section 4 of the Revised Statutes.

The pertinent section of the statute dealing with the taxability of buildings in the State of Maine is as follows:

> " . . . . Buildings and house trailers on leased land or on land not owned by the owner of the buildings when situated in any municipality, shall be considered real estate for purposes of taxation, and shall be taxed in the municipality where said land is located; *but when such buildings and house trailers are located in the unorganized territory they shall be assessed and taxed as personal property in the place where located.* (Emphasis supplied).

It can be readily seen from the foregoing section that since the building in question here is located in an unorganized territory, for purposes of taxation it should be taxed as personal property.

RICHARD S. COHEN
Assistant Attorney General

November 25, 1964

To: Col. Robert Marx, Chief, Maine State Police

Re: Granting of weight tolerance

Facts:

On the ground that measuring devices are not 100% accurate, it has been requested that you grant a tolerance above the maximum gross weight of 73,280 pounds for trucks.

Question:

May a tolerance above the maximum gross weight of 73,280 pounds provided for in R. S., c. 22, § 109, be granted by the Maine State Police?

Answer:

No.

Opinion:

R. S., c. 22 § 109, provides for a maximum gross weight of 73,280 pounds. R. S., c. 22, § 111, provides for fines dependent upon the amount of the excess over the gross weight limit, and further provides:

> "For the purposes of this chapter, weights as indicated by any type of stationary or portable scales approved by the Maine State Highway Commission and tested within 12 calendar months prior to the time of use by a person and method approved by said commission shall be deemed accurate."

Section 111 also provides, with regard to the minimum fine, that the excess be intentional and be 1,000 pounds or over. To grant a further tolerance would violate the clear intent of this provision.

Tolerances have been granted by the Legislature in other sections of the law, but there is no authority for a tolerance based on the possible inaccuracy of weighing devices.

LEON V. WALKER, JR.
Assistant Attorney General

December 14, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Transportation of School Children

Facts:

The superintending school committee of Town A has contracted with the superintending school committee of Town B whereby public school pupils of Town B receive public school instruction in Town A's public school system. *R. S., c. 41, § 105.* Pursuant to said agreement, Town A's school buses transport Town B's school children to the public schools in Town A.

Town A intends to utilize its buses for the additional purpose of transporting certain of Town B's school children to a parochial school in Town A, at a charge to the parents of these children. Town B has voted not to approve transportation for private school children. *R. S., c. 90-A, § 12. III, E.*

Questions:

Question No. 1:

Whether the use of Town A's school buses for the purpose of transporting Town B's public school children to the public schools in Town A constitutes a valid use?

Answer:

Yes.

Question No. 2:

Whether the use of Town A's school buses for the purpose of transporting certain of Town B's school children to a private school in Town A constitutes a valid use?

Answer:

The matter is of local import not concerning State subsidy moneys.

Reason:

Contracts for conveyance of public school children are contemplated in the law.

> " . . . The superintendent of schools in each town shall procure the conveyance of all elementary school pupils residing in his town, a part or the whole of the distance to and from the nearest suitable school, for the number of weeks for which schools are maintained in each year, when such pupils reside at such a distance from the said school as in the judgment of the superintending school

committee shall render such conveyance necessary. In all cases, con veyance so provided shall conserve the comfort, safety and welfare of the children conveyed and shall be in charge of a responsible driver who shall have control over the conduct of the children conveyed. Contract for said conveyance may be made for a period not to exceed 5 years. . . . " *R. S., c. 41, § 14.*

Too, the conveyance of private school children may be authorized by administrative units; but the cost of such conveyance is not an item upon which State subsidy is computed.

"E. Providing for the transportation of school children to and from schools other than public schools, except such schools as are operated for profit in whole or in part, subject to the following condition:

"1. Such sums shall not be considered in computing the net foundation program allowance on which state subsidy is computed under chapter 41, section 237-D. This subparagraph shall not apply to an administrative unit which transports children to a school pursuant to chapter 41, sections 105 and 107.

" . . . " *R. S., c. 90-A., § 12, III, E.*

In conclusion, the first question is answered in the affirmative; and the second question presents no matter for determination. *R. S., c. 41, § 12, III, E.*

JOHN W. BENOIT
Assistant Attorney General

December 15, 1964

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

Re: Milk Sales from Licensed Dealers to Caterers Servicing State-Owned Institutions

Facts:

A licensed milk dealer sells milk to a caterer. The caterer services a State teachers' college by providing students with meals on a contractual basis, including the milk purchased from the licensed milk dealer. The college in turn pays to the caterer a fixed amount per meal, with the catering service providing and paying for the necessary provisions and services.

Question:

Do minimum prices for milk established by the Commission apply to sales by licensed dealers to catering service to State-owned and operated institutions?

Answer:

Yes.

Opinion:

The given facts establish a sale from a licensed dealer to a caterer. The fact that the caterer then sells the milk to a state-owned and operated institution, exempt from regulation as to minimum prices for milk, does not change the fact that the sale from the dealer to a caterer is a sale subject to minimum prices for milk.

JEROME S. MATUS
Assistant Attorney General

December 23, 1964

To: William T. Logan, Commissioner of Education

Re: Endorsement of Published Materials

Facts:

The Commissioners of Education of the nine northeastern states have created the Northeastern State Coordinating Council. By direction of the commissioners, the Council created a workshop at Tufts University concerning the subject of citizenship and public affairs. The workshop, composed of teachers, turned out certain materials which the Council wishes to have published and distributed throughout the nine northeastern states. In the past, Tufts University has caused these materials to be published at a commercial printing house; and the commissioners have sponsored the publication in furtherance of its distribution. Now, the Council has informed the commissioners that Tufts University can no longer undertake such publication; and, therefore, the publication of the materials must be effected elsewhere. The Council is aware that several states cannot endorse publications by commercial houses, and thus the Council faces a dilemma with respect to how best to publish and distribute the reference materials. Each commissioner has agreed to secure an opinion from his Attorney General's Office regarding the legality of publication and distribution of the reference material by a university press (such as the Harvard University Press).

Question:

Whether the Commissioner of Education for the State of Maine may legally endorse the publication of these workshop materials when such publication and distribution is done by a university press (such as the Harvard University Press) which is not considered a "commercial house," with royalties going to a special fund existing for the purpose of underwriting future projects?

Answer:

Yes.

Reason:

The workshop materials are a result of the efforts of the commissioners. The Council, acting pursuant to the direction of the commissioners, caused the workshop to come into existence; and thus, caused the reference materials to exist. The end product, then, can be said to be the work of the commissioners. In the past, the commissioners have effected such publication by utilizing the facilities of Tufts University. However, that university has secured such publication through a contract with a commercial house. Yet, under those facts, the commissioners sponsored the publication. Surely, publication by a university press (not being considered a "commercial house"), followed by endorsement on the part of the commissioners, would not be improper.

According to the Maine Laws relating to public schools, the Commissioner of Education is authorized to obtain information upon the subject of school systems of other states and countries; and is authorized to disseminate this information in order to bring about an improved system of instruction in this State. He is authorized, inter alia, "to do all in his power to awaken

and sustain an interest in education among the people and to stimulate teachers to well-directed efforts in their work." *R. S., c. 41, § 11, II.*

JOHN W. BENOIT
Assistant Attorney General

December 28, 1964

To: Ernest H. Johnson, State Tax Assessor

Re: Power Line Extension Charges

Facts:

Questions have arisen as to the application of the Maine sales and use tax to pole line extension charges. When a customer of an electrical company lives outside of the service area of that electrical company, arrangements are made to provide service to the customer at an increased rate. This rate is reflected in an additional charge to the customer on his monthly bill for electricity.

