STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1965 - 1966

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ATTORNEYS GENERAL OF MAINE

1820 - 1966

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
Richard J. Dubord, Waterville 1965

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 1946-1963
Boyd L. Bailey, Bath 1946-1956
George C. West, Augusta 1947-1961
Stuart C. Burgess, Rockland 1949-1953
L. Smith Dunnack, Augusta 1949-1965
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 1953-1965
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 1957-1965
Richard A. Foley, Augusta 1957-1963
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 1961-1965
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 1963-1965
Richard S. Cohen, Hallowell 1963-
Jerome S. Matus, Augusta 1964-
Emery O. Beane, Jr., Augusta 1965-
James M. Cohen, Lewiston 1965-
Ronald L. Kellam, Portland 1965-
Phillip M. Kilmister, Augusta 1965-
John B. Wlodkowski, Augusta 1965-
Peter T. Dawson, Augusta 1966-

* 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 (Resigned)
Assistant	William Clifford (Acting County Attorney)
Assistant	Charles Abbott
Assistant	John B. Beliveau
Aroostook	Frank G. Hickey
Assistant	John E. Welch
Cumberland	Earl J. Wahl
Assistant	Thomas F. Monaghan (Resigned)
Assistant	William B. Troubh
Assistant	Frederick T. McGonagle
Assistant	George Milliken
Franklin	Hubert Ryan
Hancock	Bernard C. Staples
Kennebec	Bernard R. Cratty
Assistant	Bruce Chandler
Knox	Peter P. Sulides
Lincoln	Donald T. Brackett
Oxford	Severin M. Beliveau
Penobscot	Howard M. Foley
Assistant	Albert C. Blanchard
Assistant	Jules L. Mogul
Piscataquis	Judson C. Gerrish
Sagadahoc	Ronald A. Hart
Somerset	Anthony J. Cirillo
Waldo	Roger F. Blake
Washington	Francis A. Brown
York	Lloyd P. LaFountain (Resigned) Ralph H. Ross, Successor
Assistant	Edward F. Gaulin

STATE OF MAINE

Department of the Attorney General

Augusta, Maine, December 1, 1966

To the Governor and Council of the State of Maine:

In conformity to Title 5, Section 204 of the Revised Statutes of 1964, I herewith submit a copy 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.

RICHARD J. DUBORD
Attorney General

January 14, 1965

Honorable Denis Blais
Executive Council
State House
Augusta, Maine

Dear Councillor:

Since your request I have reviewed the procedure which was followed on January 6th in connection with the swearing in of the new Executive Council. Apparently the Council was sworn in to office by the Governor in the Council Chamber following the instructions set forth in an agenda for council protocol which was prepared by the outgoing Secretary of State and Council.

However, I find that Article IX, Section 1, of the Constitution of Maine, requires that the members of the Council must be sworn in before the presiding officer of the Senate in the presence of both Houses of the Legislature. It, therefore, appears that the procedure set forth in the council protocol agenda which was followed was incorrect.

I must, therefore, conclude that the constitutional oath of office has not yet been properly administered to the newly elected members of the Executive Council and that they should be sworn in before the presiding officer of the Senate in joint convention before both Houses of the Legislature.

Yours very truly,
RICHARD J. DUBORD
Attorney General

January 21, 1965

Honorable Leon J. Crommett
House of Representatives
State House
Augusta, Maine

Re: *Ministerial and School Lands; and Funds therefrom. Use of Entire Fund for School Purposes by Administrative Unit.*

Dear Representative Crommett:

In answer to your request, we tender the following formal opinion:

FACTS:

Some years ago, the Town of Millinocket sold its public school lot pursuant to existing statutory authority. The funds realized from said sale are on deposit in the Millinocket Trust Company; and are earning a yearly income of $300. The school officials of the Town desire to make use of the principal for school purposes.

QUESTIONS:

1. Whether, under existing law, a Town may use any or all of the reference principal for school purposes?

2. If the answer to the first question is in the negative, whether the Legislature may (constitutionally) authorize towns to make such use of the principals?

ANSWERS:

1. No.
2. Yes.

REASON:

The present statutory provisions covering the administration of ministerial and school lands; and the administration of the gains derived from the sale of those lands is located in 13 M.R.S. § 3163 § 3172 and 30 M.R.S. § 4159 – § 4161 (formerly R.S., c. 57, § 50 § 64). Briefly, those provisions cover matters concerning: (1) The vesting of the grants (§ 3161; formerly § 50 of chapter 57, R. S.); the authority of the town to convey said ministerial and school lands (§ 3164; formerly § 53 of chapter 57, R. S.); the manner of investment of the proceeds of sale (§ 3165; formerly § 54 of chapter 57, R. S.); and the use of the income of the fund for school purposes in the town (§ 3167; formerly § 56 of chapter 57, R. S.). Because none of the reference statutes authorize the use of the principal amount of the funds, the first question must be answered in the negative.

A review of certain of the Maine Case Law concerning the second proposed question may be of some assistance in arriving at an attending answer. In *Union Parish Society v. Upton,* 74 Me. 545 (1883), our Supreme Judicial Court decided that a law enacted in 1832 (Laws of 1832, c. 39) was constitutional although it resulted in the diverting of proceeds of sales of reserved lands from the ministerial fund to the fund for public schools. It is to be noted that such law applied only to those lands where the title had not vested in any beneficiary. Certain of the language of the Court provides an interesting historical note concerning public lots:

> "After the district of Maine became a state, it was found that there was a variety of acts and resolves of Massachusetts, passed in pursuance of the policy of appropriating lands for public purposes, the lands situated mostly in Maine, different enactments having different charitable objects in view, and extending different legal rights to beneficiaries. It was deemed impracticable and inexpedient to carry all of the purposes of the commonwealth expressed in its legislation into literal effect. While the charities were to be upheld, it was thought best to turn all of them that could be into the channel of the public schools. So the law of 1832, c. 39, was passed, some legislation, in 1823 and 1831, preceding the law of 1832, and leading to it. Acts of 1824, c. 254, §4. Of 1831, c. 492. The act of 1832, in its substance kept alive from then till now, provides that the proceeds arising from the sale of such ministerial lands as had 'not vested in any parish or individual,' should be applied to the support of public schools. This act is declared, by the complainants in this bill, to be unconstitutional, as altering or attempting to alter vested rights. We think otherwise." *Union Parish Society v. Upton, supra,* at page 546-547.

In *State v. Cutler,* 16 Me. 349, our Supreme Judicial Court determined that the State was entitled to the custody and possession of the reference lots until an entity exists for

whose benefit the reservation was made. The Court stated, inter alia:

"By the act of separation, and the adoption of the constitution, we have succeeded to all the sovereignty of the Commonwealth of Massachusetts, for the regulation of the great subjects of State Rights. Our title to our portion of the public lands is the same as hers. Our jurisdiction over the territory is complete. Redress for injuries to those lands is to be sought in our Courts. But the principles of law as to individual and corporate rights are to govern our decision. Where the State has no right or title against individuals or corporations, but a mere despotic interference, it is not to be favored. But when it employs its power for the preservation of property, to take which, there is no person in existence, though it is not considered as passing by escheat to the government, it may well enough be considered as entitled to the possession against mere strangers and trespassers. It is not by this construction, intended, that the State becomes proprietor absolutely, and so authorized to defeat the terms of the grant made by Massachusetts; but to maintain them, for the security of those, who may be entitled to the benefit. ***" *State of Maine v. Alvan Cutler,* supra, at page 351.

Continuing, in *Millinocket v. Mullen,* 108 Me. 29, the Court determined that the inhabitants of the town could legally maintain an action of assumpsit concerning certain stumpage removed from the public school lot by the defendant. The Court reviewed the legislation relating to ministerial and school lands and the funds arising therefrom, and wrote upon the subject of the control and management of the school funds as follows:

"It seems clear from these statutory provisions that the legislative purpose was to place the ministerial and school funds, arising from the sale or otherwise of these lands, the fee in which was thus vested in the inhabitants of the town, in the control and management of an agency or instrumentality that should be perpetual and yet be entirely separate from the inhabitants of the town, either as individuals or as a municipality. The purpose was a wise one. It made more certain that the funds would be carefully preserved, invested, and the income thereof applied to the uses intended. This independent instrumentality, the trustees of the ministerial and school funds, was authorized to negotiate sales of the lands, and the statute provided specially the means by which the title should be transferred to purchasers. There is no provision in the statute that actions involving the title to such land are not to be brought in the name of the inhabitants of the town in whom the fee is vested. It would seem that such actions must necessarily be so brought. * * *" *Millinocket v. Mullen,* supra, at page 32.

In an earlier case concerning the public school lot in Millinocket, the Supreme Judicial Court decided the case of *State v. Mullen,* 97 Me. 331. *State v. Mullen,* supra, was an action of trespass to real estate. The Court upheld the non-suit of the plaintiff for the reason that the trespass was committed after the incorporation of Millinocket; and, therefore, the State ceased to be trustee of the reserved lands, and had no interest in them by which to maintain the action. In *Mullen,* the Court recognized the two ways in which public lands came into existence. Prior to the separation of Maine from Massachusetts, the latter state made grants of public lands; and after the separation, this State (by virtue of its sovereignty) became entitled to the care and possession of such lands. The Court also recognized the other method of creating public lands, i.e., through enactment of general law (Stat. 1824, c. 280, as revised by Stat. 1828, c. 393). In both instances, the State became trustee; and became entitled to the possession of the lands until they vested in the beneficiary. In those instances where the State, by general law, had appropriated land for public use, it was held that: "The State has placed no limitation upon its power to designate the uses, or to control thereafter the title vested

in the beneficiaries, only that they are to be public and for the benefit of the town." *State v. Mullen,* supra, at page 335.

Thus, if the Town of Millinocket acquired its public school lot by reason of the general law of the State of Maine, the fee has vested in the Town and the Legislature, by an enactment of general law, may authorize such Town to use the fund for school purposes. Such legislation should be so drawn that the vote of the townspeople occurs after the approval of the trustees (municipal officials.)

If the Town of Millinocket acquired the public lot pursuant to the act relating to the separation of the District of Maine from Massachusetts, Public Laws of Maine, 1821, Volume 1, p. 46, the Legislature may, through an enactment of general law, authorize the Town to make use of the "corpus" for school purpose. We predicate our opinion on the existence of Chapter 492 of the Laws of Maine, 1831, wherein the Legislature of this State created an Act to modify the terms and conditions of the Act of Separation; and in said Act decreed that the terms and conditions of the original Act "are hereby, so modified, or annulled, that the trustees of any ministerial or school fund incorporated by the Legislature of Massachusetts, in any town within this State, shall have, hold and enjoy their powers and privileges, subject to be altered, restrained, extended or *annulled* by the Legislature of Maine with the consent of such trustees and of the town for whose benefit such fund was established." (Emphasis supplied) The reference Act specified that it "shall take effect and be in force, provided, the Legislature of the Commonwealth of Massachusetts shall give its consent thereto." The reference consent was given by the Commonwealth of Massachusetts through its enactment of a legislative mandate of approval signed by the Governor June 20, 1831. *Laws of Massachusetts,* 1831, c. 47.

Very truly yours,
JOHN W. BENOIT
Assistant Attorney General

March 2, 1965

Kermit S. Nickerson, Deputy Commissioner — Education

Transportation of pupils; Review of Opinion Dated December 14, 1964.

Supplemental Statement Re December 14, 1964 Opinion

In a formal opinion dated December 14, 1964, this office declared that a superintending school committee of town A, which had contracted with the superintending school committee of town B so that the former town was educating the pupils of the latter town, could also contract with town B concerning the conveyance of town B's public school pupils to town A's schools. In the reference opinion we declined to render a formal opinion regarding the further use which was made of town A's school buses, i.e., the transportation of certain of town B's private school children to a private school in town A.

You have requested that we review the reference opinion. You indicate that you are concerned with the fact that town A's buses are going beyond "the town limits to provide conveyance for hire to another municipality." We know of no statutory provision confining the use of school buses to the town limits. Under the given facts, town B does not possess the necessary buses required to transport its students to town A; and has contracted with town A for the plural purposes of acquiring both an education for its youngsters and for the conveyance of these children to the place where the classes are held. In effect, town B's superintending school committee is providing

conveyance through the contract procedure. You also indicate concern relative to the fact that the use of town A's buses beyond its town limits might in some way conflict with public transportation regulations. The given facts do not indicate that town A's use of its buses constitutes a mode of public transportation.

You further express concern regarding town A's conveyance of town B's private school students to a private school in town A. You indicate that since town A's use of its buses involves a dual use, i.e., the conveyance of public school students and the conveyance of private school students, that, therefore, the expenditures are commingled, and the State cannot legally pay any subsidy for such private school transportation. The situation is no different than the plural instances of dual conveyance of both private and public school students in the City of Auburn. In such cases the State Board of Education has adopted a formula which, when applied, results in a state subsidy being paid on the cost of the conveying public school students only.

In conclusion, we are all mindful of the situations wherein towns make use of their school buses for the purpose of conveying members of the basketball team and members of the student body to basketball tournaments located outside the limits of the town; and of the situations where such teams and students are carried to other states on such buses for the purpose of taking part in an interstate tournament. Too, we are mindful of the situations where school buses are used to convey the members of the school band for concerts held outside the limits of the particular town. Surely, a town has as much right to use its buses to convey students residing in an adjacent municipality when the transporting town also holds a contract with such adjacent municipality regarding the education of these reference pupils.

JOHN W. BENOIT
Assistant Attorney General

March 9, 1965
Education

Kermit S. Nickerson, Deputy Commissioner

Transportation of School Children; Review of Opinion Dated December 14, 1964.

We acknowledge receipt of your inter-departmental memorandum dated March 5, 1965, wherein you indicate, a second time, that our December 14, 1964, opinion has not been received with favor by the Department of Education. (The first such indication came here on January 29, 1965.)

In your latest memorandum, you state that you shall draw the following conclusions concerning the December 14, 1964, opinion:

1. "A town operating a municipal bus route may engage in the business of transporting pupils residing in other towns for hire."

2. "I gather from the opinion that use of a school bus does not conflict with public transportation laws or franchises, even though this may be done for hire, on a contractual arrangement and for non-residents of the owning and operating town."

In the December 14 opinion, the facts reveal that the sending town contracted with the receiving town for both education and transportation. Our opinion should be read in light of the given facts. We have not yet stated that a municipality may operate its school buses for the purpose of transporting pupils residing in other towns for hire. Whether or not it may so operate is a matter of no concern to the State Department of Education.

You indicate that you are concerned by the "fact Town A is conveying students of

Town B to a parochial school for fees paid by the parents * * *." In our December 14 opinion, we stated that this was an area where the State should have no concern.