A customer who wishes electric service from a power company and who is outside the service area agrees with the utility, in writing, as follows that:

1. The stipulated minimum amount will be paid.
2. The customer will contract with the utility for electric service in accordance with the schedule of rates — payments made by the consumer for electricity will be credited toward the guaranteed minimum for such month.
3. If the customer sells or ceases to occupy the premises he shall still be bound to the guaranteed payments; payments made for electric service on another location will not be credited but payments made at the original premises will be. The agreement in effect sets up a new minimum, as approved by the Public Utilities Commission, for the electrical service.

The electrical companies file a schedule of their rules and regulations which, among other things, provide a set rate for pole line extension charges. These rules and regulations are approved by the Public Utilities Commission. That Commission indicates that it considers these charges to be "rates."

The practical operation of this set of facts is as follows: John Jones, a customer of X Electric Company contracts with X Electric Company for electrical power. Under his contract he is obligated to pay $2 monthly if he purchases no electricity and an additional $6 monthly for pole line extension charges regardless of whether or not he purchases electricity. If he does purchase electricity the price of the electricity over and above $2 will apply toward the pole line extension charge.

Question No. 1:

Whether such charges are to be treated for tax purposes in the same manner as minimum charges within the normal rate schedule; that is, the entire charge being taxable if any current is used, and no tax being applicable if no current is used?

Answer:

Yes.

Question No. 2:

If the line extension charge is not itself subject to tax should the tax apply only to the amounts charged under the normal rate schedule (note that where there is a line extension charge, amounts which would be chargeable under the normal rate schedule are applied to the line extension charge), whether there is a separate statement or not?

Answer:

The line extension charge itself is not subject to tax unless there is a sale of tangible personal property; if there is a sale the charge is taxable whether separately stated or not.

Law:

The sales and use tax law, section 3, provides as follows:

> "The tax imposed upon the sale and distribution of gas, water or electricity by any public utility, the rates for which sale and distribution are established by the Public Utilities Commission, shall be added to the rates so established."

Further, "sale price" is defined in section 2 of the sales and use tax law as follows:

> "'Sale price' means the total amount of the sale . . . price . . . including services that are a part of such sale . . . nor shall 'sale price' include the price received for labor or services used in installing or applying or repairing the property sold, if separately charged or stated. . . . "

Reasons:

Clearly, the sales and use tax law contemplates the imposition of a tax only when there is a sale. Therefore, if the utility furnishes or sells no electricity to a customer and makes a minimum charge for a month only for the service, there is no tax. It follows that if a customer purchases no electricity during a particular month but is further obligated to pay an amount greater than the normal minimum on account of a line extension charge, there is no tax applicable to the new minimum.

Too, if a customer purchases electricity during the period under section 3 above a tax is applicable for the charge for that electricity. For example, if a customer purchases $4 worth of electricity a tax is applicable for that figure; if he purchases electricity, the charge for which is less than the minimum amount, the tax is applicable to the minimum amount.

A problem arises when for example, a customer purchases $3 worth of electricity but is obligated to pay $8 as a result of a line extension agreement he has made with the utility. The customer might receive a bill for $8 with no breakdown or he might receive a bill for $3 plus $5 for a line extension charge.

We will first consider the problem where there has been no breakdown and a lump sum billing is made for the entire charge.

The question may be approached in two fashions. We may consider first whether the additional charge is a "rate" established for a "sale and distribution" of electricity.

Every "electrical company" as defined in the Revised Statutes of 1954, Chapter 44, section 16 must under the provisions of section 17 of that chapter make a just and reasonable charge (rate or toll) for any light or power produced, transmitted, delivered or furnished.

The Public Utilities Commission has the power, as more specifically provided in the Revised Statutes of 1954, Chapter 44, to regulate the rates and charges of various utilities.

Both power companies referred to in your memorandum of October 27, 1964, have filed rules and regulations regarding line extension charges with the Public Utilities Commission; it is my understanding that these rules and regulations have been approved by the Maine Public Utilities Commission and are considered "rates" by that Department. Clearly, they are so considered by the statutes. These rules and regulations are quite detailed and provide the amount and method of charge for a line extension. It is my interpretation that the agreement for the sale of electricity including the line extension charges constitutes a new minimum charge for electricity and that it is a "rate for the sale and distribution of electricity" under section 3 and is taxable in the entire amount of the charge.

Therefore, if a customer purchases any amount of electricity to which is added a line extension charge to arrive at a new minimum, the entire amount is taxable.

In the alternative, we consider whether the charge for line extension is a service which is part of the sale.

Section 2 above referred to indicates that the "sale price" means a total amount of the sale price including any services that are a part of the sale.

We must conclude from a review of the documents here, particularly the contracts, that the customer wanted electricity furnished to its premises and the power company agreed to furnish this electricity. There was not a separate contract for the sale of electricity and a separate contract for the performance of the services but rather an integral agreement calling for the performance of the services as a necessary adjunct to the sale of the electricity.

If a different intention is shown by the parties that intention is controlling; however, here we have no facts, circumstances or statements which would show an intention other than to indicate that what the customer desired was electricity delivered to its premises.

Therefore, unless the services can be said to be services used in installing, applying or repairing the property sold, they are an integral part of the sale price and should be taxed as such whether separately stated or not. (See section 2 of the sales and use tax law.)

Clearly the line extension charges are not charges for repairing or applying the property sold by the definition of those words.

The real question is whether the line extension charges are installation charges. The statute contemplates the installation of the "property sold." Here, the only property sold is the electricity itself. To be sure, the utility may have installed its poles on land of the customer but there is no sale of these poles. Nor can we view the charges for the pole line extension to be a charge for the installation of the property sold. As pointed out earlier the charge for installation must have a specific reference to the property sold; they should not be considered as installation charges.

In summation: when a minimum charge is made for electricity and no electricity is sold there is no tax; when a minimum charge is made by virtue of a line extension charge and there is no sale of electricity alone this is taxable at the rate charged therefor; and when there is a sale of elec-

tricity coupled with a minimum charge, whether a line extension charge or not, we should consider the total charge as taxable.

JON R. DOYLE
Assistant Attorney General

December 29, 1964

To: Walter B. Steele, Jr., Executive Secretary

Re: Agency of State; University of Maine

Facts:

Recently, the University of Maine advertised for bids concerning their purchase of milk to be utilized at the facility. The price proposals could conceivably be for amounts less than the minimum prices established for the Bangor Marketing Area, which includes Orono.

Section 1 of the Maine Milk Commission Law defines "person" as follows:

> " 'Person' means any individual, partnership, firm, corporation, association or other unit, and the State and all political subdivisions or agencies thereof, except State owned and operated institutions."
> *R. S., c. 33, § 1.*

It is unlawful for any person to engage in any practice which is destructive of scheduled minimum prices.

> "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. . . . "
> *R. S., c. 33, § 4.*

Presently, the University is an agency of the State for the purposes for which it was established.

> "Sec. 131. State agency. The University of Maine is declared to be an instrumentality and agency of the state for the purpose for which it was established for which it has been managed and maintained under the provisions of chapter 532 of the private and special laws of 1865 and supplementary legislation relating thereto."
> *R. S., c. 41.*

Question:

1. Whether, under the given facts, the words "agency of the State" and "State-owned and operated institutions" are synonymous?

2. If not, whether the minimum prices established by the Commission apply to the sale of milk purchased by the University?

Answer:

1. No.
2. Yes.

Reason:

The reference language (R. S., c. 33, § 1) provides that the word "person" shall mean, inter alia, the State, its political subdivisions, and its agencies; but does not include institutions which are owned and operated by the State. The Legislature has decreed that the State University is an

agency of the State "for the purpose for which it was established and for which it has been managed." *R. S., c. 41, § 131.* In a legal opinion rendered on March 23, 1946, by this Office, the following statement was given regarding the status of the University, in view of the existence of *R. S., c. 41, § 131.*

> "Confirming what I stated in a former opinion, the University of Maine is chartered by the State and fostered by the State, yet it is not a branch of the State's educational system, nor an agency, nor an instrumentality of the State only for the purposes for which it was established and for which it has been managed and maintained under the provisions of its charter and, as you know, the University of Maine has a legal entity wholly separate and apart from the State. . . . "

In the case of *Orono v. Sigma Alpha Epsilon Society*, 105 Me. 214 (1909) the Court determined that a fraternity was liable for a real estate tax levied by the Town of Orono. The Court held that the Society was not immune from taxation by reason of its relationship to the University; that neither the Society nor the University was an agency or instrumentality of the State. (Thereafter the language appearing in section 131 of c. 41, R. S., came into existence.)

In answering this opinion, it is not enough to determine whether the University is an agency of the State; but it is necessary to determine the further question: Whether the University (or agency) is a state-owned and operated institution? The words "State agency" and "State-owned and operated institution" are not synonymous. According to the decision in *Orono v. Sigma Alpha Epsilon Society*, supra, the University was not a state-owned and operated institution; and the enactment of R. S., c. 41, § 131 does not change that holding.

JOHN W. BENOIT
Assistant Attorney General

Statistics for the Years 1963-1964

MAINE CRIMINAL STATISTICS FOR THE YEARS BEGINNING NOVEMBER 1, 1963 AND ENDING NOVEMBER 1, 1964

The following pages contain the criminal statistics for the years beginning November 1, 1963 and ending November 1, 1964.

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) No pross., etc., includes all forms of dismissal without trial such as nol-prossed, dismissed, quashed, continued, placed on file, etc.

(d) Pending.

(e) Please 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.

1963

1963 ALL COUNTIES — TOTAL INDICTMENTS AND APPEALS

Crime	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Disposition Guilty (e)	Disposition Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	2828	85	920	191	1628	89	742	62	521	296
Arson	19	1	10	—	7	1 1*	—	—	3	4
Assault & Battery	163	5	66	8	83	5 1*	21	2	45	15
Assault with Intent to Kill	8	—	4	—	3 1†	—	—	—	2	1 1†
Automobile Junkyard Violation	7	—	2	—	5	—	5	—	—	—
Breaking, Entering, and Larceny	327	3	98	14	207 1** 4***	3	4	—	113	90
Driving Under Influence	346	29	59	37	221	29	183	16	20	2
Embezzlement	8	—	4	—	4	—	—	—	2	2
Escape	21	1	2	2	16	1	—	—	15	1
Forgery	163	1	57	3	101	1 1*	1	—	70	30
Intoxication	104	2	38	5	59	2	36	8	11	4
Larceny	190	3	68	8	111	3	17	3	44	47
Liquor	46	3	16	1	24 2**	3	17	2	5	—
Manslaughter	4	—	—	—	4	—	—	—	2	2
Motor Vehicle	676	17	214	71	374	17	319	12	33	10
Murder	5	—	1	2	2†††	—	—	—	2†††	—
Night Hunting	62	1	12	2	47	1	37	9	1	—
Non-Support	19	—	9	2	8	—	—	—	3	5
Rape	11	—	1	—	10	—	—	—	9	1
Robbery	29	—	5	—	24	—	1	—	17	6
Sex Crimes	140	8	37	9	86	8	9	—	53	24
Sunday Blue Laws	20	—	8	—	12	—	12	—	—	—
Miscellaneous	460	11	209	27	212	11 1*	80	10	71	51

* (4) N. G. by reason of mental defect or mental disease.
** (3) Defendant Deceased.
*** (4) Custody of U. S. Immigration.
† Guilty of Assault.
††† Guilty of Manslaughter.

1963 INDICTMENTS AND APPEALS BY COUNTIES

ARSON

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Disposition Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	19	1	10	—	7	2	—	—	3	4
Androscoggin	2	—	—	—	2	—	—	—	—	2
Aroostook	1	—	—	—	1	—	—	—	1	—
Knox	1	1	—	—	—	1	—	—	—	—
Oxford	2	—	—	—	2	—	—	—	2	—
Penobscot	8	—	8	—	—	—	—	—	—	—
Waldo	3	—	2	—	—	1*	—	—	—	—
Washington	1	—	—	—	1	—	—	—	—	1
York	1	—	—	—	1	—	—	—	—	1

* (1) Not Guilty by reason of mental defect.

ASSAULT AND BATTERY

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	163	5	66	8	83	5 1*	21	2	45	15
Androscoggin	8	—	2	—	6	—	2	—	2	2
Aroostook	12	—	4	—	8	—	2	—	6	—
Cumberland	21	—	9	3	9	—	4	—	2	3
Franklin	10	—	5	—	5	—	—	—	5	—
Hancock	7	—	3	2	2	—	—	—	2	—
Kennebec	7	—	4	—	3	—	—	—	3	—
Lincoln	1	—	—	—	1	—	1	—	—	—
Oxford	7	—	2	1	4	—	—	—	4	—
Penobscot	26	—	9	1	15	1*	4	2	6	3
Piscataquis	4	1	—	—	3	1	1	—	2	—
Sagadahoc	12	—	8	1	3	—	1	—	2	—
Somerset	16	—	7	—	9	—	3	—	2	4
Waldo	6	—	2	—	4	—	2	—	1	1
Washington	6	2	1	—	3	2	1	—	2	—
York	20	2	10	—	8	2	—	—	6	2

* N. G. by reason of Mental Defect — Comm. to Pineland

ASSAULT WITH INTENT TO KILL

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	8	—	4	—	4	—	—	—	2	2
Androscoggin	1	—	—	—	1	—	—	—	1	—
Cumberland	4	—	2	—	1 1*	—	—	—	—	1 1*
Kennebec	3	—	2	—	1	—	—	—	1	—

* Guilty of Assault

AUTOMOBILE JUNKYARD VIOLATION

County	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Disposition Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	7	—	2	—	5	—	5	—	—	—
Kennebec	1	—	—	—	1	—	1	—	—	—
Penobscot	1	—	—	—	1	—	1	—	—	—
Piscataquis	2	—	—	—	2	—	2	—	—	—
Sagadahoc	1	—	—	—	1	—	1	—	—	—
Waldo	1	—	1	—	—	—	—	—	—	—
York	1	—	1	—	—	—	—	—	—	—

BREAKING, ENTERING AND LARCENY

County	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	327	3	98	14	212	3	4	—	113	90
Androscoggin	33	—	9	—	24	—	—	—	7	17
Aroostook	35	—	14	—	21	—	—	—	21	—
Cumberland	52	—	7	1	40 1*	—	3	—	20	17
Franklin	12	1	2	—	9	1	—	—	5	4
Hancock	14	—	1	4	9	—	—	—	3	6
Kennebec	38	—	13	—	25	—	—	—	11	14
Knox	3	—	1	—	2	—	—	—	—	2
Lincoln	8	—	3	—	5	—	—	—	2	3
Oxford	10	2	1	1	6	2	—	—	6	—
Penobscot	26	—	9	1	11	—	—	—	7	4
Piscataquis	14	—	7	1	6	—	—	—	4	2
Sagadahoc	9	—	6	—	3	—	—	—	—	3
Somerset	20	—	4	—	16	—	—	—	13	3
Waldo	13	—	6	—	7	—	—	—	2	5
Washington	13	—	4	—	3	—	1	—	—	2
York	40	—	10	6	20 4***	—	—	—	12	8