Your memorandum asks in conclusion: "What is the answer which may be given a citizen and a taxpayer in Town A when he says his tax money is being used to convey pupils for Town B and other non-resident pupils to a private school?" Of course, you are not required in law to answer such a question; and to do so would usurp the function of town counsel and the courts.

In conclusion, it is somewhat unrealistic to say that a town may utilize its school buses in order to transport members of the school body to a point outside the town limits (even to a point outside the state) in order that certain members of the student body take part in an athletic event; and, at the same time, saying that these same school buses cannot be utilized by the town for the purpose of performing the terms of a contract which call for such town to both educate and transport the students residing in the adjacent town. If a taxpayer feels himself aggrieved by such circumstances, he should not receive legal advice from the Department of Education.

JOHN W. BENOIT
Assistant Attorney General

March 31, 1965
Water Improvement Commission

R. S. Macdonald, Chief Engineer

Licensing of the Vahlsing Plant (sugar beet factory)

FACTS:

A new sugar beet processing plant is to be constructed on Prestile Stream. There are two possibilities; (1) the factory may connect into and discharge through the present pipe of a potato processing plant or, (2) it may discharge through its own pipe some 300 feet from the point of discharge of the potato processing plant.

QUESTION:

Does the sugar beet plant need a license from the Water Improvement Commission in either instance?

ANSWER:

Yes.

REASON:

The licensing of industries to pollute waters is covered by 38 M.R.S.A., sec. 413.

"No person, firm, corporation or municipality or agency thereof shall discharge into any stream, river, pond, lake or other body of water or watercourse or any tidal waters, whether classified or unclassified, any waste, refuse or effluent from any manufacturing, processing or industrial plant or establishment or any sewage *so as to constitute a new source of pollution* to said waters without first obtaining a license therefor from the commission." (Emphasis supplied)

The question which must be answered is whether or not the discharge from the sugar beet factory does "constitute a new source of pollution" to Prestile Stream.

Attached hereto are copies of two opinions on this subject previously given by this office. The first opinion is by Ralph W. Farris, Attorney General, dated February 25, 1949. In all three instances cited it was ruled to be a new source of pollution and would require a license.

The second opinion was dated August 30, 1962 by Thomas W. Tavenner, Assistant Attorney General. He ruled that a laundromat dumping its waste into a sewer did not require a license.

The distinction between the two opinions is readily understandable. They are not in conflict. The facts given in the instant case would be within the interpretation of a "new source of pollution" set forth in the 1949 opinion.

GEORGE C. WEST
Deputy Attorney General

April 27, 1965
Education

Kermit S. Nickerson, Deputy Commissioner

Transfer of Realty to School Administrative District by a Member Administrative Unit; Reversion Clause.

FACTS:

Recently a school administrative district was organized, and the participating administrative units are due to convey school property to the district pursuant to 20 M.R.S.A. §217.

> "When the territory of a school district, community school district or a municipality falls within a School Administrative District which has been issued its certificate of organization and has assumed the management and control of the operation of the public schools within the School Administrative District, the school directors shall determine what school property and buildings owned by any school district, community school district or municipality within the School Administrative District shall be necessary to carry on the functions of the School Administrative District and shall request in writing that the trustees of any school district, community school district or the municipal officers of any municipality within the School Administrative District convey the title to such school property and buildings to said School Administrative District, and the trustees of a school district, community school district or the municipal officers of any municipality shall make such conveyance notwithstanding any other provision in the charter of said school district, community school district, municipality or other provisions of law." *20 M.R.S.A. §217.*

One of the district's member units intends to convey its school property to the district with the proviso that a particular school site and buildings will revert to the municipality in the event that the property is no longer used for school purposes.

QUESTION:

Whether such a proviso may be made in the reference transfer?

ANSWER:

No.

REASON:

The reference provision of the public school laws, 20 M.R.S.A. §217, does not expressly answer the question presented for determination. The statute decrees only that a request be made for conveyance of school property; and that, thereupon, the conveyance shall be made.

It is noted that 20 M.R.S.A. §222 prescribes procedure for dissolution of school administrative districts. The section refers to a 'dissolution agreement'. It is the duty of the State Board of Education to prepare such an agreement for submission to the voters of the district. The Legislature has granted to the State Board of Education full authority to prepare said agreement. If a town has conveyed its school property to a school administrative district upon condition that such property shall revert to the municipality in the event that the property is no longer used for school purposes, then such school property is being returned pursuant to the instrument of conveyance rather than the dissolution agreement. The question which would then arise would be: Whether the dissolution agreement could legally recognize this situation so as to maintain the equities between the participating units.

In 20 M.R.S.A. §307, school directors of a school administrative district are authorized to dispose of real property by selling such property and building "to the town where the same is located at a mutually acceptable price without advertising; *provided the school administrative district had assumed no indebtedness or lease obligation on account of said property.*" (Our emphasis) Assume that the desired conveyance is made in the instant case and assume, also, that the district accedes to the indebtedness regarding the property. It seems somewhat inconsistent to say that such property may someday revert to the town wherein the property is located, by operation of law, but that the same property may not be transferred to such town at a mutually agreeable price.

The member municipalities in a school administrative district should transfer whatever title they possess in the school property to the district as is provided by the reference statute.

JOHN W. BENOIT
Assistant Attorney General

April 7, 1965
Maine State Police

Major Parker Hennessey, Deputy Chief

Children Running Off From the Training Centers

You have asked the opinion of this office relative to the authority of the State Police to apprehend and return runaways from Juvenile Training Centers.

The portion of the Statute determinative of the answer to your question appears in brackets below and was not discovered by this office until after talking with you by

telephone because of the misleading title to the section, R.S. 1964, T. 34, §133, formerly, R.S. 1954, c. 27, §10.

" §133. AIDING ESCAPE.

Whoever induces, aids or abets anyone committed to any state institution in escaping therefrom or from the custody of the Department of Mental Health and Corrections or the Department of Health and Welfare or who knowingly aids, harbors or conceals in any way anyone who has escaped therefrom, or who elopes with or marries a female committed to the custody of the said departments of any state institution without the consent of the department in custody of the person shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 11 months, or by both.

["It shall be the duty of any sheriff, deputy sheriff, constable, police officer or other person finding any fugitive from any of said institutions at large to apprehend them without a warrant and return said fugitive to the institution from which the escape was made or to any officer or agent of the department. Such officer shall be paid a reasonable compensation by the State for his services."]

This section is the only provision relating to escapes from State institutions, other than the State Prison and the Reformatories, and includes the State hospitals, the Pineland Hospital and Training Center and the Juvenile Training Centers. It is our view that the State Police, Sheriffs' Departments, etc., in carrying out their duty to maintain law and order are to assist in the location of all of such escapees, whether patients from the State hospitals or children committed to the training centers, and that once located, the police shall apprehend and return such persons without a warrant, to the institutions from which they escape.

This office did not make a ruling as such for the District Court in Augusta; it is not our function to do so, however, the Judge of the District Court and I, expressed the opinion that the girls who escaped from the Stevens Training Center had not committed a criminal offense under the General Escape Statute, R.S. 1964, T. 17, §1405, formerly, R.S. 1954, c. 135, §28. This Statute is subject to interpretation and may be differently interpreted by a County Attorney faced with a similar situation who may wish to attempt prosecution.

In any event, we are of the opinion that it is a police function to assist in the location of escapees from the training centers as part of the maintenance of law and order, and that the Statute before cited which is clear and unambiguous, and not subject to interpretation makes mandatory the apprehension and return of escapees from the Juvenile Training Centers, without a warrant.

COURTLAND D. PERRY
Assistant Attorney General

May 24, 1965
Forestry

Austin H. Wilkins, Commissioner

Removal of sunken logs from Great Ponds and Streams

FACTS:

Several inquiries have been made concerning the right of an individual to remove

sunken logs from Great Ponds and streams.

QUESTION:

To whom do sunken logs in Great Ponds and streams belong?

ANSWER:

See opinion.

OPINION:

The law of lost goods is applicable to sunken logs. The law in Maine, as stated in *Lawrence v. Buck,* 62 Maine 275, is that lost goods, as against all persons but the original owner and those deriving title under him, belong to the first finder who does such acts as indicate an intention to take possession of them. The owner of the land upon which the lost goods are found does not have title to them.

The provisions of 33 M.R.S.A. 1051, also seem applicable. This statute provides that whoever finds lost goods of a value of $3.00 or more shall, if the owner is unknown, within 7 days give notice thereof to the clerk of the town where the goods were found, and that if the value is $10.00 or more, the finder must, in addition, publish notice thereof in a newspaper.

While the chapter heading of 38 M.R.S.A. 971 is entitled "Floating Timber", such a heading is not to be considered as affecting the meaning of the law itself. This section provides that whoever takes, without the consent of the owner, any log suitable to be sawed, *lying in* any river or pond, forfeits for every such log $20.00, one-half for the State and one-half for the complainant. I have underscored the words "lying in", since a court could interpret them to refer to logs lying on the bottom of a pond or stream.

The conclusion then is that, subject to the statutory restrictions above mentioned, the person who salvages sunken logs would own them as against all but the original owner and those deriving title under him.

LEON V. WALKER, JR.
Assistant Attorney General

June 1, 1965
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

Sales Tax Credit for Price Adjustments on Purchases of Electrical Equipment

FACTS:

Because of the threat of or existence of anti-trust litigation, some Maine public utilities have received monies as a result of price adjustments made by certain of their suppliers.

The utilities have received payments aggregating approximately $75,000 over a one-year period. The adjustments represent purchases during the period 1956 through 1960; in other words, purchases made from five to nine years ago. Requests have been

made by the utilities for sales tax credits or refunds based on such adjustments. The requests are made under the provisions of Title 36 M.R.S.A. § 2011.

ISSUES:

1. Can a refund be allowed at this date because of overpayment of sales tax with respect to transactions occurring more than two years ago, where the taxpayer within the past two years has received price adjustments on prior transactions.

2. Where an audit has been made and an assessment covering the period has become final under the law, can a taxpayer be allowed a refund for an overpayment occurring within the audit period if the request, is seasonable under section 2011, and if the taxpayer can show that he was not aware of the overpayment until after the assessment had become final.

LAW:

> "Upon written application by the taxpayer, if the tax assessor determines that any tax, interest or penalty has been paid more than once, or has been erroneously or illegally collected or computed, the tax assessor shall certify to the State Controller the amount collected in excess of the amount that was legally due, of whom it was collected or by whom paid and the same shall be credited by the tax assessor on any taxes then due from the retailer under this chapter, and the balance shall be refunded to the retailer or user, for his successors, administrators, executors or assigns, but no credit or refund shall be allowed after two years from the date of overpayment unless written petition therefore, setting forth the grounds upon which the refund is claimed, shall have been filed with the tax assessor within that period. The tax assessor shall also have the right to cancel or abate any tax which has been illegally levied. Nothing shall authorize the taxpayer or anyone in his behalf, to apply for a refund of any amount assessed if the assessment has become final as provided in section 1957 . . ." Title 36 M.R.S.A. § 2011.

REASONS:

Question No. 1.

Generally speaking, taxes which have been illegally assessed and voluntarily paid cannot be recovered after payment. See Creamer v. Breman, 91 Me. 508 and Drummond et al. v. Maine Employment Security Commission, 157 Me. 404.

However, the State has the power to authorize a refund of taxes paid. This authorization must find its birth in a valid statute. *Although the Legislature has no power to compel the refund of taxes legally collected, it may prescribe the limitations and conditions on which a refund may be had.* See Drummond et al. v. Maine Employment Security Commission, supra.

It is also clear that a taxpayer seeking a refund must bring himself within the provisions of the refund statute; see Drummond et al. v. Maine Employment Security Commission and 51 Am. Jur. Taxation § 1179. The statutory provision would require that an "overpayment" be made and that the refund application be submitted within two years from the date of "overpayment."

We must first define the word overpayment.

The United States Supreme Court in the case of Jones v. Liberty Glass Company, 332

U.S. 524, has stated that the word overpayment means any payment in excess of that which was properly due. It is further indicated that such an excess payment may be traced to an error in mathematics or in judgment or in interpretation of facts or law and that the error may be committed by the taxpayer or by the revenue agents. This decision also states that whatever the reason, payment of more than is rightfully due is what characterizes an overpayment. See also 5th Third Union Trust Co. v. Glander (Ohio 1946) 68 N.E. 2d 394. Ohio Bell Telephone v. Evatt, 51 N.E. 2d 718 and Stiner v. Nelson, 309 F. 2d 19.

Because of the conclusion reached herein it is not necessary to conside the question of whether the factual situation did in fact involve *overpayment* of tax since if the requests were not seasonable the question is moot. Therefore, it is assumed that an overpayment was made.

The particular question here is when did the overpayment occur?

The facts indicate that the actual payment of the tax took place beyond the two-year period of limitations.

The further question that presents itself is whether the statute begins to run from the date of payment of the tax or the date when the taxpayer ascertained that there was an overpayment.

The general rule is stated as follows:

> "The time allowed for bringing the action is generally fixed by statute . . . As the cause of action accrues from the time of payment, the statute of limitations begins to run from that time, even though the illegality may not then have been known." The Law of Taxation, Cooley, § 1304 (see cases cited).

Some states, for example Ohio, provide that a refund petition must be filed within a certain date from the date it was ascertained that the assessment or payment was illegal or erroneous. The Ohio Supreme Court in the case of Phoenix Amusement Company v. Glander (Ohio 1947), 76 N.E. 2d 605, has held that this language means actual knowledge obtained by the vendor or taxpayer of such illegality or error.

The Maine Legislature has not spoken, as has the legislature of Ohio in indicating that knowledge was a prerequisite to the running of the statute of limitations. The Maine statute only requires that a petition for refund be made within two years from the date of overpayment. Too, the general rule indicates that knowledge is not a factor in the consideration of the application of the statute.

There are no Maine cases strictly in point on this question although the case of Tantish v. Szendy, 158 Me. 228 is helpful in explaining the rationale for and the interpretation of such a statute.

The court said in that case that the Maine Legislature had, over the years, established different periods of limitation in different types of cases. It explained the reasons therefor in the following language:

> "The statutes noted illustrate the concern of the legislature for appropriate limitations upon access to the courts."

This case was concerned with a malpractice action which was required to be brought: ". . . within two years after the cause of action accrues."

The Maine court held that the cause of action accrued when a wrongful action was committed and not when the damage was discovered or reasonably should have been discovered.

Considering the rationale of our court in interpreting a similar statute in the Tantish case, we must conclude that since there was no legislative expression of a requirement of knowledge in the statute under consideration, the two-year limitation commences to run at the actual time of payment of the tax rather than at the time when the taxpayer

determined that it was overpaid. This conclusion also finds support in the general rule stated herein.

Question No. 2.

It is clear that under the statute that this question must be answered in the negative.

Under normal circumstances, i.e., when no assessment of the tax has been made which has become final, the taxpayer has two years from the date of overpayment to apply for a refund.

However, if an assessment has been made within the two-year period covering in part an alleged overpayment and the assessment has become final the taxpayer cannot utilize the provisions of section 2011.

The legislature has taken such a situation out of the operation of the two-year period of limitation by providing as follows:

> "Nothing shall authorize the taxpayer, or anyone in his behalf, to apply for a refund of any amount assessed when the assessment has become final as provided in section 1957." Title 36 M.R.S.A. § 2011.

In other words, if an assessment has been made and has become final the two-year statute does not apply; if no assessment of the tax in question has been made and the taxpayer has voluntarily reported and paid it, the two-year period applies and commences to run from the date of payment of the tax.

It is possible that a further question could arise, if for example, the taxpayer paid the tax initially after it was required to be due – the question being should the two-year period begin to run from the time the tax was actually due or when it was paid. However, since the facts here do not indicate such a question, it is not answered.

JON R. DOYLE
Assistant Attorney General

June 9, 1965
Education

Keith L. Crockett, Secretary-Treasurer
Maine School Building Authority

Grants for Water Pollution Control on M.S.B.A. Property.

FACTS:

With the assistance of the Maine School Building Authority, the Town of Windham has recently completed the construction of a new high school. *20 M.R.S.A. § 3501-3517.* The Windham town officials filed an application with the Federal Government seeking a Federal grant to help defray the cost of a sewage disposal plant for the project. Federal funds were forwarded directly to the town officials, and evidently set aside by them to help defray the cost of the first lease payment due the Authority. Federal auditors are now questioning the legality of the Town's application for the grant inasmuch as the land and buildings are owned by the Authority. The auditors contend that the Authority should have been the applicant; should have received the funds; and should have made them a part of the total funds for the project.

QUESTIONS:

Your memorandum poses four questions:

1. Does this office believe that the Authority should be the applicant for projects of this nature?
2. Does this office concur in the concern expressed by the Federal auditors with respect to the legal implications of such applications?
3. Does this office foresee any arguments, pro or con, which would tend to strengthen or weaken the Authority's position with respect to such matters?
4. Does this office recognize any parallel between this type of grant and monies received from N.D.E.A. funds for furnishings? (Note: Towns have used these funds without any turnover to the Authority.)

ANSWERS:

The answers appear below in the REASON.

REASON:

For the reasons stated herein, it is decided that the Town was the proper applicant for the Federal grant; and that the Federal monies have been properly forwarded to the Town.

According to an applicable provision of the Maine Statutes governing Maine School Building Authority projects: "The authority may authorize any administrative unit, subject to the supervision and approval of the authority, to design and construct any project and to acquire necessary land, furnishings and equipment therefor." *20 M.R.S.A. § 3507.* Since the sewage disposal plant constituted a part of the Windham project at the time the Authority approved said project, the Town has received Authority authorization to make application for the Federal grant regarding the sewage disposal plant.

According to the reference provision cited above and the provisions of the Lease Agreement existing between the Town and the Authority, the Town of Windham is the Authority's agent regarding the construction of the project; and the Authority has complied with the statute in granting to the Town full authority regarding construction of the project.

We are informed by your department that none of the proceeds of the Authority's bond issue is involved in the sewage plant construction; and that the Town of Windham is supplying its own funds as the applicant.

We have examined the following forms (in blank) utilized by the Town in making application for the reference Federal grant: (1) The application (P.H.S.-2654-1), and (2) The offer and acceptance form (P.H.S.-2690-1). Further we have examined the instruction sheet (P.H.S.-2654-1) and have also examined Title 42, Subchapter D, Part 55, Subpart B, which covers grants for construction of sewage treatment works. The reference Title constitutes a regulation in the area of water pollution control construction grants. The applicable Federal statute in *33 U.S.C. § 466, et seq.*

We are mindful of the provision appearing in the reference regulations at § 55.26 (m), wherein it is stated: "That the applicant will demonstrate to the satisfaction of the Surgeon General that he has or will have a fee simple or such other estate or interest in the site of the project, including necessary easements and rights of way as the Surgeon General finds sufficient to issue undisturbed use and possession for the purposes of construction and operation for the estimated life of the project; * * *." Regarding this language, it is noted here that the Town of Windham has the requisite estate or interest in the site of the project, including necessary easements and rights of way, as entitled it

to make the application for the Federal grant. Again, the Town of Windham has been authorized by the Maine School Building Authority to construct the project and its attending sewage disposal plant. The Town of Windham, in view of the applicable Maine Statutes, possessed the requisite "estate or interest in the site of the project" which authorized it to make the application for the reference Federal grant.

In our reading we have included an examination of the pertinent provisions of the Maine Statutes as they pertain to the Water Improvement Commission. *38 M.R.S.A. § 361, et seq.*

It is to be noted that we have not been apprised of the contents of the application made by the Town of Windham and of the statement therein relative to § 3: legal information. And it is to be further understood that this opinion predicates the right of the Town, to make application, upon the fact that the Town possesses the requisite estate or interest in the site of the project; and not upon the element of ownership. Of course, we realize that our opinion is not binding upon the Federal authorities.

JOHN W. BENOIT
Assistant Attorney General

June 10, 1965
State

Kenneth M. Curtis, Secretary of State

Eligibility for Restoration of Operator's License

FACTS:

An individual was convicted of driving under the influence in 1948, 1954, and in June, 1963. He sought a pardon for the 1954 conviction in 1965. It was granted. He then sought restoration of his license.

In 1959, the legislature passed the so-called "10-year" law. It was repealed in 1963; the repeal became effective in September, 1963. Because the 1963 conviction and suspension was prior to the repeal of the so-called "10-year" law, it was understood that upon pardon of the 1954 conviction the person would have only the 1963 conviction on his record and so would be eligible for restoration of his operator's license.

QUESTION:

Is this individual now eligible for restoration of his operator's license?

ANSWER:

No.

REASONS:

Chapter 144 of the Public Laws of 1959 amended the last sentence of the next to the last paragraph of section 150, chapter 22, R. S. 1954, to read as follows:

> "*For* the purpose of this section in case a person has been convicted one or more times prior to the 13th day of July 1929 of a violation of the provisions of

this section, such previous conviction or convictions shall be construed as one conviction *only those prior convictions had within the 10 years immediately preceding a conviction shall be considered."*

This provision as amended affected (1) the sentence and (2) the right to operate. The court, when a person appeared on a "driving under the influence" charge could ignore any convictions for that offense more than 10 years previous. Your office on revocations or restorations could do likewise. By our opinion of August 14, 1959, persons convicted after September 12, 1959, only, could have this advantage as the 1959 amendment was prospective only.

Chapter 261, P.L. 1963, repealed the sentence as amended in 1959. This action removed the benefit given to the multiple offender. The repeal would be prospective only. In other words, an offender, when he appears in court or before your deputy after September 21, 1963, is governed by the law as it appears at the time of such appearance.

It must be borne in mind that we are here dealing with a license law. No vested right is granted a licensee. The legislature may at any time change licensing conditions. It has done so in this instance. The individual here involved gained a benefit in 1963 when convicted. He was sentenced and his license revoked on the basis of a second conviction, to wit, 1954 and 1963, rather than a third conviction.

Presently, the pardon of the 1954 conviction leaves him in the same position. He is presently considered as a person applying for restoration based upon two prior convictions, to wit, 1948 and 1963. A petition for restoration cannot be entertained until 1966.

GEORGE C. WEST
Deputy Attorney General

June 18, 1965
Soil Conservation Committee

Charles L. Boothby, Exec. Sec.

FACTS:

At the present time several towns and soil conservation districts are prime sponsors of small watershed projects under P.L. No. 566, the Watershed Protection and Flood Prevention Act. As sponsors, they are required to administer contracts for the construction of works of improvement, including flood control dams.

State funds are involved to the extent that the State Soil Conservation Committee reimburses the sponsors 50% of the cost of legal fees, easements, rights-of-way, and, upon request, furnishes the services of the Executive Secretary as Contracting Officer.

All plans, specifications, standards, and drawings, bid forms and regulations are prepared by the Soil Conservation Service, U.S. Department of Agriculture.

QUESTION:

Is such action by the sponsors of Small Watershed Projects subject to the provisions of Title 5, Sections 1741 to 1776 as pertains to the Bureau of Public Improvements?

ANSWER:

Yes.

REASON:

Title 5, section 741, defines "public improvements" as, ". . . the construction, major alteration or repair of buildings or public works now owned or leased or hereafter constructed, acquired or leased by the State of Maine or any department, officer, board, commission or agency thereof, or constructed, acquired or leased, in whole or in part with state funds."

The facts relate to the building of "works of improvements, including flood control dams." Certainly such construction comes within the meaning of "public works" as quoted above. The legislature appropriates funds to the State Soil Conservation Committee. In turn, some of these funds are allocated to the districts. See Title 12, M.R.S.A., section 201. Such funds allocated to the districts are, of course, state funds.

12 M.R.S.A., Sec. 3, 2, defines a "district" or "soil conservation district" as "an agency of the state." A soil conservation district, being an agency of the state, any public improvements which it constructs must be subject to the provisions of Title 5, M.R.S.A., sections 1741 to 1776.

GEORGE C. WEST
Deputy Attorney General

June 29, 1965
Treasury

Eben L. Elwell, Treasurer

Investment of Excess Moneys and Retirement System Funds

Reference is made to your letter of June 23, 1965, asking about the legality of investing certain state funds.

FACTS:

On July 1, 1965, the State will sell bonds duly authorized for use in water improvement facilities. Some part of the proceeds of this sale cannot be used until after July 1, 1966. See P & S 1965, ch. 129. Thus, there will be excess money in the State Treasury and the Treasurer is desirous of investing some of the proceeds of the sale of bonds in notes insured by the Farmers Home Administration.

QUESTION:

Are notes insured by the Farmers Home Administration and assigned to said agency a proper investment for excess moneys in the State Treasury?

ANSWER:

Yes.

OPINION:

5 M.R.S.A. 135 states in part:

"When there are excess moneys in the State Treasury which are not needed to

meet current obligations he may, with the concurrence of the State Controller or the Commissioner of Finance and Administration and with the consent of the Governor and Council, invest such amounts in bonds, notes, certificates of indebtedness or other obligations of the United States of America which mature not more than 24 months from the date of investment."

We know that some portion of the proceeds of the bond sale constitutes "excess moneys . . . not needed to meet current obligations" as some of the money is not available for distribution until July 1, 1966.

The question to be answered is whether notes issued by the Farmers Home Administration are either "bonds, notes, certificates of indebtedness or other obligations of the United States of America which mature not more than 24 months from the date of investment."

The Farmers Home Administration is a part of the United States Department of Agriculture. It operates an insured farm loan program whereby farmers may borrow money from private lenders which loans are insured by the Farmers Home Administration. Any mortgage given as security runs to the Government. The lender holds only the insured note. Payments on principal and interest are fully guaranteed by the Government. Certain types of loans will be payable over periods up to 40 years and others up to 33 years. From time to time lenders under this program assign notes to the Farmers Home Administrations. These are the notes now available to the State to purchase.

Such notes, if legal for investment under 5 M.R.S.A. § 135, must be (1) "obligations of the United States of America" and (2) "mature not more than 24 months from the date of investment."

There are several opinions of the Attorney General of the United States which affirm that notes insured by authority granted under an act of Congress are obligations of the United States of America. Railroad Loan Guarantees Under the Transportation Act of 1958, Vol. 41, op. No. 68 –

> "It is enough to create an obligation of the United States if an agency or officer is validly authorized to incur such an obligation on its behalf and validly exercises that power."

See also opinions as follows: Vol. 41 op. No. 63; Vol. 41 op. No. 24; Vol. 42, op. No. 1; Vol. 41 op. No. 76.

We are satisfied that such notes are "other obligations of the United States."

Next, we must consider if the obligation "matures not more than 24 months from the date of investment." The actual notes have varying maturity dates over periods of several years. However, at the time of purchase the government enters into a repurchase agreement with the State. Under this agreement the government will buy back the notes on July 1, 1966, with an option whereby the State may continue holding all or some part of the notes for another year.

Thus, it seems that so far as the State is concerned the "obligation of the United States of America" to the State of Maine will "mature not more than 24 months from the date of investment." The date of investment being scheduled as July 7, 1965.

It is, therefore, our conclusion that the State Treasurer may lawfully invest "excess moneys . . . not needed to meet current obligations" in these notes.

GEORGE C. WEST
Deputy Attorney General

David H. Stevens, Chairman

July 1, 1965
Highway

Carrying or Lapsing of Funds.

FACTS:

Chapter 306 of the Public Laws of 1963 authorizes the construction of access roads to ski areas. The Act provides, inter alia, that: "The cost of construction shall be paid 50 per cent from the General Highway Fund, 25 per cent from the municipality and county if the road is located in whole or in part in unorganized township or townships, and 25 per cent from the owner or owners of the ski area involved." (The Act appears in 23 M.R.S.A. § 703.)

The Private and Special Laws passed by the 101st Legislature allocated $25,000 for each of the fiscal years ending June 30, 1964 and June 30, 1965, for the construction of: "access roads-ski areas"; placing such sums in the Department of "Highway and Bridges". *P. & S., 1963, c. 167.* It is provided in the Maine Statutes that unexpended balances of the General Highway Fund which were set up for general construction and maintenance of highways and bridges shall be deemed non-lapsing carrying accounts.

> "Such unexpended balances of the General Highway Fund as have been set up for general construction and maintenance of highways and bridges shall be deemed non-lapsing carrying accounts. All other unexpended balances shall lapse into the General Highway Fund at the end of such fiscal period but shall not lapse or be transferred to the general fund in the Treasury." *23 M.R.S.A. § 1652.*

QUESTION:

Is the allocation for "Access Roads-Ski Areas" a lapsing or carrying account?

ANSWER:

It is a non-lapsing carrying account.

REASON:

At the outset, we note that the 102nd Legislature amended P. L., 1963, c. 306 (now appearing in 23 M.R.S.A. § 703, as amended) by enlarging said provision so that the same also includes authorization for the construction of access roads to public industrial development areas. *P. L., 1965, c. 388.* Further, the same session of the Legislature also allocated a sum of $25,000 for the fiscal years ending June 30, 1966 and June 30, 1967 for the purpose of meeting the expenses incident to the construction of; "access roads-ski and industrial areas." *P. & S., 1965, c. 152.* Thus, although the Legislature added a further expense factor, i.e. access roads to industrial areas, the amount of the allocation for the next two fiscal years was established at the same figure allocated for the past two fiscal years.