* Defendant Deceased
*** (4) Custody of U. S. Immigration

DRIVING UNDER INFLUENCE

County	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Disposition: Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	346	29	59	37	221	29	183	16	20	2
Androscoggin	20	1	1	—	18	1	12	4	2	—
Aroostook	24	4	4	—	16	4	15	—	1	—
Cumberland	59	2	16	7	34	2	32	1	1	—
Franklin	9	—	1	—	8	—	8	—	—	—
Hancock	12	—	3	3	6	—	6	—	—	—
Kennebec	33	4	—	—	29	4	21	5	3	—
Knox	8	—	1	2	5	4	—	—	—	1
Lincoln	7	2	—	—	5	2	3	—	2	—
Oxford	10	1	—	1	8	1	8	—	—	—
Penobscot	63	1	10	10	42	1	35	—	6	1
Piscataquis	2	—	1	—	1	—	—	—	1	—
Sagadahoc	5	—	1	3	1	—	1	—	—	—
Somerset	16	3	—	2	11	3	5	3	3	—
Waldo	3	—	1	—	2	—	2	—	—	—
Washington	11	1	3	3	4	1	4	—	—	—
York	64	10	17	6	31	10	27	3	1	—

EMBEZZLEMENT

County	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	8	—	4	—	4	—	—	—	2	2
Androscoggin	1	—	1	—	—	—	—	—	—	—
Cumberland	5	—	1	—	4	—	—	—	2	2
Penobscot	1	—	1	—	—	—	—	—	—	—
Sagadahoc	1	—	1	—	—	—	—	—	—	—

ESCAPE

County	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	21	1	2	2	16	1	—	—	15	1
Androscoggin	1	—	—	—	1	—	—	—	1	—
Aroostook	1	1	—	—	—	1	—	—	—	—
Cumberland	7	—	—	—	7	—	—	—	7	—
Kennebec	3	—	—	—	3	—	—	—	3	—
Knox	4	—	—	2	2	—	—	—	2	—
Piscataquis	1	—	—	—	1	—	—	—	1	—
York	4	—	2	—	2	—	—	—	1	1

FORGERY

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Disposition Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	163	1	57	3	101	2	1	—	70	30
Androscoggin	48	—	31	—	17	—	—	—	6	11
Aroostook	14	—	8	—	6	—	—	—	5	1
Cumberland	21	—	3	2	15	1*	—	—	12	3
Franklin	1	—	—	—	1	—	—	—	—	1
Hancock	5	—	2	—	3	—	—	—	2	1
Kennebec	14	—	3	—	11	—	1	—	8	2
Lincoln	1	1	—	—	—	1	—	—	—	—
Oxford	5	—	1	—	4	—	—	—	4	—
Penobscot	26	—	4	—	22	—	—	—	15	7
Somerset	11	—	2	1	8	—	—	—	7	1
Waldo	6	—	1	—	5	—	—	—	4	1
Washington	1	—	—	—	1	—	—	—	1	—
York	10	—	2	—	8	—	—	—	6	2

* N. G. by reason of Insanity — Comm. to Comm. Ulmer

INTOXICATION

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	104	2	38	5	59	2	36	8	11	4
Androscoggin	2	—	—	—	2	—	—	—	1	1
Aroostook	7	—	1	—	6	—	3	—	3	—
Cumberland	19	1	11	—	7	1	2	1	2	2
Franklin	9	—	4	—	5	—	4	1	—	—
Hancock	3	1	1	—	1	1	1	—	—	—
Kennebec	1	—	1	—	—	—	—	—	—	—
Knox	4	—	1	—	3	—	3	—	—	—
Lincoln	1	—	—	—	1	—	—	—	1	—
Oxford	1	—	1	—	—	—	—	—	—	—
Penobscot	28	—	8	2	18	—	13	3	2	1
Piscataquis	2	—	2	—	—	—	—	—	—	—
Somerset	6	—	3	—	3	—	2	—	1	—
Waldo	11	—	2	—	9	—	6	3	—	—
Washington	3	—	—	—	3	—	3	—	—	—
York	7	—	3	3	1	—	—	—	1	—

LARCENY

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Disposition Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	190	3	68	8	111	3	17	3	44	47
Androscoggin	8	1	2	—	5	1	—	—	2	3
Aroostook	3	—	1	—	2	—	—	—	2	—
Cumberland	48	—	21	1	26	—	5	—	8	13
Franklin	10	—	5	—	5	—	1	—	1	3
Hancock	8	—	1	—	7	—	—	1	3	3
Kennebec	21	—	6	—	15	—	2	1	8	4
Knox	6	—	3	2	1	—	1	—	—	—
Lincoln	3	—	3	—	—	—	—	—	—	—
Oxford	6	—	3	—	3	—	—	—	3	—
Penobscot	24	1	9	—	14	1	—	1	7	6
Piscataquis	6	1	2	—	3	1	—	—	3	—
Somerset	8	—	—	5	3	—	2	—	1	—
Waldo	12	—	1	—	11	—	1	—	1	9
Washington	9	—	—	—	9	—	4	—	1	4
York	18	—	11	—	7	—	1	—	4	2

LIQUOR

County	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	46	3	16	1	26	3	17	2	5	—
Androscoggin	9	—	3	—	6	—	3	—	3	—
Cumberland	10	—	6	1	3	—	1	2	—	—
Franklin	3	—	2	—	1	—	1	—	—	—
Kennebec	2	—	1	—	1	—	1	—	—	—
Knox	1	—	—	—	1	—	1	—	—	—
Oxford	4	—	1	—	3	—	1	—	2	—
Penobscot	11	2	—	—	7 2*	2	7	—	—	—
Waldo	1	—	1	—	—	—	—	—	—	—
Washington	3	1	1	—	1	1	1	—	—	—
York	2	—	1	—	1	—	1	—	—	—

* Defendant Deceased

MANSLAUGHTER

County	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	4	—	—	—	4	—	—	—	2	2
Androscoggin	2	—	—	—	2	—	—	—	—	2
Hancock	1	—	—	—	1	—	—	—	1	—
Penobscot	1	—	—	—	1	—	—	—	1	—

MOTOR VEHICLES

County	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Disposition: Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	676	17	214	71	374	17	319	12	33	10
Androscoggin	43	1	10	1	31	1	23	—	6	2
Aroostook	20	—	8	—	12	—	10	—	2	—
Cumberland	132	3	58	11	60	3	55	1	3	1
Franklin	39	2	8	—	29	2	24	—	2	3
Hancock	26	2	6	9	9	2	4	2	2	1
Kennebec	53	3	11	—	39	3	30	3	6	—
Knox	14	—	1	4	9	—	9	—	—	—
Lincoln	13	—	2	1	10	—	6	—	4	—
Oxford	41	1	23	6	11	1	11	—	—	—
Penobscot	123	—	22	14	87	—	81	2	2	2
Piscataquis	5	—	1	1	3	—	3	—	—	—
Sagadahoc	8	—	4	2	2	—	2	—	—	—
Somerset	36	3	13	7	13	3	11	1	1	—
Waldo	16	—	7	—	9	—	6	1	1	1
Washington	20	—	3	3	14	—	13	1	—	—
York	87	2	37	12	36	2	31	1	4	—

MURDER

County	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	5	—	1	2	2	—	—	—	2	—
Franklin	1	—	1	—	—	—	—	—	—	—
Knox	1	—	—	—	1*	—	—	—	1*	—
Washington	2	—	—	2	—	—	—	—	—	—
York	1	—	—	—	1*	—	—	—	1*	–

* Guilty of Manslaughter

NIGHT HUNTING

County	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	62	1	12	2	47	1	37	9	1	—
Aroostook	2	—	—	—	2	—	2	—	—	—
Franklin	2	—	—	—	2	—	2	—	—	—
Hancock	2	—	—	—	2	—	2	—	—	—
Oxford	3	—	3	—	—	—	—	—	—	—
Penobscot	13	—	3	2	8	—	8	—	—	—
Piscataquis	10	—	1	—	9	—	4	5	—	—
Somerset	10	—	4	—	6	—	5	—	1	—
Waldo	9	—	1	—	8	—	5	3	—	—
Washington	10	1	—	—	9	1	8	1	—	—
York	1	—	—	—	1	—	1	—	—	—