We view any unexpended balances of the General Highway Fund, which the Legislature has established for the purpose of constructing access roads to ski areas, as non-lapsing carrying accounts; and do establish the reference position upon *23 M.R.S.A. § 1652* (quoted above in part).

JOHN W. BENOIT
Assistant Attorney General

July 9, 1965
Education

Kermit S. Nickerson, Deputy Commissioner

Reference to Repealed Statute by Member Towns in a School Administrative District Vote.

FACTS:

On May 26, 1965 the directors of School Administrative District No. 39 issued their warrant calling for a district meeting for the purpose of voting "by secret ballot on the following questions in accordance with Chapter 90-A, section 37 to 39, of the Revised Statutes of Maine * * *." The warrant next set forth the two questions to be voted upon. Both questions were of like tenor: Whether the directors shall be authorized to issue bonds or notes (in a stated amount) for specified capital outlay purposes. Following the issuance of the reference warrant, the three member towns of the District issued their separate warrants calling for the holding of town meetings. Each of the towns' warrants borrowed the language which was set forth in the director's warrant; and the official ballots in the three town meetings followed suit. The total vote of the district favored each of the questions (124 yes, 13 no); and the district directors have contacted a Maine bank for the purpose of acquiring the moneys on notes to be executed by the district. The lending institution has questioned the validity of the district vote since the reference warrants and the ballots referred to a portion of the Maine Revised Statutes which was repealed prior to the dates of the warrants. (See: "An Act to Revise and Consolidate the Public Laws of the State," Vol. 16 of the Maine Revised Statutes (1964), pages 873 and 874; and "An Act to Repeal the Acts Consolidated in the Revised Statutes of the Year One Thousand Nine Hundred and Sixty-Four," supra, pages 875 through 882.)

A school administrative district's expenditure of moneys for a capital outlay purpose qualifies for state aid. *20 M.R.S.A. § 3518.*

QUESTION:

Whether the reference recital of the repealed statute renders the district vote illegal?

ANSWER:

No.

REASON:

At the time the reference warrants were issued by the directors and by the towns, there was no "Chapter 90-A, section 37 to 39" in the Maine Revised Statutes. The subject statute had been repealed, earlier, by legislative enactment; and replaced by 30 M.R.S.A. § 2061-2066. A reading of both the former and the latter statutory provisions reveal that the new law is but a continuance of the old law. If the several warrants, and the ballots had contained the present recital of the statutes, the reference question of validity would be nonexistent. It remains to be seen, then, whether the references to the former statute, rather than to the present statute (they both being identical in language), render the subject vote illegal.

In *Foreman v. Dorsey,* 256 Ala. 253, 54 So. 2d 499, the plaintiff's complaint (pleading) designated a provision of law which did not apply to the case. The appellate court held that this was not a fatal error in view of the fact that there was a law which did apply to the case. Too, the court said that it was improper for a litigant to so designate the law governing his suit; and to do so amounted to legislating. While *Foreman v. Dorsey,* supra, may not be identical, factually, with the present matter, its principle may be useful. Here, as there, a provision of law "does apply and is controlling." It is *30 M.R.S.A. § 2061-2066.*

It has been decided that a petition for a referendum is not invalidated because it incorrectly described the election procedure to be utilized for the submission of the question to the electors, where the statutes do not require that any such description be included in the referendum petition itself. *State ex rel. Tietje v. Collett,* 138 Ohio St. 425, 35 N.E. 2d 568.

In *State ex rel. v. Quarterly County Court,* (Tenn.), 351 S.W. 2d 390 (an action testing the validity of a school bond referendum), the statutory ten days' notice was not given. Instead, eight days' strict legal notice of the election was given, coupled with general newspaper coverage. Held: There was substantial compliance with the law.

> "This Court has expressed on several occasions that it will not permit trifling irregularities to defeat the will of the majority expressed at the polls." *Supra, 351 S.W. 2d 391.*

In the present case, no one was prejudiced or damaged by the reference to the earlier statute.

In *State ex rel. Dore v. Superior Court for King County,* (Wash.) 18 P. 2d 51, the notice of the election (and the ballots) designated the office to be filled as follows: "One (1) justice of the peace for Seattle Precinct 2-year term." The term of the office should have been for an "unexpired term". In upholding the election as valid, the court examined the statutes and found that they made "no mention as to the term." 18 P. 2d 52. The Court went on to state the following:

> "It is the general rule that an election will not be set aside for a mere informality or irregularity which cannot be said in any manner to have affected the result thereof, and that a literal compliance with the statute requiring notice is not essential to the validity of an election." Supra. *18 P. 2d 52.*

See the case of *Bramley v. Miller,* (New York) 1 N.E. 2d 111, where a school district vote was sustained by the courts when only fourteen applicants had requested that a district meeting be held, although the statute required fifteen applicants' signatures.

One might consider the case of *In re Cleveland,* (N.J.) 19 A. 17, to be in point. There, a misrecital of some of the provisions of an Act occurred in the proclamation of the election. Of this the Court said that the election was not devoid of legal effect. The Court reasoned that since the Act had not required the insertion of the citation into the proclamation, and since the error had no effect on the election, there was no existing error of law.

In conclusion, the district's vote in the instant case has not been rendered invalid by reason of the presence of the reference statutory citation, i.e., "Chapter 90-A, Section 37 to 39, of the Revised Statutes of Maine." We are prompted to reach this conclusion for several reasons. First, the citation is surplus language. Note that the article in which the language appears (Art. 2), recites that the vote is to be "by secret ballot." The subject citation, were it effective law, would not have extended or modified those words. We are, therefore, not faced with a situation wherein a statutory reference stands alone, and is required to speak for itself. Second, neither the previous nor the present statute requires that the warrants and ballots recite the statute. Third, the reference citation in

no way tends to mislead the voters; and in no way affected the results of the vote. Lastly, we are not at all satisfied that the district possessed an option regarding the method of voting upon the articles authorizing the issuance of bonds or notes. In *Frank E. Hancock, Attorney General, ex rels., George L. Atkins et als. v. Robert S. Fuller, Selectman et als,* (a case heard by Chief Justice Robert B. Williamson in early 1960, in Kennebec County Superior Court) it was decided by the Chief Justice (in his written findings and conclusions) that: "The questions in the instant case are ordered by the Legislature acting through the commission to be submitted to the voters of Farmingdale. Farmingdale is a 'secret ballot' town and it follows therefore that in my opinion the questions must be voted upon by secret ballot." The decree was dated March 9, 1960. The questions voted upon in the instant matter were of the same tenor as those which were before the court in the case cited immediately above. *20 M.R.S.A. § 215, 4; 20 M.R.S.A. § 225, 3, A.* In closing, we cite the entire decision in *Lewis v. City of Port Angeles,* (Wash.), 34 P. 914, 915:

> "Stiles, J. The only objection made to the issuance of the proposed bonds being that the ordinance adopting the system of electric lighting for the respondent city recited that it was passed in pursuance of the act of March 26, 1890, as amended by the act of March 9, 1891, when in fact, if passed at all, it must have been passed in pursuance of the act of February 10, 1893, the judgment is affirmed. *The recital in the ordinance was surplusage,* and the act of 1893 was, under the decision in Seymour v. City of Tacoma, 33 Pac. 1059, (decided June 2, 1893,) *a mere re-enactment of the former acts,* with an immaterial amendment covering the purchase of the existing light or water plants." (Emphasis ours.)

Thus, if the notes are executed and if the School Administrative District expends the moneys for a capital outlay purpose, such expenditure would not be rendered invalid by the given facts; and State aid should be paid pursuant to *20 M.R.S.A. § 3518.*

JOHN W. BENOIT
Assistant Attorney General

August 4, 1965
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

Taxation of Roadside Advertising Signs

FACTS:

In your memorandum relating to the above, the question is raised as to whether or not roadside advertising signs located on private property are taxable as personal property, or as real estate.

ANSWER:

Roadside advertising signs, on standards, posts, or other support of that nature attached upon land, would be taxable as real estate.

LAW:

"Real estate, for the purposes of taxation, shall include all lands in the State and all buildings, house trailers and *other things affixed to the same* . . . ." 36 M.R.S.A. § 551. (Emphasis supplied).

REASONS:

In making the above determination as to whether roadside advertising signs are taxable as real estate or personal property, we must deal with two distinct areas. Firstly it must be determined what "other things affixed to the same." in the above statute should be construed as, in light of appearing within the general taxation statute, and whether or not the rule put forth in the above statute can be altered by intent of the parties.

Where the tax statute itself sets out standards to determine whether or not property annexed to realty is taxable as realty, as seen in the above statute, those standards, rather than intent of the parties, govern the situation. It has been held widely that this rule is not affected by private agreements of the parties. Therefore, *things affixed to the land* will be taxed as real estate and not as personal property, without considering the intent of the parties.

We must now ask ourselves just what is encompassed in the portion of the above statute "things affixed to the same." As seen above, where the tax statute itself sets out a standard, intent of the parties is of no effect whatsoever. As found in Webster's New International Dictionary, "affix" is to fix or fasten in any way; to attach physically; to fix upon; to settle upon; to attach with or to connect with.

In the work sheets prepared in connection with the redraft of Chapter 92 of the Revised Statutes, 1954, now 36 M.R.S.A. it can be readily seen that the words "and other things" which were dropped from the particular statute in the revision of 1883 would be restored, so that real estate would clearly include *anything* affixed to land, therefore, "affixed to the same" in the statute refers to physical connection without considering intent of the parties.

Since the advertising signs in question are on standards, posts, or some other support of that nature that are affixed in some manner to the land, they would necessarily have to be taxed as real property and not as personalty.

CONCLUSION:

Lastly, in considering to which persons the advertising signs in question should be taxed to, we find in *Peaks v. Hutchinson,* 96 Me. 530, that the Maine Court has held that buildings constitute a property right distinct from that of the landowner. By analogy it can be said without hesitation that signs on standards, physically attached to the land would be considered in the same manner as buildings and would necessarily constitute a separate and distinct property right from the owner of the land. As property these signs are taxable separately as stated above. It is within legislative authority, for the purpose of taxation, to provide that real estate shall be assessed as personalty or that personalty shall be taxed as realty. This is the situation in the instant case. 36 M.R.S.A. § 551 makes such signs taxable as real estate wherein it provides that "Real estate, for the purposes of taxation, shall include all lands . . . and other things affixed to the same...." This did not, however, change the interest of the sign owner in any other respect. The sign is still a property right and must be taxed to the owner in the absence of legislative

enactment otherwise. There is nothing in such language to indicate any intention upon the part of the Legislature to affect the nature of owners of property or an interest in property affixed to land other than to make certain that, for the purposes of taxation, it be considered real estate.

RICHARD S. COHEN
Assistant Attorney General

August 26, 1965
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

Sales and Use Tax Status of National Banks

FACTS:

National banks have recently been permitted to engage in the business of leasing tangible personal property. This office has previously ruled that national banks are exempt from both sales and use tax.

QUESTION:

Whether the previous opinions regarding the status of national banks under the sales and use tax law are correct, particularly with respect to the liability of such banks for tax on purchases by them.

ANSWER:

Yes.

LAW:

The sales tax law exempts by Subsection 1 of Section 1760: "Sales which this State is prohibited from taxing under the constitution or laws of the United States or under the constitution of this State."

Subsection 2 exempts: "Sales to the State or any political subdivision, or to the Federal Government, *or to any agency of either of them.*" (Emphasis supplied).

REASONS:

Specifically, this office has previously ruled as follows regarding the status of national banks under the sales and use tax law:

1. *Sales to* national banks are exempt. (Opinions of May 4, 1953 and October 4, 1961).
2. *Sales by* national banks are exempt. (Opinion of October 4, 1961).
3. Use tax may be imposed upon the purchaser of tangible personal property sold by a national bank in the ordinary course of business. (Opinion of October 10, 1961).

1. *Taxation of sales to national banks reviewed.*

Briefly, previous opinions have reasoned that sales to national banks are exempt because of the specific exemption accorded them under the sales and use tax law as agencies of the Federal Government.

National banks are deemed agencies of the Federal Government. (See 12 U.S.C.A. § 548 and O'Neil v. Valley National Bank of Phoenix, Ariz. 1942, 121 P. 2d 646).

Other states, e.g., California, tax sales to national banks. (See Western Lithograph Co. v. State Board of Equalization, Cal. 1938, 78 P. 2d 731).

This is due to language in the California statute which effectively eliminates national banks from exemption from sales taxation and by reasoning of the California courts that the tax is on the retailer and not the purchaser or consumer.

California's sales and use tax law (Cal. Rev. & Taxation Code, Div. 2, Part 1, Sec. 1) provides exemption for an unincorporated agency or instrumentality of the government or one wholly owned by the United States. It is not my understanding that national banks fall within this classification.

The California courts (Cf. Western Lithograph v. State Board of Equalization, supra) as part of their reasoning that sales to national banks are taxable conclude that the tax is on the retailer and that the banks are not burdened thereby as purchasers. The Maine Supreme Court has taken a similar position that the incidence of tax is on the seller in the case of *W. S. Libbey v. Johnson,* 148 Me. 410.

This conclusion, coupled with the appropriate statutory language is necessary for taxation of sales to national banks since under the provisions of 12 U.S.C.A. § 548 only certain taxes, as will be explained later herein, can be levied against national banks.

Other states taxing sales to national banks are Pennsylvania, South Carolina, South Dakota, New York City, Florida, Iowa, Kansas, Mississippi, Michigan and Illinois.

Therefore, the only prohibition at this time against the taxing of sales to national banks is that contained in our own sales and use tax law prohibiting taxation of sales to the Federal Government. If this language were repealed and language similar to that of California substituted, sales to national banks could be taxed.

2. *Taxation of sales by national banks reviewed.*

Previous opinions have also ruled that *sales by* national banks are nontaxable.

12 U.S.C.A. § 548 permits only the taxing of national banks (1) on their shares (2) stockholder's dividend income (3) the bank's income or (4) the banks measured by income.

Since the Libbey case holds the incidence of the tax is on the retailer and since such a tax is prohibited by 12 U.S.C.A. § 548, then sales by national banks have been properly ruled exempt from tax.

3. *Payment of tax by purchaser from national banks re-examined.*

This office has previously ruled that sales by national banks of tangible personal property in the ordinary course of business subject Maine purchasers to the use tax.

This result is still true since the incidence of the use tax is on the purchaser. (See also Bank of America National Trust & Savings Association v. State Board of Equalization. Cal. Dist. Ct. App. 11-20-62).

CONCLUSION:

Since it is not possible under the Federal constitution and Federal statutes to tax sales *by* national banks, we can only affect the area of taxation of sales *to* national banks

by corrective legislation in this State. The California law would be a good guide to use if you wish to propose such legislation.