NON-SUPPORT

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Disposition Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	19	—	9	2	8	—	—	—	3	5
Androscoggin	2	—	—	—	2	—	—	—	—	2
Aroostook	1	—	1	—	—	—	—	—	—	—
Cumberland	4	—	3	1	—	—	—	—	—	—
Penobscot	1	—	—	—	1	—	—	—	—	1
Piscataquis	1	—	—	—	1	—	—	—	1	—
Sagadahoc	1	—	—	—	1	—	—	—	—	1
Somerset	2	—	1	1	—	—	—	—	—	—
Waldo	4	—	1	—	3	—	—	—	2	1
York	3	—	3	—	—	—	—	—	—	—

RAPE

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	11	—	1	—	10	—	—	—	9	1
Androscoggin	1	—	—	—	1	—	—	—	—	1
Aroostook	2	—	—	—	2	—	—	—	2	—
Cumberland	1	—	—	—	1	—	—	—	1	—
Hancock	1	—	—	—	1	—	—	—	1	—
Kennebec	1	—	—	—	1	—	—	—	1	—
Oxford	2	—	—	—	2	—	—	—	2	—
Penobscot	2	—	—	—	2	—	—	—	2	—
Somerset	1	—	1	—	—	—	—	—	—	—

ROBBERY

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	29	—	5	—	24	—	1	—	17	6
Androscoggin	3	—	—	—	3	—	—	—	3	—
Cumberland	11	—	1	—	8	—	—	—	7	1
					2*					2*
Franklin	3	—	2	—	1	—	1	—	—	—
Kennebec	3	—	—	—	3	—	—	—	1	2
Oxford	2	—	—	—	2	—	—	—	2	—
Penobscot	3	—	1	—	2	—	—	—	2	—
Sagadahoc	1	—	—	—	1	—	—	—	1	—
Waldo	1	—	—	—	1	—	—	—	—	1
York	2	—	1	—	1	—	—	—	1	—

* (2) Guilty of assault.

SEX CRIMES

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Disposition Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	140	8	37	9	86	8	9	—	53	24
Androscoggin	9	—	1	2	6	—	—	—	3	3
Aroostook	8	—	1	—	7	—	1	—	6	—
Cumberland	26	1	12	1	12	1	2	—	5	5
Franklin	6	1	—	—	5	1	4	—	1	—
Hancock	3	—	—	—	3	—	—	—	2	1
Kennebec	13	1	2	—	10	1	—	—	6	4
Knox	1	—	1	—	—	—	—	—	—	—
Oxford	7	2	—	4	1	2	—	—	1	—
Penobscot	17	—	3	1	13	—	—	—	6	7
Piscataquis	3	—	2	1	—	—	—	—	—	—
Sagadahoc	9	—	7	—	2	—	—	—	1	1
Somerset	9	1	2	—	6	1	—	—	6	—
Waldo	5	1	—	—	4	1	1	—	2	1
Washington	6	—	—	—	6	—	1	—	4	1
York	18	1	6	—	11	1	—	—	10	1

SUNDAY BLUE LAWS

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	20	—	8	—	12	—	12	—	—	—
Androscoggin	8	—	—	—	8	—	8	—	—	—
Cumberland	9	—	7	—	2	—	2	—	—	—
Kennebec	3	—	1	—	2	—	2	—	—	—

MISCELLANEOUS

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	460	11	209	27	212	12	80	10	71	51
Androscoggin	39	1	17	5	16	1	1	—	4	11
Aroostook	27	—	17	—	10	—	4	1	5	—
Cumberland	78	3	36	5	33	3 1*	8	—	20	5
Franklin	24	—	5	—	19	—	17	—	1	1
Hancock	17	1	3	—	13	1	2	5	3	3
Kennebec	35	—	10	—	25	—	2	1	11	11
Knox	16	—	4	1	11	—	10	—	1	—
Lincoln	4	—	1	—	3	—	3	—	—	—
Oxford	61	2	43	—	16	2	2	2	12	—
Penobscot	71	—	29	6	36	—	15	1	9	11
Piscataquis	8	—	5	—	3	—	2	—	—	1
Sagadahoc	4	—	2	—	2	—	2	—	—	—
Somerset	12	—	2	—	10	—	2	—	2	6
Waldo	12	1	8	—	3	1	3	—	—	—
Washington	11	—	1	6	4	—	3	—	1	—
York	41	3	26	4	8	3	4	—	2	2

* N. G. by reason of mental disease or mental defect.

FINANCIAL STATISTICS, YEAR ENDING NOVEMBER 1, 1963

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	$ 33,036.32	$ 35,927.98*	$ 2,631.90	$ 16,930.20	$ 5,168.16	$ 46,354.56
Aroostook	16,753.32	38,988.10	1,981.40	11,529.30	9,529.50	37,375.07
Cumberland	68,781.33	108,410.42	3,147.56	11,707.30	5,867.40	126,160.53
Franklin	7,965,25	9,249.15	1;231.40	2,815.80	5,790.80	22,048.00
Hancock	15,235.48	19,999.06	1,860.40	4,627.54	1,824.00	30,675.01
Kennebec	18,544.97	27,414.00	1,220.40	8,175.60	7,185.60	33,728.83
Knox	321.96	13,921.25	876.60	1,850.00	1,162.40	22,031.70
Lincoln	4,464.75	174.11	795.30	2,713.20	1,288.00	1,149.00
Oxford	6,272.58	3,995.66	1,093.80	6,735.00	1,823.36	39,050.36
Penobscot	17,949.00	23,910.00	2,312.00	11,743.00	18,330.00	62,593.00
Piscataquis	928.97	7,999.16	531.20	3,729.10	2,339.00	12,541.75
Sagadahoc	4,870.44	4,503.03	799.60	4,606.40	543.50	15,155.70
Somerset	24,455.17	20,589.18	2,113.40	8,879.90	3,196.00	63,607.38
Waldo	12,386.11	21,658.22	751.60	4,197.00	5,481.54	23,955.85
Washington	10,997.01	6,415.33	1,238.40	3,607.60	5,904.80	37,319.89
York	5,331.69	35,827.77	2,366.60	12,162.50	5,313.10	114,529.32
Totals	$248,294.35	$378,982.42	$ 24,951.56	$116,009.44	$ 80,747.16	$688,275.95

* This amount includes $3,683.50 received from Sagadahoc for support of their prisoners.

1963 POST-CONVICTION PETITIONS

	STATE COURTS				FEDERAL COURTS			
Type of Petition	Total	Superior Court	Outcome	Appeal to Law Court	U. S. D. C.	U. S. C. A.	U. S. Supreme Court	Outcome
Certiorari	1						1	Denied (1)
Habeas Corpus	25	17	Withdrawn (2) Dismissed (15)	Lack of Prosecution (1)	8	1		Denied (8)
Post-Conviction Habeas Corpus	8	8	Withdrawn (1) Dismissed (5) Pending (2)	Lack of Prosecution (1) Dismissed (2)				
Writ of Error	8	8	Report (1) Discharged (1) Dismissed (6)	Dismissed (1)				
Writ of Error Coram Nobis	12	12	Report (1) Dismissed (7) Withdrawn (2) Pending (1) Sentence Revoked (1)	Sustained (1) Dismissed (2)				
TOTALS	54	45	45	8	8	1	1	9

1963 LAW COURT CASES

COUNTY	NAME OF CASE	OUTCOME
Androscoggin	Berube, Lawrence	Exceptions Overruled
Aroostook	Vaillancourt, Herbert	Appeal Withdrawn
	Corey, Najeb	Pending
	Ross, Daniel	Pending
Cumberland	No Cases	
Franklin	No Cases	
Hancock	No Cases	
Kennebec	Park, Ralph Thomas	Appeal Denied
	Bernatchez, Edmond	Appeal Denied
	Ladd, Owen (#2168)	Appeal Denied
	Ladd, Owen (#2169)	Appeal Denied
	Biddison, Douglass	Pending
Knox	No Cases	
Lincoln	No Cases	
Penobscot	No Cases	
Piscataquis	No Cases	
Sagadahoc	No Cases	
Somerset	Ring, Frank	Appeal Dismissed
	Gillis, Robert J.	Pending
	Merrow, Leroy	Pending
	Talbot, Julien	Exceptions Sustained
Waldo	No Cases	
Washington	No Cases	
York	Charette, Gerard	Exceptions Overruled
	Deschambault, Clement H.	Exceptions Sustained
	Deschambault, Clement H.	Exceptions Overruled
	Binette, Raoul J.	Exceptions Sustained
	Austin, James G.	Exceptions Sustained
	Austin, James G.	Exceptions Sustained
	Hodgkins, Oscar	Exceptions Sustained