JON R. DOYLE
Assistant Attorney General

October 8, 1965
Executive

Governor John H. Reed

Public Law 89-11 – Letter from President of Board of Commissioners, Government of District of Columbia

FACTS:

On April 14, 1965 the Congress of the United States granted consent to the following states, Maine, Massachusetts, New Hampshire, Pennsylvania, Maryland, and the District of Columbia, to enter into a compact relating to taxation of motor fuels consumed by interstate buses and to a compact relating to bus taxation proration and reciprocity. Both compacts were enacted into law by the Maine Legislature in 1963 and are set forth in 36 M.R.S.A. § 3091-3153 and 29 M.R.S.A. § 431-474 respectively. The District of Columbia, having adopted the same compacts through its legislative body, (in actuality, the Congress of the United States) has contacted the Governor of the State of Maine in order to carry out the terms of the compacts.

QUESTION:

Is it necessary that the legislature adopt an enabling statute expressly authorizing the Governor or some other state official to execute agreements to carry out the terms of said compacts?

ANSWER:

No.

OPINION:

The Bus Tax Proration Agreement as set forth in 29 M.R.S.A. § 431-474 and the compact entitled Taxation of Motor Fuels Consumed by Interstate Buses as set forth in 36 M.R.S.A. § 3091-3153 represent completely executed agreements on behalf of the State of Maine and sister states, adopting similar legislation, to accomplish the objectives set forth in said compacts.

29 M.R.S.A. § 433 (10) of the Bus Taxation Proration Agreement provides in part:

"This agreement shall enter into force and become binding between and among the contracting states when enacted or otherwise entered into by any 2 states. . . ."

Likewise, in 36 M.R.S.A. § 3099 of the compact on Taxation of Motor Fuels Consumed by Interstate Buses, it is clearly stated that:

"This agreement shall enter into force when enacted into law by any 2 states. Thereafter it shall enter into force and become binding upon any state

subsequently joining when such state has enacted the compact into law. . . ."

A second part of this same section merely provides for withdrawal from the compact by act of the legislature and notice of such withdrawal by the Governor.

The compacts represent entirely self-executing contracts entered into between the states. The mere act of legislative enactment constitutes the only assent required to legally bind a state to carry out the terms of such compacts. Certainly, the terms of said compacts are clear and unambiguous. All that remains to be done is the actual carrying out, or administration, of the terms of the compacts.

Pursuant to the provisions of 29 M.R.S.A. § 431 et seq. and 36 M.R.S.A. § 3091 et seq., the Secretary of State and the State Tax Assessor are designated as the administrators under whose supervision the terms of such compacts shall be carried out. This being so, and the fact that no action on behalf of the Governor is required in order to effectuate the terms of the above-mentioned compacts, it is suggested that any correspondence addressed to the Office of Governor pertaining to the execution of such compacts be directed to the attention of those officials charged with the administration of said compacts, to wit: the Secretary of State and the State Tax Assessor.

PHILLIP M. KILMISTER
Assistant Attorney General

September 17, 1965

Raeburn W. Macdonald
Water Improvement Commission

Waste Discharge License, Maine Sugar Industries Inc.

FACTS:

In your memorandum and diagram submitted to this office on September 15, 1965 you have set forth in effect the following factual situation:

> Company V, a potato processing plant, has a license to discharge properly treated waste into P stream. Company S, a proposed sugar refinery, will discharge its waste materials through a portion of V's processing system and thence through Company V's waste outlet into P stream.

QUESTION:

To whom should a license for the discharge of sugar refining wastes be issued?

ANSWER:

Company S (Proposed Sugar Refinery)

OPINION:

The sugar refinery will cause the sole new source of pollution to the waters of P stream and must procure a license as a condition precedent to the discharge of any of its waste materials. (38 M.R.S.A. § 413)

The granting of a license is a permissive right and carries with it certain responsibilities owed to the licensor, i.e., Water Improvement Commission. The responsibility for the proper discharge of industrial wastes lies with the industrial firm

which creates such waste and does not shift to an intermediate or subsequent processor.

The only concern of the Water Improvement Commission should be whether or not the prospective licensee can meet the requirement of discharging properly treated waste materials into a given body of water so as not to degrade said water. If it appears that an applicant for a license cannot meet this responsibility, a license should be denied. Conversely, if it should appear that such responsibility can be carried out by the prospective licensee, then a license should be granted.

The commission seems to be greatly concerned with the difficulty of establishing the exact amount of pollution attributable to each polluter should a degradation of the stream take place and legal or equitable action to correct such degradation become necessary. In the factual situation presented, this burden of proof would exist even if separate processing facilities were utilized, because of the proximity of the two firms. It should be pointed out however that the responsibility for the proper discharge of waste materials may, if anything, be greater upon firms using a processing plant common to both. Should a degradation or defilement of the stream take place, equitable relief might be brought jointly against both.

PHILLIP M. KILMISTER
Assistant Attorney General

December 27, 1965
Labor and Industry

Marion E. Martin, Commissioner

Inspection of public places of employment.

In your memorandum of November 15, 1965 you have sought our opinion to the following question:

QUESTION:

Do sections 1 and 2, Chapter 200, Public Laws 1965 place on the Department of Labor and Industry the responsibility for inspection of public places of employment such as State Institutions, County Court Houses, Public Works Departments et cetera and Public and Private Schools and Colleges?

ANSWER:

See opinion.

OPINION:

Sections 1 and 2 of Chapter 200 Public Laws of 1965, now designated as 26 M.R.S.A. §§ 45 and 45-A, provides that the Commissioner or any authorized agent of the Department of Labor and Industry shall notify employers of the need to correct dangerous conditions of employment which exist on the premises under their control. Section 45-A is an exclusionary provision and merely designates certain areas of employment which are outside the jurisdiction of the Department.

Sections 45 and 45-A must be read in conjunction with section 44 in order to properly arrive at the responsibility for inspection vested in the Department in regard to

those employees enumerated in the above-stated question.

26 M.R.S.A. § 44 Right of Access "The Commissioner as state factory inspector, and any authorized agent of the department, may enter *any factory or mill, construction activity, workshop, private works or state institutions which have shops or factories,* when the same are open or in operation, for the purpose of gathering facts and statistics such as are contemplated by sections 42 to 44, and may examine into the methods of protection from danger to employees and the sanitary conditions in and around such buildings and places, and may make a record of such inspection." (Emphasis supplied)

The statutory language sets forth the right of inspection in areas of private economic enterprise and then specifically states "or state institutions which have shops and factories." It is apparent that the legislature did not wish to have workers in shops and factories in which the state is the employer, subjected to standards of safety and protection different than those which govern their counterparts in private industry. For this reason, the right to inspect shops or factories in state institutions was given.

We believe that the legislature intended nothing more than this however. Had the legislature intended to give the Department of Labor and Industry the authority to inspect shops and factories of other public employers, such as municipalities, counties, or public school systems, we believe they would have said so.

To expand the right of inspection as set forth in section 44 of 26 M.R.S.A. to include all workshops and factories, whether public or private in nature, could be accomplished only through legislative enactment.

In answer to the question presented, it therefore follows that if a *"factory"* or *"workshop"* as defined in 26 M.R.S.A. § 1 is maintained by a state institution or a private educational institution, that the Department of Labor and Industry may inspect the premises of said factories or workshops pursuant to the terms of 26 M.R.S.A. §§ 44 and 45.

PHILLIP M. KILMISTER
Assistant Attorney General

January 5, 1966
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

Insurance Premium Tax – John Hancock Mutual Life Insurance Company

FACTS:

Taxpayer, a life insurance company, has established a contributory group insurance plan for its full-time employees.

Under the plan enrolled employees receive life insurance and health insurance, including hospital, surgical, major medical and other usual benefits.

Both the employees and the company contribute to the coverage; the employees by payroll deduction, the company by assumption of cost shown only by a journal entry in the company's books.

On November 3, 1965, under the provisions of the Maine Revised Statutes relating to taxation of insurance companies based on "gross direct premiums," the Bureau of Taxation made a supplemental insurance premium tax assessment against the taxpayer.

This assessment was based upon both premiums contributed by employees of the taxpayer and the premiums contributed by the taxpayer itself.

The taxpayer admits that the tax as applied to the employee's contributions is correct but contests the tax as applied to the company's contribution on the ground that the company has not paid a premium but has merely made a transfer from one account to another.

QUESTIONS:

1. Whether under such a plan employee contributions are taxable as "premiums."
2. Whether under such a plan employer (taxpayer) contributions are taxable as "premiums."

ANSWERS:

1. Yes.
2. No.

LAW:

Title 36 M.R.S.A. § 2513 imposes a tax on insurance companies doing business in the state as follows:

> "Every insurance company or association which does business or collects premiums or assessments including annuity considerations in the State, except those mentioned in sections 2511 and 2517, including surety companies and companies engaged in the business of credit insurance or title insurance, shall, for the privilege of doing business in this State and in addition to any other taxes imposed for such privilege annually *pay a tax upon all gross direct premiums* including annuity considerations whether in cash or otherwise, on contracts written or risks located or resident in the state for insurance of life, annuity, fire, casualty and other risks at the rate of 2% a year." (Emphasis supplied).

REASONS:

In order to answer the question we must determine what a premium is.

Although the taxation of insurance companies in the above fashion has been in effect for some years the words "gross direct premium" as a measure of the tax were first placed in the law in 1939 (See P.L. 1939, C. 1, § 1 and 3).

Since the phrase "gross direct premium" generally has no particular meaning in the field of insurance law it is safe to assume from the use of the language that the Legislature intended to tax the gross receipts from premiums directly attributable to business done in Maine paid by the insured to the insurer.

> ". . . a tax on gross premium receipts, merely as a basis for taxation, is usually considered to be imposed as a franchise or privilege tax, exacted for the privilege of doing business in the state . . . ." 74 C.J.S. Taxation § 167 b. (1).

The New York Supreme Court in the case of *Guardian Life Insurance Company of America v. Chapman,* 97 N.E. 2d 877 has, however, determined that the words "direct premium" exclude amounts paid for reinsurance but has not further defined the term.

PREMIUM DEFINED

Generally the word premium as used in taxing acts is to be given the construction placed upon it by ordinary usage and in accordance with its apparent meaning when used in insurance policies. See New York Life Insurance Company v. Wright (Ga.) 122 S.E. 706 and Guardian Life Insurance Company of America v. Chapman (N.Y.) 97 N.E. 2d 877.

> "The word 'premium' in the law of insurance has a well settled and specific meaning which is well understood. In its proper and accepted sense it means the amount *paid to the company* as consideration for insurance; the consideration *paid* for a contract of insurance . . ." (Emphasis supplied) 44 C.J.S. Insurance 340 a.
>
> " 'Gross premium' is the amount actually charged by the insurer under the contract, and ordinarily includes both the net premium and the loading." 44 C.J.S. Insurance § 349 a ("loading" refers to the amount added to the net premium to defray business expenses, etc.). See also Couch, Cyclopedia of Insurance Law, Vol. 3, 579.

The Court in the Maine case of Portland v. Insurance Company, 76 Me. 231 indicates, in passing, their concept of a premium as follows:

> "The premiums are paid absolutely *to the corporation* as the consideration for the policy of insurance." (Emphasis supplied).

The following definition of premium is found in 29 Am. Jur. Insurance, 501:

> "An insurance premium may be defined as the agreed price for assuming and carrying the risk – that is the consideration paid an insurer for undertaking to indemnify the insured against a specified peril." See also Cyclopedia of Insurance Law, Couch, Vol. 3, § 579.

Other definitions are as follows:

> " 'Premiums' mean amount paid as consideration for insurance." 33 Words & Phrases, Premium, p. 95 supp.
>
> " 'Premium' in a broad sense is whatever sum of money is paid by an insured as consideration for issuance of any insurance policy . . . ." 33 Words & Phrases, Premium, p. 95, supp.

Therefore we must conclude that a "premium" is the amount *paid by or on behalf of an insured* to the *insurer.*

Under the facts here the employees are the insured; they pay for the policy of insurance by payroll deductions – this is the only payment made to the taxpayer, the insurer.

There is no question but what the employee's contribution is an "amount paid as consideration for insurance" and is a "premium." Therefore, the contribution should be taxed under the statute above cited as "premiums."

Turning to the question of whether the employer's contribution is taxable as a "premium" we must again consider the meaning of the words "gross direct premium" or "premium."

It is logical to state that if the amount paid by the insured is a "premium" then an amount paid on behalf of an insured is a "premium." For example, if A company pays consideration to B insurance company for a contract of insurance on C's life, it has paid a "premium." However, if A company and B company are one and the same and the consideration for the insurance on C's life is provided by a bookkeeping entry can A be said to have paid a premium? Generally, if we reason that a premium is monies paid to an insurer by the insured the answer is "No" since the company is the insurer and the

customer the insured. However, can the company be said to be paying monies to itself on behalf of the insured?

Remembering that the word premium implies a payment or consideration and that those words imply the existence of a debt or contractual relationship we must answer the question again in the negative. With the exception of this one instance monies paid (to a third person) on behalf of the insured constitute a premium since they are a consideration paid on an existing debt. But here, since one cannot contract with or owe monies to oneself, there is no debt and no payment and thus no premium.

Therefore, where one pays monies to oneself, on behalf of another, there is no payment of a "premium" as considered in the statute. Too, there is some question as to whether the monies transferred here are paid "on behalf" of the insured or merely reflect a reduced rate of insurance. The result is the same in either case, there is no premium paid.

CONCLUSION:

The monies contributed by the employees should be considered premiums, those by the company are not to be considered premiums.

JON R. DOYLE
Assistant Attorney General

January 17, 1966
Education

Kermit S. Nickerson, Deputy Commissioner

Mentally Retarded Children

FACTS:

The State Department of Education has an appropriation of monies in the amount of $1350 which is to be utilized in the manner authorized by 20 M.R.S.A. § 3161. The reference statute is as follows:

> "Any administrative unit may, in addition to the sum raised for the support of public schools, raise and appropriate money for the education of teachers and other school personnel to meet the educational needs of mentally retarded children. Such appropriation shall be expended on a matching basis with any funds made available by the department for the same purpose.
>
> "Teachers and other school personnel who are so trained may be reimbursed through funds of the department on a matching basis for expenditures for such training approved in advance by the commissioner." *20 M.R.S.A. § 3161.*

Teachers employed in approved private schools and teachers employed at the Pineland Hospital and Training Center have inquired of your Department whether they are eligible for reimbursement of expenses incurred by them in their study of courses preparing them for the education of mentally retarded children.

QUESTION:

Whether the State of Maine may legally expend the appropriated monies under the given facts?

ANSWER:

No.

REASON:

The tenor of 20 M.R.S.A. § 3161 is that the State shall participate in a program whereby public school teachers are trained "to meet the educational needs of mentally retarded children." The section does not admit of an interpretation that teachers in either an approved private school or teachers in the Pineland Hospital and Training Center may participate in the program.

JOHN W. BENOIT
Assistant Attorney General

January 18, 1966
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

Taxation of Personal Property of Banks

FACTS:

The factual situation that is treated in the following pages deals with the legality of municipalities subjecting tangible personal property owned by trust companies within the geographical boundaries of the State of Maine to local personal property taxation.

ISSUE:

Whether or not municipalities may subject personal property owned by trust companies within the State of Maine to personal property taxation during the same period a bank stock tax is being levied pursuant to 36 M.R.S.A. § 4752?

ANSWER:

No; municipalities may not, legally, levy personal property taxes against trust companies located within the State of Maine.

LAW:

36 M.R.S.A. § 601

§ 601 Personal property; defined

"Personal property for the purposes of taxation includes all tangible goods and chattels wheresoever they are and all vessels, at home or abroad." R.S. 1954, c. 92, §5; 1955, c. 399, § 1; 1961, c. 223, § 4.

36 M.R.S.A. § 602

§ 602. – Where taxed

"All personal property within or without the State, except in cases enumerated in section 603, shall be taxed to the owner in the place where he resides." R.S. 1954, c. 92, § 13; 1955, c. 399, § 1.

36 M.R.S.A. § 4751

§ 4751. List of stockholders; real estate report.

"On or before April 15th of each year, the treasurer of every trust company organized under the laws of this State and the cashier of every banking institution formed under the laws of the United States, doing business in this State, shall send to the State Tax Assessor a list of all common stockholders and their residences, showing the number of shares owned by each on the first day of April, together with the value of the real estate, vaults and safe deposit plant owned by each trust company or banking institution, which is taxed as other real estate is taxed in the town in which it is located, and the amount for which said real estate, vaults and safe deposit plant was valued by the assessors of such municipality for the year previous." R.S. 1954, c. 16, § 154.

36 M.R.S.A.§4752

§ 4752. Tax on stock; payment; appeals

"The State Tax Assessor shall determine the value of shares of stock reported, as provided for in section 4751, and deduct therefrom the proportionate part of the assessed value of such real estate, vaults and safe deposit plant. Upon the value of said shares so determined after making said deductions, the said Tax Assessor shall assess an annual tax of 15 mills for each dollar of such assessed value so determined, and shall, on or before the first day of June, notify said trust companies and banking institutions. All taxes so assessed shall be paid by said trust companies and banking institutions to the State Tax Assessor on or before the first day of July, and *said tax shall be in lieu of all municipal or other taxes upon said stock, and said trust companies and banking institutions may charge the tax so paid pro rata to the individual stockholders thereof.* The State Tax Assessor shall pay over all receipts from such tax to the Treasurer of State daily. (Emphasis supplied).

REASONS:

In first analyzing the statutes that we are here directly concerned with, we see from 36 M.R.S.A. §§ 601, 602 that all tangible personal property is taxed to the owner "where he resides." We must then look to 36 M.R.S.A. § § 4751, 4752 as set out above, and find that there is specifically an enactment set down by the Legislature whereby the State Tax Assessor is directed to assess a tax on the stock held by stockholders of banking institutions located within the State of Maine and more specifically trust companies, for the purpose of the situation at hand. Reading further in the same section,

it can be seen that the Legislature specifically prohibits municipalities from levying local taxes upon the "stock" in question. At this point the question arises as to whether or not the municipality, in carrying out the authority vested in it by 36 M.R.S.A.§602, is, in effect, transgressing the clear exception as stated in 36 M.R.S.A.§4752, that portion being in italics. And lastly, it must be determined as to whether or not a municipality in levying a personal property tax on such personal property of a trust company is acting in such a manner whereby a situation is created whereby a levying of both taxes would constitute double taxation.

Generally speaking, "double taxation" is frequently used to connote any situation in which it can be contended with some show of reason that the same person or property has been subjected to more than one tax burden.

It is frequently stated that before invalid double taxation may be said to exist, both taxes must have been imposed in the same year, for the same purpose, upon property owned by the same person, and by the same taxing authority. However, the criteria that need exist for the presence of double taxation vary from jurisdiction to jurisdiction. Applying the theory of "double taxation" to the situation at hand can be stated as follows: Will "double taxation" exist wherein taxes are imposed on the corporate property and on the shares in the hands of the stockholders? This question must be answered in the affirmative within the State of Maine.

The case of Inhabitants of East Livermore v. the Livermore Falls Trust and Banking Company, 103 Me. 418 (1907) states clearly the proposition that "To tax the shares of a corporation to the shareholders, and to tax at the same time the property of the corporation to the corporation itself, imposes in effect, if not in theory, a double tax burden on the shareholders."

The Court went on to state at page 424 that "It is elementary that no tax can be imposed without express statutory authority, that such authority is to be construed strictly against the State, and particularly that no double tax burden shall be imposed on any person or property unless the statutes so clearly require it that no other construction is possible in reason." In conclusion, the Court in the Livermore case illustrates, what is in effect, a legislative policy of this State against "double taxation" and proposes the fact that not only is there no intention to impose "double taxation" but there is an "anxiety" to avoid it.

The Livermore case taken along with the generally held proposition "That the general principle that an intention to impose duplicate taxation is not to be presumed is applicable with respect to the taxation of the various elements of value in the corporate structure, and accordingly, that statutes will not be construed as revealing an intention that both the capital or property of the corporation and the individual shares should be taxed unless such intention is clearly and unequivocally expressed." 51 Am. Jur. § 294.

The above shows clearly that the Maine Legislature does not intend, at least at the present, to have municipalities levy personal property taxes upon trust companies during the time said property is being assessed upon through the bank stock tax set out in 36 M.R.S.A. § 4752.

RICHARD S. COHEN
Assistant Attorney General

February 2, 1966
Real Estate Commission

Leo M. Carignan

Expiration of listing contracts of realty brokers.

FACTS:

Universal Listing, Inc. solicits advertising in regard to the sale of real estate and contracts with realty owners to print brochures and folders and send same to all real estate brokers in a given area. For this service, a fee is charged, which is payable upon sale of the realty. There is no definite termination date set forth in the written contract between the seller of the real estate and Universal Listing, Inc. The State of Maine has a statute which provides that contracts to list real estate for sale must contain a specific expiration date.

In your memorandum of December 13, 1965 you have set forth two questions. Your questions are based upon an actual contractual dispute between Universal Listing Inc. and a real estate seller. There is a clear conflict of evidence as to whether or not the contractual dispute referred to in your memorandum was based solely on the written contract referred to above or whether said written contract was reformed or subsequently amended or renewed by the parties. This office offers no opinion as to the merits of any civil action which may result between the parties.

Let it be clearly understood that the following information is based strictly on the terms of the written contract of Universal Listing, Inc. as submitted to this office.

QUESTION No. 1:

Inasmuch as the sum agreed upon for advertising purposes is only payable when the property is sold, is Universal Listing acting as a real estate broker?

ANSWER:

Yes.

The question as to whether or not Universal Listing Inc., as a result of the factual situation described above, is acting as a real estate broker was answered by this office in an opinion dated August 23, 1962. We affirm the position stated in that opinion and direct your attention to the following language contained therein:

"In soliciting sellers of real estate to place advertising with it, and undertaking to have that advertising distributed to real estate brokers, the corporation in

question is engaged in 'listing' real estate for sale. . . . Universal Listing, Inc. is acting as more than a mere printing house. It is, in effect, the link between the seller and the broker. . . ."

QUESTION No. 2:

If Universal Listing is, in fact, acting as a real estate broker in this case, are they violating the license law by not including a specific expiration date in the contract?

ANSWER:

Yes.

32 M.R.S.A. § 4004 provides as follows: "Any contract made by a real estate broker or salesman to list real estate for sale shall contain a specific expiration date. If the parties to the contract desire to continue the contract, a new contract must be executed."

This section of our statutes was primarily enacted to protect owners against continuing contracts entered into without realization of their effect, and would apply to both written and oral contracts.

In the absence of a specific date in the written contract which Universal Listing, Inc. uses, the seller of the realty advertised for sale, would be obligated to pay Universal whether the property was sold or removed from the market 2 days or 20 years after the contract was consummated.

Contracts which provide for such an indefinite period of time during which contractual obligations exist between the parties thereto, represent precisely the type of bargains which 32 M.R.S.A. § 4004 intends to discourage.

32 M.R.S.A. § 4056 (1) provides for the suspension or revocation of license due to the performance of certain designated acts of brokers and salesmen. Subsection (H), an all inclusive provision, provides for suspension or revocation of license for, "Disregarding or violating any provisions of this chapter."

32 M.R.S.A. § 4056 (1) (H) incorporates by reference section 4004 discussed above, and it therefore follows that a violation of 4004 subjects a licensee to possible suspension or revocation of his license.

PHILLIP M. KILMISTER
Assistant Attorney General

February 2, 1966
Personnel

Ober C. Vaughn, Director

Rights to re-employment under Federal Law of State employees completing military service.

FACTS:

By memorandum dated October 19, 1965 you have requested a ruling as to whether or not nonstatus employees of the State would be entitled to reinstatement on the same or similar position upon being released from military service. You also indicate that it is your understanding under State law that these nonstatus employees will not be entitled

to military leave. A nonstatus employee is an employee who has not attained his permanent status in his employment within the meaning and intent of the "Personnel Law" 5 M.R.S.A. Chapter 51 through Chapter 61.

QUESTION:

Is the State of Maine liable for re-employment of nonstatus employees under pertinent provisions of Federal Law dealing with the right to re-employment upon release from military service?

ANSWER:

No.

OPINION:

5 M.R.S.A. § 555 is the provision of Maine law setting forth rights of reinstatement to employment and other benefits and the eligibility for such rights and benefits accruing to individuals who have served in the Armed Forces of the United States.

The first paragraph of 5 M.R.S.A. § 555 provides as follows:

> "Whenever any employee, regularly employed, for a period of at least 6 months by the State or by any department, bureau, commission or office thereof, or by any county, municipality, township or school district within the State, *and who has attained permanent status in such employment,* shall in time of war, contemplated war, emergency or limited emergency enlist, enroll, be called or ordered, or be drafted in the Armed Forces of the United States or any branch or unit thereof, or shall be regularly drafted under federal man power regulations, he shall not be deemed or held to have thereby resigned from or abandoned his said employment, nor shall he be removable therefrom during the period of his service." (Emphasis ours.)

If an individual under the State of Maine Personnel Law did not have a permanent status at the time he entered the Armed Forces of the United States, he is not entitled to reinstatement as a matter of right under the provisions of 5 M.R.S.A. § 555.

The pertinent provision of Federal Law dealing with re-employment rights of State employees is found in 50 U.S.C.A. § 459 (b) (c) i,ii:

> "(b) In the case of any such person who, in order to perform such training and service, has left or leaves a position *(other than a temporary position)* in the employ of any employer and who (1) receives such certificate, and (2) makes application for re-employment within ninety days after he is relieved from such training and service or from hospitalization continuing after discharge for a period of not more than one year –
>
> "(A). . . .
>
> "(B). . . .
>
> "(C) if such position was in the employ of any State or political subdivision thereof, it is declared to be the sense of the Congress that such person should –
>
> "(i) if still qualified to perform the duties of such position, be restored to such position or to a position of like seniority, status, and pay; or
>
> "(ii) If not qualified to perform the duties of such position by reason of disability sustained during such service but qualified to perform the duties of any other position in the employ of the employer, be restored to such other position

the duties of which he is qualified to perform as will provide him like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in his case." (Emphasis ours.)

Since this Federal Statute says in effect that an individual who had a temporary position with a state prior to his induction in the Armed Forces is not entitled to reinstatement as a matter of right, and since a person with a temporary position does not have a permanent status under State law, it follows that the State of Maine is not liable for re-employment of nonstatus employees under pertinent provisions of Federal Law.

JEROME S. MATUS
Assistant Attorney General

February 3, 1966
Labor and Industry

Marion E. Martin

Public Works, Fair Minimum Wage Rate; definition of term majority.

FACTS:

Section 1306 defines fair minimum rate of wages stating that it ". . . . shall be the rate of wages paid in the locality in this state as hereinbefore defined to the majority of workmen, laborers or mechanics in the same trade or occupation in the construction industry. . . ." (Emphasis supplied)

QUESTION:

Does the word "majority" as used in section 1306 quoted above mean 50% plus one?

ANSWER:

No.

OPINION:

26 M.R.S.A. § 1305 provides as follows:

"It is declared to be the policy of the State of Maine that a wage rate of no less than the *prevailing hourly rate* of wages for work of a similar character in this State in which the construction is performed, shall be paid to all workmen employed by or on behalf of any public authority engaged in the construction of public improvements." (Emphasis supplied)

We believe that when the legislature in section 1306 speaks of the wage paid "to the majority of workmen, . . . in the same trade or occupation in the construction industry," what is meant is the prevailing rate of wages or labor market wage rate, and not necessarily the hourly wage rate which is paid to 50% plus one of the number of workers in a particular trade.

Standing alone, the word majority means the greater number, or more than half of the whole number. If one were to ignore other sections of the statutory law which provide for the establishment of a fair minimum rate of wages to govern employment on state public improvement contracts, one might conclude that such a minimum wage rate

should be based on a wage rate which is paid to 50% plus one of the total number of workers in a particular trade. A reading of all sections of the statutes establishing a fair minimum wage rate for employees on state public improvement contracts militates against such a conclusion however.

There may not be a particular wage rate paid to a majority of workmen. For example, let us assume that the Department of Labor and Industry wishes to establish a minimum hourly wage rate for electricians. Let it further be assumed that there are a total of 200 electricians in the state who receive the following hourly wage rates: 80 electricians receive $2.50 per hour, 50 receive $2.70 per hour, 50 receive $2.40 per hour, 10 receive $2.20 per hour, and 10 receive $2.90 per hour. Clearly, there is no specific wage rate which is paid to a majority of electricians, if one interprets majority to mean 50% plus one. However, by taking all of the wage rates into consideration, could not a prevailing or labor market wage rate for electricians be determined?

26 M.R.S.A. § 1308 (1) Determination of Wage Rates.

> "The Department of Labor and Industry, from time to time, *shall investigate and determine the prevailing hourly rate of wages in this state.*
>
> *"In determining such prevailing rates,* the Department of Labor and Industry may ascertain and consider the applicable wage rates established by collective bargaining agreements, if any, and such rates as are paid generally in this State where the construction of the public improvement is to be performed." (Emphasis supplied)

The language of section 1308 (1) emphasizes the need for determining the prevailing hourly rate of wages, and not simply discovering that rate which is paid to a majority of workers.