1964

Crimes	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Disposition Guilty (e)	Disposition Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	2620	96	909	111	1500	100	722	69	417	277
Arson	11	2	2	—	6	2	—	—	5	1
						1*				
Assault & Battery	156	10	69	4	73	10	13	3	43	14
Assault with Intent to Kill	19	1	4	1	7	1	—	—	5	2
					4**	2*			4**	
Automobile Junkyard Violation	6	—	2	—	4	—	4	—	—	—
Breaking, Entering and Larceny	353	5	108	13	227	5	—	3	118	106
Driving Under Influence	332	33	53	17	229	33	192	27	10	—
Embezzlement	25	2	18	—	5	2	—	—	1	4
Escape	29	—	5	6	18	—	—	—	18	—
Forgery	127	2	56	—	69	2	1	—	34	34
Intoxication	75	—	29	7	39	—	25	4	9	1
Larceny	130	2	57	7	64	2	8	4	28	24
Liquor	44	2	12	2	23	2	17	5	1	—
					5†					
Manslaughter	4	1	—	—	2	1	—	—	2	—
					1**				1**	
Motor Vehicle	671	9	241	30	391	9	351	13	19	8
Murder	11	—	1	2	2	2*	—	—	2	—
					2***					
					2††					
Night Hunting	63	11	14	3	35	11	28	5	1	1
Non-Support	14	—	8	—	6	—	—	—	1	5
Rape	24	6	3	—	12	6	—	—	11	1
					3**					3**
Robbery	21	1	3	3	12	—	—	—	11	1
					2**				2**	
Sex Crimes	103	—	36	2	65	—	1	2	45	17
Miscellaneous	402	9	188	13	185	9	82	3	45	55
					1**				1**	
					6†††					

* N. G. by Reason of Mental Defect or Mental Disease
** Guilty of Assault
*** Guilty of Manslaughter
†† Appeal to Law Court
††† (6) Children Committed to Health and Welfare
† (5) License Suspended

1963 INDICTMENTS AND APPEALS BY COUNTIES

ARSON

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Disposition: Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	11	2	2	—	6	2 1*	—	—	5	1
Aroostook	4	—	1	—	3	—	—	—	3	—
Cumberland	1	—	—	—	1	—	—	—	1	—
Oxford	1	1	—	—	—	1	—	—	—	—
Penobscot	1*	—	—	—	—	1*	—	—	—	—
Somerset	1	—	1	—	—	—	—	—	—	—
Waldo	1	1	—	—	—	1	—	—	—	—
Washington	2	—	—	—	2	—	—	—	1	1

* (1) N. G. by Reason of Mental Defect

ASSAULT AND BATTERY

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	156	10	69	4	73	10	13	3	43	14
Androscoggin	3	—	1	1	1	—	1	—	—	—
Aroostook	11	—	2	—	9	—	—	—	8	1
Cumberland	24	2	11	—	11	2	—	1	8	2
Franklin	3	—	1	—	2	—	—	—	—	2
Hancock	5	—	1	2	2	—	1	—	—	1
Kennebec	23	3	7	—	13	3	3	—	9	1
Knox	3	—	2	—	1	—	—	—	1	—
Lincoln	4	—	—	1	3	—	2	—	1	—
Oxford	2	1	1	—	—	1	—	—	—	—
Penobscot	23	—	11	—	12	—	2	2	4	4
Piscataquis	1	—	—	—	1	—	1	—	—	—
Sagadahoc	13	2	6	—	5	2	1	—	4	—
Somerset	11	2	4	—	5	2	—	—	3	2
Waldo	7	—	4	—	3	—	—	—	2	1
Washington	5	—	3	—	2	—	—	—	2	—
York	18	—	15	—	3	—	2	—	1	—

ASSAULT WITH INTENT TO KILL

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Disposition Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	19	1	4	1	7	1	—	—	5	2
					4**	2*			4**	
Aroostook	1	—	—	—	—	1*	—	—	—	—
Cumberland	7	1	2	—	3	1	—	—	3	—
					1**				1**	
Kennebec	2	—	1	—	1**	—	—	—	1**	—
Knox	1	—	—	—	1	—	—	—	1	—
Lincoln	1	—	—	1	—	—	—	—	—	—
Penobscot	2	—	—	—	1**	1*	—	—	1**	—
Piscataquis	1	—	—	—	1**	—	—	—	1**	—
Somerset	3	—	1	—	2	—	—	—	—	2
Washington	1	—	—	—	1	—	—	—	1	—

* (2) N. G. by Reason of Mental Disease
** (4) Guilty of Assault

AUTOMOBILE JUNKYARD VIOLATION

County	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	6	—	2	—	4	—	4	—	—	—
Cumberland	2	—	1	—	1	—	1	—	—	—
Kennebec	1	—	1	—	—	—	—	—	—	—
Sagadahoc	1	—	—	—	1	—	1	—	—	—
Somerset	2	—	—	—	2	—	2	—	—	—

BREAKING, ENTERING AND LARCENY

County	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	353	5	108	13	227	5	—	3	118	106
Androscoggin	12	—	5	—	7	—	—	—	7	—
Aroostook	31	—	12	—	19	—	—	—	8	11
Cumberland	50	2	10	—	38	2	—	—	22	16
Franklin	6	—	—	—	6	—	—	—	2	4
Hancock	44	1	15	5	23	1	—	—	14	9
Kennebec	41	—	8	—	33	—	—	—	14	19
Knox	6	—	1	—	5	—	—	—	3	2
Lincoln	5	—	1	2	2	—	—	—	2	—
Oxford	18	—	6	—	12	—	—	—	12	—
Penobscot	45	—	18	5	22	—	—	—	10	12
Piscataquis	10	—	2	—	8	—	—	—	4	4
Sagadahoc	11	—	7	—	4	—	—	—	3	1
Somerset	14	—	3	—	11	—	—	—	4	7
Waldo	15	—	7	—	8	—	—	3	1	4
Washington	21	—	4	1	16	—	—	—	7	9
York	24	2	9	—	13	2	—	—	5	8

DRIVING UNDER INFLUENCE

County	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Disposition: Guilty (e)	Disposition: Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	332	33	53	17	229	33	192	27	10	—
Androscoggin	29	3	5	2	19	3	18	1	—	—
Aroostook	27	3	2	—	22	3	12	10	—	—
Cumberland	51	6	4	—	41	6	34	5	2	—
Franklin	9	—	—	1	8	—	7	1	—	—
Hancock	19	2	5	4	8	2	6	—	2	—
Kennebec	21	2	3	—	16	2	10	5	1	—
Knox	12	—	2	2	8	—	6	2	—	—
Lincoln	1	—	—	—	1	—	1	—	—	—
Oxford	12	—	5	2	5	—	5	—	—	—
Penobscot	55	2	12	5	36	2	33	2	1	—
Piscataquis	2	1	—	—	1	1	—	—	1	—
Sagadahoc	2	—	1	—	1	—	1	—	—	—
Somerset	10	1	2	—	7	1	7	—	—	—
Waldo	8	—	1	1	6	—	5	1	—	—
Washington	11	3	—	—	8	3	7	—	1	—
York	63	10	11	—	42	10	40	—	2	—