The determination of a prevailing wage rate need not be based on any specific economic formula, provided that all known wage differentials in a trade are taken into consideration. The *wage* which *prevails* may be a median wage resulting from relatively free competition for services between employers and employees, or the prevailing wage could reflect a monopolistic wage rate established largely by one employer or one labor union. Regardless of what the prevailing wage rate reflects, it alone, forms the basis for the establishment of a fair minimum rate of wages.

PHILLIP M. KILMISTER
Assistant Attorney General

March 17, 1966
Water Improvement Commission

R. W. MacDonald

License to Discharge Waste and Compliance with Conditions Pertaining Thereto.

FACTS:

An industrial firm applies to the Water Improvement Commission for a license to discharge waste for a limited period of time during the calendar year. The Commission issues a waste discharge license to said applicant subject to certain conditions, one of which is the period of time during which the applicant may discharge waste. (approx. October to February)

ISSUE:

May the licensee described above discharge waste at any time other than that which is provided for within the terms of its license?

ANSWER:

No.

To hold that a licensee may unilaterally change the terms of his license would be to make licensing laws a nullity. Stated simply, a license is a permit or privilege to do that which would otherwise be unlawful.

The terms or conditions of a license to discharge waste may be changed only with the approval of the licensor, to wit: the Water Improvement Commission.

Licenses issued by the Commission are issued subject to conditions actually imposed by the legislature. In other words, in order to insure that a degradation or defilement of classified waters shall not take place, the legislature has in effect said that the Commission shall issue licenses only to those applicants whose contemplated discharge of waste into receiving waters will not degrade the classification of said waters. 38 M.R.S.A. § 414, (1).

38 M.R.S.A. § 414 (3) specifically provides:

> "Any license to so discharge granted by the commission may contain such terms or conditions with respect to the discharge as in the commission's determination will best achieve the standards set forth in section 363."

Clearly, the period of time during which a firm is to discharge waste into a certain body of water is a vital element for the Commission to consider in determining whether or not to grant licensure.

Without further elaboration, it may be concluded that a license to discharge waste on a seasonal or limited time basis must be strictly complied with by the licensee.

It is clearly violative of our water improvement law for an industrial firm, which is a seasonal licensee, to operate its plant and discharge waste during an off season period.

In closing, it should be noted that the question answered in this opinion is based upon facts as set forth in a newspaper report. It is entirely possible that the newspaper report may not be accurate as to all of the facts contained therein.

PHILLIP M. KILMISTER
Assistant Attorney General

March 23, 1966
Electricians Examining Board

Theodore E. Edwards, Chairman

Municipal licensing and recording fees for electricians.

FACTS:

The Public Laws of 1965, C. 385, § 3 repealed and replaced 32 M.R.S.A. § 1103.

The Public Laws of 1965, C. 385, § 3 (now 32 M.R.S.A. § 1103 as amended) reads:

> '§ 1103. Municipal licenses not required; municipal permits.
>
> No municipality, provisions in charters to the contrary, shall require electricians to be municipally licensed, but no municipality shall issue a permit for

an electrical installation unless satisfied that the person applying for the permit complies with this chapter.'

The former 32 M.R.S.A. § 1103 provided:

' §1103. Provisions in city charters not affected.

This chapter shall not prevent the licensing of electricians licensed hereunder by cities under the charters or ordinances thereof.'

A municipality has been requiring electricians licensed under 32 M.R.S.A. § 1103 to record their State electricians' licenses and charges a recording fee for doing so. Another municipality is still charging a $10.00 electrician's licensing fee.

QUESTION:

Can municipalities require State licensed electricians to pay such recording fees or local license fees?

ANSWER:

No.

OPINION:

The intent of 32 M.R.S.A. § 1103 as amended, is crystal clear, municipalities may not issue an electrician's license nor may they charge a fee for same. The use of a recording fee for an electrician's license is in effect the issuance of a license by a municipality as it requires the electrician to pay a fee to the municipality for a license issued. Neither of the practices set forth in the facts are proper or legal under 32 M.R.S.A. § 1103 as amended.

It should be noted that municipalities still have the authority to issue permits for electrical installations. 32 M.R.S.A. § 1103 does not prevent the charging of a fee for such a permit issued by a municipality.

JEROME S. MATUS
Assistant Attorney General

April 1, 1966
Education

Kermit S. Nickerson, Deputy Commissioner

Creation of Expenditure by Administrative Unit Re State Construction Subsidy.

FACTS:

The Maine Laws relating to public schools provide, inter alia, for the payment of State subsidy to administrative units on the basis of the unit's expenditures for capital outlay purposes.

" * * * On the basis of all the reports filed in the office of the commissioner on November 1st of each year, the commissioner shall determine the total amount to be paid to all of the School Administrative Districts and other eligible administrative units in that year, for capital outlay purposes, and shall apportion out of moneys appropriated for this purpose, in December of that year, to the

School Administrative Districts and other eligible administrative units, the same percentage of each administrative unit's expenditures for capital outlay purposes including principal and interest payments * * * ." *20 M.R.S.A. § 3518.*

This office has previously determined, by formal opinion, that the 12-month period ending November 1 constitutes the period within which an eligible unit's expenditures must have been realized in order for the unit to qualify for assistance in the following month of December, i.e., November 1 is the cut-off date. (Opinion dated November 25, 1958.)

Certain eligible local administrative units have sold bond issues which provide for interest payments or the redemption of bonds on dates occurring after the said November 1 cutoff date. In some instances, the interest payments or the redemption of bonds occurs shortly after the November 1 date. The interest and redemption dates specified on the bonds are the dates on which the interest payments are available to the bond holders. Because most of the bonds are in unregistered coupon form, payment to bond holders is not made by the paying agent until coupons or matured bonds are presented to the agent. In certain instances, bond indentures require the particular local administrative unit to make a deposit of money with the paying agency at some point prior to the coupon and maturity dates; the deposit being the amount required to meet the forthcoming bond interest payments or bond redemptions.

In some instances, local administrative units, with debt service commitments occurring shortly after the November 1 cutoff point, appear to be expediting the deposit of the sums required for interest and retirement commitments. By this procedure, the administrative units records seemingly reflect a disbursement of debt service monies to their paying agents prior to November 1 so as to be in a position to contend that a capital outlay expenditure occurred prior to the cutoff date. Resort to this procedure means that the administrative unit will realize State subsidy sooner than the unit would receive subsidy were its expenditure made after the cutoff date.

Whether required or made on a voluntary basis, these deposits are held by the paying agent, in the credit of the local administrative unit until the coupon or redemption date of record arrives. At that time, and not before, the deposits are made available to the bond holders.

QUESTION:

Does an administrative unit incur an expenditure for capital outlay purposes when it deposits debt service monies with its paying agent prior to November 1 to be used by the agent after November 1 for the purpose of meeting bond interest and retirement commitments?

ANSWER:

No.

REASON:

The word "expenditure" has been defined as the spending of money; the act of expending; disbursement expense; money expended; a laying out of money; a payment. *Crow v. Board of Sup'rs. of Stanislaus County,* 135 Cal. App. 451, 27 p. 2d 655; *Slurzberg v. City of Bayonne,* 29 N.J. 106, 148 A. 2d 171; *In re Toler's Estate* 49 C. 2d 460, 319 P. 2d 337. Unless, then, the given facts reveal that an administrative unit is spending money, laying out money, etc., no expenditure will have been made prior to the cutoff date.

We note that the facts are such that the administrative unit transfers the monies to *its* paying agent, and that the agent holds the monies to the credit of the administrative unit until disbursement is required. Payment by a principal to his agent of monies to be held by the agent until called for by third persons does not appear to constitute payment to the third persons until actually relinquished by the agent. Until the agent becomes divested of the monies, the same cannot be said to be expended by the principals. See: *2 C.J.S., Agency, § 1.* et seq. for a discussion of agency principles.

JOHN W. BENOIT
Assistant Attorney General

April 4, 1966

Maynard F. Marsh, Chief Warden
Inland Fisheries and Game

Jurisdiction of District Court over Migratory Bird Treaty Act.

QUESTION:

Does the Maine District Court have jurisdiction in cases which involve violations of regulations adopted and approved pursuant to the Federal Migratory Bird Treaty Act as provided in 12 M.R.S.A. § 2352?

ANSWER:

No.

LAW:

"Determination as to when and how migratory birds may be taken, killed or possessed.

"Subject to the provisions and in order to carry out the purposes of the conventions, referred to in Section 707 of this title, the Secretary of the Interior is authorized, and directed, from time to time. . . . to make suitable regulations, permitting and governing hunting. . . , which regulations shall become effective when approved by the President. . . ." *16 U.S.C.A. § 704.*

". . . . The several judges of the courts established under the laws of the United States, and United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. All birds, or parts, nests, or eggs thereof, captured, killed, taken, shipped, transported, carried, or possessed contrary to the provisions of said sections or of any regulations made pursuant thereto shall, when found, be seized by any such employee, or by any marshal or deputy marshal, and, upon conviction of the offender or upon judgment of a court of the United States that the same were captured, killed, taken, shipped, transported, carried, or possessed contrary to the provisions of said sections or of any regulation made pursuant thereto, shall be forfeited to the United States and disposed of as directed by the court having jurisdiction. July 3, 1918, c. 128, § 5, 40 Stat. 756; 1939 Reorg. Plan No. II, § 4, (f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433." *16 U.S.C.A. § 706.*

"Nothing in sections 703-711 of this title shall be construed to prevent the several States and Territories from making or enforcing laws or regulations not

inconsistent with the provisions of said conventions or of said sections, or from making or enforcing laws or regulations which shall give further protection to migratory birds, their nests, and eggs, if such laws or regulations do not extend the open seasons for such birds beyond the dates approved by the President in accordance with section 704 of this title. July 3, 1918, c. 128, §7, 40 Stat. 756; June 20, 1936, c. 634, §2, 49 Stat. 1556." *16 U.S.C.A. § 708.*

OPINION:

As can be seen from the above-quoted statutes, the regulations referred to in the above question are those regulations created by the Secretary of the Interior pursuant to 16 U.S.C.A. § 704. It is further seen from a reading of 16 U.S.C.A. § 706 that violations of the pertinent sections of the Federal Migratory Bird Treaty Act are under the jurisdiction of courts established under the laws of the United States, i.e., Federal Courts, and it would follow that the Maine District Court would be without jurisdiction in attempting to entertain violations of a Federal statute such as the one with which we are here concerned which would necessarily include any regulations promulgated under authority of such statute.

QUESTION No. 2:

Is there any method existent whereby the Maine District Court could be given jurisdiction in cases which involve violations of regulations adopted and approved pursuant to the Federal Migratory Bird Treaty Act?

ANSWER:

Yes.

OPINION:

Jurisdiction in these particular cases could be accomplished by either legislative or administrative action. As can be seen from a reading of 16 U.S.C.A. §708, supra, a state is given express authority under the Federal Migratory Bird Treaty Act to make or enforce laws or regulations not inconsistent with the Federal Act or which give further protection to migratory birds. Therefore, the legislature by statute or in the alternative the Commissioner of Inland Fisheries and Game by authority of 12 M.R.S.A. § 2352 could adopt regulations consistent with the Federal regulations in question, violations of which would be prosecuted under authority of 12 M.R.S.A. §3057 and have as penalties those now in existence under 12 M.R.S.A. §3060. In this manner, the Maine District Court would have jurisdiction and be able to take cognizance of said violations.

Any other action taken by our legislature in trying to assert jurisdiction in the Maine District Court over violations of the Federal Act itself would be an unwarranted intrusion of a state legislative body in an area where Federal jurisdiction exists and would therefore be repugnant to the United States Constitution.

It is also the opinion of this office that you should immediately instruct your wardens that under no circumstances should an Inland Fisheries and Game Warden take any criminal action for violations of the Federal Migratory Bird Treaty Act or regulations thereto.

RICHARD S. COHEN
Assistant Attorney General

April 12, 1966
Fish and Game

Maynard Marsh, Chief Warden

Tracer Shot Shell

Reference is made to your memo of April 11th. In this memo you asked two questions.

1. May the tracer shotgun shell, a sample of which is enclosed, be legally used for hunting in this State?

ANSWER:

No.

REASON:

12 M.R.S.A., § 2458, relates to a sale, use or possession of guns, pistols or other firearms fitted or contrived with any device for deadening the sound of explosion commonly called a silencer; automatic firearms or firearms converted to an automatic type; and the use of cartridges containing tracer bullets or cartridges containing explosive bullets. All of the above items are forbidden with some exceptions as noted therein.

There can be no question that a tracer shotgun shell is forbidden for hunting purposes. The paragraph which contains the prohibition of use of this item is discussing hunting.

2. May this tracer shotgun shell be legally used for shooting skeet or trap in this State?

ANSWER:

No.

REASON:

The answer to this question is much more debatable than the answer to the first question. The last sentence of the third paragraph of the above-cited statute states:

"It shall be unlawful for any person to use cartridges containing tracer bullets or cartridges containing explosive bullets."

This sentence, read by itself, is very clear and would raise no doubt as to the prohibition against the tracer shotgun shell.

The only doubt is whether this sentence can be read by itself, or should be read as only a part of the hunting and trapping laws. A good argument could be advanced in this direction. We conclude, however, that the general intent of § 2458 relates to the use of the prohibited firearms and ammunition whether for purposes of hunting or otherwise. The better interpretation would prohibit the use of this ammunition for hunting, target shooting, skeet or trap shooting, or any other purpose.

GEORGE C. WEST
Deputy Attorney General

May 11, 1966
Retirement

E. L. Walter Executive Secretary

Eligibility for Group Life Insurance

FACTS:

A teacher signed a contract with a school administrative district on August 13, 1963. The contract was for the year beginning July 1, 1963 and ending June 30, 1964. On August 26, 1963, the teacher died without ever appearing at school and performing any teaching duties. He was supposed to start his duties the day he died.

The district paid the teacher for one full day and deducted group life insurance premium, retirement and survivor benefits for that one day.

QUESTION:

Must the retirement system accept the group life insurance premium and make payment under the group life insurance program?

ANSWER:

See opinion.

OPINION:

The Group Life Insurance program is a part of the State Retirement System 5 M.R.S.A. § 1151 sets forth the pertinent parts of the program and provides in part:

> "Group life insurance shall be made available to state employees and teachers, subject to the following provisions:
>
> "1. Eligibility. Except as provided herein, each appointive officer or employee of the State of Maine, or teacher, who is eligible for membership in the Maine State Retirement System. . . . shall at such time and under the conditions of eligibility as the board of trustees may by regulation prescribe, come within the purview of this section.
>
> "4. Employee automatically insured; procedure if desire not to be insured. All employees eligible under the terms of this section will be automatically insured for the maximum amounts applicable thereunder, commencing on the date they first become so eligible. . . ."