EMBEZZLEMENT

County	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Disposition: Guilty (e)	Disposition: Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	25	2	18	—	5	2	—	—	1	4
Aroostook	1	—	—	—	1	—	—	—	1	—
Cumberland	2	—	1	—	1	—	—	—	—	1
Hancock	18	2	14	—	2	2	—	—	—	2
Kennebec	1	—	1	—	—	—	—	—	—	—
Penobscot	2	—	1	—	1	—	—	—	—	1
Sagadahoc	1	—	1	—	—	—	—	—	—	—

ESCAPE

County	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Disposition: Guilty (e)	Disposition: Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	29	—	5	6	18	—	—	—	18	—
Androscoggin	1	—	—	1	—	—	—	—	—	—
Cumberland	14	—	—	1	13	—	—	—	13	—
Kennebec	2	—	—	—	2	—	—	—	2	—
Knox	10	—	5	4	1	—	—	—	1	—
Oxford	2	—	—	—	2	—	—	—	2	—

FORGERY

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Disposition Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	127	2	56	—	69	2	1	—	34	34
Androscoggin	10	—	4	—	6	—	1	—	5	—
Aroostook	15	—	6	—	9	—	—	—	3	6
Cumberland	6	—	2	—	4	—	—	—	2	2
Franklin	2	—	1	—	1	—	—	—	1	—
Hancock	3	—	2	—	1	—	—	—	—	1
Kennebec	21	1	9	—	11	1	—	—	4	7
Oxford	1	—	1	—	—	—	—	—	—	—
Penobscot	41	—	20	—	21	—	—	—	13	8
Somerset	7	—	3	—	4	—	—	—	1	3
Waldo	2	—	—	—	2	—	—	—	2	—
Washington	9	—	6	—	3	—	—	—	1	2
York	10	1	2	—	7	1	—	—	2	5

INTOXICATION

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	75	—	29	7	39	—	25	4	9	1
Androscoggin	7	—	4	—	3	—	2	—	1	—
Aroostook	3	—	1	—	2	—	2	—	—	—
Cumberland	10	—	7	—	3	—	3	—	—	—
Franklin	2	—	1	1	—	—	—	—	—	—
Hancock	5	—	2	2	1	—	—	—	1	—
Kennebec	3	—	1	—	2	—	1	—	1	—
Knox	4	—	—	—	4	—	1	—	3	—
Lincoln	2	—	—	1	1	—	1	—	—	—
Oxford	1	—	—	—	1	—	1	—	—	—
Penobscot	15	—	5	2	8	—	7	—	1	—
Somerset	5	—	1	—	4	—	3	—	—	1
Waldo	10	—	1	1	8	—	4	3	1	—
Washington	1	—	—	—	1	—	—	1	—	—
York	7	—	6	—	1	—	—	—	1	—

LARCENY

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Disposition Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	130	2	57	7	64	2	8	4	28	24
Androscoggin	2	—	1	—	1	—	—	—	1	—
Aroostook	10	—	7	—	3	—	1	—	1	1
Cumberland	30	1	14	—	15	1	—	—	9	6
Franklin	17	—	9	2	6	—	2	—	2	2
Hancock	3	—	1	—	2	—	—	—	—	2
Kennebec	4	—	—	—	4	—	—	—	2	2
Knox	3	—	2	—	1	—	—	—	—	1
Lincoln	1	—	—	—	1	—	—	1	—	—
Oxford	9	—	3	—	6	—	—	—	6	—
Penobscot	16	—	4	1	11	—	—	1	4	6
Piscataquis	1	—	1	—	—	—	—	—	—	—
Sagadahoc	2	—	1	—	1	—	—	—	—	1
Somerset	9	1	1	—	7	1	4	—	3	—
Waldo	9	—	2	4	3	—	—	1	—	2
Washington	1	—	—	—	1	—	—	—	—	1
York	13	—	11	—	2	—	1	1	—	—

LIQUOR

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	44	2	12	2	28	2	17	5	1	—
Androscoggin	2	—	1	—	1*	—	—	—	—	—
Cumberland	12	1	—	—	7 4*	1	7	—	—	—
Franklin	6	—	1	1	4	—	4	—	—	—
Hancock	1	—	—	—	1	—	1	—	—	—
Kennebec	4	—	1	—	3	—	2	1	—	—
Lincoln	1	1	—	—	—	1	—	—	—	—
Oxford	1	—	1	—	—	—	—	—	—	—
Penobscot	8	—	1	1	6	—	2	4	—	—
Piscataquis	1	—	1	—	—	—	—	—	—	—
Somerset	1	—	1	—	—	—	—	—	—	—
Waldo	2	—	—	—	2	—	1	—	1	—
York	5	—	5	—	—	—	—	—	—	—

* License Revoked or Suspended

MANSLAUGHTER

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	4	1	—	—	2 1*	1	—	—	2 1*	—
Androscoggin	1	—	—	—	1	—	—	—	1	—
Aroostook	1	—	—	—	1*	—	—	—	1*	—
Knox	1	—	—	—	1	—	—	—	1	—
York	1	1	—	—	—	1	—	—	—	—

* Guilty of Assault and Battery

MOTOR VEHICLE

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Disposition: Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	671	9	241	30	391	9	351	13	19	8
Androscoggin	35	—	13	1	21	—	20	—	1	—
Aroostook	43	—	18	—	25	—	22	1	2	—
Cumberland	107	—	39	—	68	—	60	3	5	—
Franklin	64	—	15	3	46	—	42	4	—	—
Hancock	22	—	11	1	10	—	6	—	1	3
Kennebec	35	1	7	—	27	1	24	—	2	1
Knox	28	1	9	3	15	1	14	—	1	—
Lincoln	8	—	2	3	3	—	3	—	—	—
Oxford	26	1	8	6	11	1	10	—	1	—
Penobscot	96	—	21	13	62	—	53	3	5	1
Piscataquis	7	—	1	—	6	—	6	—	—	—
Sagadahoc	6	—	4	—	2	—	1	—	—	1
Somerset	37	1	8	—	28	1	28	—	—	—
Waldo	15	2	4	—	9	2	7	1	1	—
Washington	20	1	4	—	15	1	13	1	—	1
York	122	2	77	—	43	2	42	—	—	1

MURDER

County	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	11	—	1	2	2 2* 2***	2**	—	—	2 2*	—
Cumberland	1	—	—	—	1	—	—	—	1	—
Franklin	1	—	—	1	—	—	—	—	—	—
Hancock	1	—	—	—	1	—	—	—	1	—
Oxford	1	—	—	1	—	—	—	—	—	—
Penobscot	2	—	—	—	2*	—	—	—	2*	—
Washington	2	—	1	—	—	1**	—	—	—	—
York	3	—	—	—	2***	1**	—	—	—	—

* (2) Guilty of Manslaughter
** (2) N. G. by Reason of Mental Illness
*** (2) Appeal to Law Court

NIGHT HUNTING

County	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	63	11	14	3	35	11	28	5	1	1
Aroostook	4	—	2	—	2	—	1	1	—	—
Franklin	6	4	2	—	—	4	—	—	—	—
Hancock	4	—	2	—	2	—	2	—	—	—
Kennebec	3	—	—	—	3	—	2	1	—	—
Oxford	6	—	—	2	4	—	4	—	—	—
Penobscot	18	—	3	1	14	—	10	3	1	—
Piscataquis	5	1	—	—	4	1	4	—	—	—
Waldo	2	2	—	—	—	2	—	—	—	—
Washington	13	4	3	—	6	4	5	—	—	1
York	2	—	2	—	—	—	—	—	—	—

NON-SUPPORT

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Disposition Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	14	—	8	—	6	—	—	—	1	5
Aroostook	1	—	1	—	—	—	—	—	—	—
Cumberland	1	—	1	—	—	—	—	—	—	—
Kennebec	1	—	—	—	1	—	—	—	—	1
Oxford	1	—	—	—	1*	—	—	—	1*	—
Somerset	3	—	1	—	2	—	—	—	—	2
Waldo	3	—	2	—	1	—	—	—	—	1
Washington	1	—	—	—	1	—	—	—	—	1
York	3	—	3	—	—	—	—	—	—	—

* Guilty of Neglect

RAPE

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	24	6	3	—	12 3*	6	—	—	11	4
Aroostook	2	—	—	—	1 1*	—	—	—	1	1*
Cumberland	3	—	1	—	2	—	—	—	2	—
Kennebec	5	1	—	—	4	1	—	—	4	—
Lincoln	1	1	—	—	—	1	—	—	—	—
Oxford	9	3	1	—	3 2*	3	—	—	3	— 2*
Somerset	1	—	—	—	1	—	—	—	1	—
York	3	1	1	—	1	1	—	—	—	1

* Guilty of Assault

ROBBERY

County	Total (a)	Ac-quit-ted (b)	Nol-pros etc. (c)	Pend-ing (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Pris-on (i)	Pro-ba-tion (j)
Totals	21	1	3	3	14	—	—	—	13	1
Cumberland	11	1	1	—	7 2*	—	—	—	7 2*	—
Franklin	3	—	—	3	—	—	—	—	—	—
Oxford	1	—	1	—	—	—	—	—	—	—
Penobscot	2	—	—	—	2	—	—	—	2	—
Waldo	1	—	—	—	1	—	—	—	1	—
York	3	—	1	—	2	—	—	—	1	1

* Guilty of Assault

SEX CRIMES

County	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Disposition: Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	103	—	36	2	65	—	1	2	45	17
Androscoggin	6	—	3	1	2	—	—	—	2	—
Aroostook	13	—	1	—	12	—	—	—	9	3
Cumberland	10	—	1	—	9	—	—	—	8	1
Hancock	1	—	—	—	1	—	—	—	1	—
Kennebec	23	—	12	—	11	—	1	2	5	3
Oxford	8	—	3	1	4	—	—	—	4	—
Penobscot	15	—	6	—	9	—	—	—	7	2
Piscataquis	2	—	1	—	1	—	—	—	1	—
Sagadahoc	8	—	6	—	2	—	—	—	—	2
Somerset	3	—	2	—	1	—	—	—	1	—
Waldo	5	—	—	—	5	—	—	—	4	1
Washington	4	—	—	—	4	—	—	—	3	1
York	5	—	1	—	4	—	—	—	—	4

MISCELLANEOUS

County	Total (a)	Acquitted (b)	Nol-pros etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	402	9	188	13	192	9	82	3	46	55
Androscoggin	16	—	7	3	4	—	1	—	3	—
					2**					
Aroostook	41	1	18	—	22	1	6	—	5	11
Cumberland	47	—	23	—	22	—	15	—	3	4
					1**					
					1*					1*
Franklin	27	—	8	—	19	—	12	1	2	4
Hancock	25	—	11	2	12	—	6	—	2	4
Kennebec	32	1	10	—	21	1	9	1	7	4
Knox	13	—	8	—	5	—	5	—	—	—
Lincoln	8	—	4	1	3	—	2	1	—	—
Oxford	28	2	13	1	11	2	7	—	4	—
					1**					
Penobscot	55	—	26	2	27	—	5	—	14	8
Piscataquis	6	1	3	—	2	1	—	—	—	2
Sagadahoc	3	—	1	—	2	—	2	—	—	—
Somerset	24	3	6	4	9	3	2	—	1	6
					2**					
Waldo	19	1	8	—	10	1	3	—	4	3
Washington	17	—	8	—	9	—	3	—	—	6
York	41	—	34	—	7	—	4	—	1	2

* Guilty of Assault
** (6) Children Committed to Health and Welfare

FINANCIAL STATISTICS, YEAR ENDING NOVEMBER 1, 1964

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	$ 33,438.81	$ 35,681.02*	$ 3,160.50	$ 17,282.70	$ 4,068.00	$ 52,341.44
Aroostook	17,354.00	37,473.00	2,634.00	12,693.00	8,438.00	6,842.00
Cumberland	73,512.23	103,955.31	2,248.20	13,176.20	11,002.00	214,849.65
Franklin	13,293.05	11,377.59	487.20	4,946.75	4,309.95	23,002.80
Hancock	20,913.88	25,041.42	1,135.50	6,799.95	1,573.00	32,939.04
Kennebec	19,426.56	28,821.56	2,119.30	12,858.10	4,519.00	7,449.40
Knox	1,351.59	9,975.08	1,804.90	4,404.90	1,773.00	17,753.05
Lincoln	920.55	2,535.52	831.70	5,107.10	1,179.00	15,408.00
Oxford	3,374.23	3,567.33	1,277.75	4,119.60	2,654.20	42,474.48
Penobscot	21,660.73	25,434.00	2,813.80	13,514.80	13,092.00	16,247.00
Piscataquis	2,004.97	8,919.33	412.90	1,720.38	920.00	1,145.00
Sagadahoc	4,976.40	4,178.15	701.40	1,873.70	577.00	12,333.00
Somerset	20,671.99	23,477.65	2,052.90	8,337.60	3,728.66	71,013.97
Waldo	16,731.70**	23,420.07	1,097.50	7,550.00	2,208.92	23,185.50
Washington	19,245.86	18,178.29	1,022.60	6,381.30	2,769.00	26,736.84
York	28,255.81	47,620.68	2,861.50	35,937.50	12,121.02	118,299.82
Totals	$297,132.36	$409,656.00	$ 26,661.65	$156,703.48	$ 74,932.75	$682,020.99

* This amount includes $3,115.50 from Sagadahoc for support of their prisoners.

** This amount includes costs of $1,861.47 of a trial for Hancock County.

1964 POST-CONVICTION PETITIONS

		STATE COURTS			FEDERAL COURTS			
Type of Petition	Total	Superior Court	Outcome	Appeal to Law Court	U. S. D. C.	U. S. C. A.	U. S. Supreme Court	Outcome
Habeas Corpus	5				5	2		Denied (5)
Post-Conviction Habeas Corpus	38	38	Dismissed (23) Pending (8) Discharged (7)	Pending (6) Lack of Prosecution (2) Dismissed (1)				
TOTALS	43	38	38	9	5	2		5

1964 LAW COURT CASES

COUNTY	NAME OF CASE	OUTCOME
Androscoggin	No Cases	
Aroostook	Najeb Corey	Pending
	Daniel Ross	Pending
Cumberland	Myron A. Millett, Sr.	Exception Sustained
	Robert Viles, Sr.	Pending
Franklin	No Cases	
Hancock	No Cases	
Kennebec	George McLeod	Respondent's exceptions sustained
	George McLeod	Respondent entitled to new trial on each indictment
	Douglas Biddison	Respondent's exceptions denied
Knox	No Cases	
Lincoln	No Cases	
Oxford	No Cases	
Penobscot	Kenneth MacKenzie	Pending
Piscataquis	No Cases	
Sagadahoc	No Cases	
Somerset	Julien Talbot	Respondent's demurrer sustained. Re-indicted May Term, 1964. Plea guilty — Men's Reformatory probation
Waldo	No Cases	
Washington	No Cases	
York	Oscar Hodgkins	Exceptions Overruled Mittimus issued

MEDICAL EXAMINERS' REPORTS OF DEAD BODIES

Counties	1963	1964
Androscoggin	21	14
Aroostook	84	66
Cumberland	177	186
Franklin	27	39
Hancock	46	46
Kennebec	153	138
Knox	42	38
Lincoln	32	30
Oxford	52	62
Penobscot	199	171
Piscataquis	36	35
Sagadahoc	18	8
Somerset	67	76
Waldo	9	1
Washington	53	45
York	135	174
Totals	1,151	1,129

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