Thus we see that an employee is eligible for group life insurance "commencing on the date they first become so eligible." But when does one "first become so eligible"? This is answered by the above-quoted portion of § 1151, subsection 1. The employee "first become (s) so eligible" when "eligible for membership in the Maine State Retirement System" and "at such time and under the conditions of eligibility as the board of trustees may by regulation prescribe."

Hence, we conclude that the ultimate decision is not a legal one but one to be determined by the board of trustees through its regulations.

GEORGE C. WEST
Deputy Attorney General

May 17, 1966
Treasury

Eben L. Elwell, State Treasurer

Use of Temporary Loans for Highway Purposes

FACTS:

The Ninety-Ninth and One Hundredth Legislatures proposed bond issues for highway and bridge purposes. Both bond issues were duly approved by the electorate at special elections in 1959 and 1961.

The Highway Commission now foresees the need of additional revenue in the next fiscal year. In accordance with 23 M.R.S.A. § 1551 - 1552, the Economic Advisory Board has met and considered the advisability of issuing Highway Bonds on July 15, 1966.

The bond market is at a very high point at present. Therefore, the Board has considered the possibility of recommending to the Governor and Executive Council the use of temporary loans for highway purposes as provided in 5 M.R.S.A. § 150. Under this plan, issuance of bonds would be deferred until market conditions improve. In the meantime temporary loans would be made and repaid prior to June 30, 1967, by issuance of the bonds.

QUESTION:

Would there be any legal problems involved in the use of temporary financing for highway construction and the subsequent issuance of long term bonds with the proceeds from the sale of such bonds to be used to repay said temporary financing?

ANSWER:

See opinion for answer.

OPINION:

The question, as worded, cannot be answered with a categorical "Yes" or "No." The general procedure of using temporary loans and repaying them by a bond issue would appear to be legal. 5 M.R.S.A. § 150, provides by the last two sentences:

> "The Treasurer of State is authorized, in any fiscal year in which the Governor and Council deem it necessary, to negotiate a temporary loan or loans for the use of the State Highway Commission for highway purposes. The said loan or loans shall not exceed 1/3 of the highway revenue received during the previous fiscal year and shall be repaid within the same fiscal year out of revenue credited to the General Highway Fund during that fiscal year."

This means that the limit of temporary loans is 1/3 of the highway revenue received from July 1, 1965 to June 30, 1966. That figure cannot be determined until, at least, July 1, 1966. Payment of the temporary loans must be made on or before June 30, 1967. These two limitations upon temporary loans are absolute and must be met.

If the temporary loans are made on an "as needed" basis and repaid when the bonds are issued, no legal problems can be foreseen. However, if one temporary loan payable on June 30, 1967 is made, then a legal problem may well arise.

In 1943 the Ninety-First Legislature sought to enact a bill authorizing the issuance of bonds to refund outstanding bonds maturing or subject to redemption before June 30, 1947. The House asked the Supreme Judicial Court if this bill was constitutional.

Opinion of the Justices, 139 Me. 416, said:

"Unless otherwise expressly prohibited, the Legislature has the power to authorize the refunding of valid outstanding obligations of the State but the issuance of bonds for that purpose an unreasonable length of time before the maturity of the indebtedness for the avowed and inseparable purpose of establishing an interim investment fund for gain and profit as is authorized by H.P. 1069, L.D. 558, pending in the 91st Legislature of Maine, will create a new debt or liability on behalf of the State in violation of the Provisions of Section 14 of Article IX of the Constitution of Maine as amended. We answer this question in the negative."

The Court did not expound on its reasons or theory as to why the law was unconstitutional other than its flat statement that the bill "will create a new debt or liability. . . . in violation of the provisions of Section 14, Article 9 of the Constitution of Maine."

If the Governor and Council should authorize a temporary loan payable on June 30, 1967 and subsequently during the fiscal year authorizes the issuance of bonds, it would be reasonable to assume that one of the purposes for such an action would be to invest the funds for gain and profit. We recognize that any method of issuing a temporary loan and subsequently issuing bonds will create a situation where for a short period of time both the loan and the bond issue may be outstanding. This cannot be avoided. However, the issuance of a temporary loan with a definite date payable can be avoided, and any taint of unconstitutionality can be avoided.

The insertion of a mandatory call date in the temporary loan which would require payment of the temporary loan within a reasonably short time after the issuance of the bonds would be one method of accomplishing this.

This dual indebtedness is the only feature of the suggestion by the Economic Advisory Board which might have legal complications. At least this office cannot see any other legal problems.

GEORGE C. WEST
Deputy Attorney General

June 24, 1966
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

Taxation of Municipal Sewer Facilities Located in Another Town

FACTS:

The town of Norway has constructed a sewage system located in part within the adjoining town of Paris.

The system was constructed prior to the enactment of Title 30, Chapter 235, which provides for the financing of sewage facilities through the issuance of revenue bonds. No information is available as to whether the system is revenue-producing.

The town of Paris now seeks to levy property taxes against that portion of the sewage system located within its limits.

QUESTION:

The general question is:

Whether the town of Paris can levy property taxes against that portion of the sewage owned by the town of Norway but located in the town of Paris.

The specific questions are:

1. Is the effect of section 4262 of Title 30 to exempt from taxation the property of *any* municipal sewage system, revenue-producing or not, whether located within the limits of the municipality or not?

Answer: No.

2. If the answer to the first question is "no," is the effect of the section to exempt from taxation revenue-producing sewer facilities of a municipality, wherever located, regardless of whether the facilities were acquired prior to enactment of Chapter 235 of Title 30, and regardless of whether the facilities were procured through the issuance of revenue bonds?

Answer: No.

3. If the answer to both above questions is "no," is the Bureau of Taxation justified in concluding that section 4262 of Title 30 applies only to such facilities acquired or constructed through issuance of revenue bonds, and acquired or constructed subsequent to enactment of what is now Chapter 235 of Title 30, in 1963?

Answer: Yes.

LAW:

Title 30, M.R.S.A. § 4251 entitled "Sewage Disposal Systems" authorizes municipalities to "acquire, construct. . . . maintain and operate. . . ." revenue-producing water or sewage facilities within, without or partly within or without the corporate limits of the municipality.

The facilities are to be constructed by the issuance of revenue bonds. (Title 30 M.R.S.A. § 4252).

Section 4262 of Title 30 provides that the revenue-producing facilities shall be exempt from taxation wherever located.

Previous to the enactment of the above provisions public municipal corporations could construct such facilities only by way of appropriation. (See Chapter 96, sections 129-150 inclusive, 1954 Revised Statutes of Maine, now Title 30 M.R.S.A. § 4351-4361 inclusive).

Too, previous to the enactment of the above exemption provision the only exemption provision for similar facilities was contained in what is now Title 36 M.R.S.A. § 651 (1) (D) which exempted certain public property as follows:

> "The property of any public municipal corporation of this State appropriated to public uses, *if located within the corporate limits and confines of such public municipal corporation."* (Emphasis supplied).

REASONS:

Question 1: *Is the effect of section 4262 of Title 30 to exempt from taxation the property of any municipal sewage facility, revenue-producing or not, whether located within the limits of the municipality or not?*

This question is answered in the negative.

Section 4262 which relates to the exemption of municipal facilities of sewage disposal systems conditions its operation upon the facilities being "revenue-producing." Too, it relates the exemption provision to those facilities constructed or acquired under the provisions of Chapter 235 cited above.

Therefore a facility must be a "revenue-producing" facility within the contemplation of Chapter 235 in order that its property, wherever located, be exempt from taxation.

Question 2: *If the answer to the first question is "no," is the effect of the section to exempt from taxation revenue-producing sewer facilities of a municipality, wherever located, regardless of whether the facilities were acquired prior to enactment of Chapter 235 of Title 30, and regardless of whether the facilities were procured through the issuance of revenue bonds?*

The answer to this question is in the negative.

A. *The section exempts revenue-producing sewer facilities constructed under Chapter 235.*

Section 4262 which provides an exemption for taxation of revenue-producing municipal facilities is limited, in its operation, at least in part, to those revenue-producing facilities which have been acquired or constructed under Chapter 235 of Title 30. There is a legislative finding of fact in section 4262 indicating that municipal facilities acquired or constructed under this Chapter (235) constitute public property and are used for municipal purposes. The exemption is further extended to those portions of the facility which are located without the corporate limits of the municipality.

Therefore it is proper to conclude that revenue-producing sewer facilities of a municipality which have been acquired or constructed under the provisions of section 4262 are exempt from taxation wherever located.

B. *In order to be exempt the facilities must be procured through the issuance of revenue bonds.*

Chapter 235 is limited in its application to those revenue-producing sewer facilities which have been constructed by the issuance of revenue bonds since elaborate provision is made for the financing of the facilities in this fashion under the provisions of the chapter.

Too, the provision formerly contained in Chapter 96 of the 1954 Revised Statutes is still existent in Title 30 at section 4351 through 4361 contemplating the construction of sewage facilities by a town by means of appropriation. This indicates that the Legislature was aware that previously the town could not issue revenue-producing bonds to create a sewage district and that it intended chapter 235 to operate to cure this defect. Therefore, it is important for the operation of the chapter that revenue-producing bonds be issued.

C. *The exemption in section 4262 does not apply where the facilities were constructed prior to the enactment of Chapter 235.*

Presumably, since the facts indicate that the facility in question was constructed prior to 1963, when Chapter 235 was enacted, the sewage facilities of the town of Norway were constructed under the authority found in Revised Statutes of 1954, Chapter 96, sections 129 through 150, inclusive. (Now Title 30 M.R.S.A. § 4351-4361). Under these provisions exemption from taxation of such facilities was dependent upon whether the facilities came within the tax-exemption provisions of Title 36 M.R.S.A. § 651. This provision exempted in part, the property of any public municipal corporation which is appropriated to public uses, if the property was located within the corporate limits and confines of such public municipal corporation.

While a facility constructed under the provisions of Chapter 235 may as well be as

devoted to a public use as is one constructed under the provisions of Revised Statutes 1954, Chapter 96, section 129 through 150 inclusive, it appears that the provision extending the tax exemption for such sewage facilities is only attributable to those facilities acquired or constructed under the provisions of Chapter 235 as explained above.

Therefore, in answer to your question No. 3 you are justified in concluding that section 4262 of Title 30 applies only to such sewage facilities acquired or constructed through issuance of revenue bonds, and acquired or constructed subsequent to enactment of what is now Chapter 235 of Title 30.

Therefore, under the present statutes (Title 36 M.R.S.A. § 6517, sub. D), the facilities in question are taxable by the town of Paris since they are located without the corporate limits of the town of Norway.

JON R. DOYLE
Assistant Attorney General

June 29, 1966
Education

Kermit S. Nickerson, Deputy Commissioner

Regional Technical and Vocational Centers; Exceeding Amount of Appropriation

FACTS:

In 1965, the Legislature enacted legislation providing for the establishment and operation of regional technical and vocational centers. *P. L. 1965, c. 440.* Section 4 of the reference Act contains the following language re appropriation of moneys:

"Sec. 4. Appropriation. In order to carry out the purposes of this Act, there is appropriated out of any moneys in the General Fund not otherwise appropriated in the sum of $210,000 for the fiscal year ending June 30, 1967. * * * "

The total number of applications filed with the State Board of Education pursuant to the provisions of the subject Act (20 M.R.S.A. § 2356-A to 2356-H) would, if approved, exceed the amount of $210,000 by a sizable sum. Your memorandum recites that approval of the present applications together with expected additional applications would increase the State's involvement and would obligate future legislatures to raise additional appropriations of considerable size.

QUESTION:

Does the State Board of Education possess authority to approve applications for the reference regional technical and vocational centers although to do so means that future State aid would exceed the appropriated sum of $210,000?

ANSWER:

Yes.

REASON:

An administrative unit seeking to offer a program of technical and vocational

education, as is specified in Section 2356-A of said Act, may establish regional centers for vocational or technical education. Said section provides that the administrative unit must secure the approval of the State Board of Education. *20 M.R.S.A. § 2356-A.* The reference Act (P. L. 1965, c. 440, § 3) does not contain language which conditions State Board of Education approval upon the amount of money appropriated by the legislature.

According to applicable provisions of the reference Act, the matter of approval is vested in the State Board of Education; and the manner of payment is delegated to the Commissioner of Education. *20 M.R.S.A. § 2356-A and § 2356-B.* Section 2356-B specifies that the Commissioner of Education shall make grants to qualifying administrative units "from any funds appropriated for these purposes, in the apportionment of which special funds which are or may become available to the State Board of Education for distribution for these purposes from Federal grants or from other sources may be used in part payment of, but shall not be in addition to, grants authorized by this section * * * ." It would appear that if the State Board of Education approves a plan for a regional center in a particular administrative unit, then the Commissioner of Education is to make a grant of monies to said administrative unit pursuant to the language recited immediately above. (The reference Act became effective September 3, 1965; and it contained no appropriation for the fiscal year ending June 30, 1966.)

A reading of the subject Act does not admit of an interpretation that the State Board of Education is not to approve additional applications for regional technical and vocational centers, once plans have been presented and approved which would involve State grants totaling $210,000. Any such interpretation places a premium upon the element of haste. We do not read the provisions of the reference Act as placing a premium upon 'the earliest post-marked application'. Suppose that the State Board of Education should approve a plural number of applications equaling the appropriated sum of $210,000. There is not guarantee that all of such centers would be completed so as to take advantage of the present appropriated monies. (State grants are not made until the administrative unit has completed construction of the center, inter alia. *20 M.R.S.A. § 2356-B.)* So it might be that certain of the appropriated monies could lapse after the fiscal year ending June 30, 1967; leaving certain of the centers without State aid unless the legislature appropriates further monies. Because the reference hypothetical situation would "commit future legislature(s) to additional appropriations" (to use the words of your memorandum), that argument does not appear to be applicable in arriving at an answer to the posed question.

In conclusion, it should be pointed out that the appropriated funds are not the criteria set up by the legislature for the Board to use in approving regional technical and vocational centers. Rather we refer you to section 2356-A wherein 3 criteria are set forth.

1. It shall be a regional center for vocational or technical education.
2. It shall be established, maintained and operated only in accordance *with a plan approved* by the State Board of Education as to educational need, scope of program to be offered, location and area to be served.
3. This particular criteria goes to school programming and is not necessary to be repeated.

We point out only the expressed function of the Board to first set up *a state-wide plan* of technical and vocational school regions. Once this plan has been conceived, then the Board may act upon individual applications provided they fit into the approved scheme of such school regions. The proposed school *must* be a regional center. The Board is vested with the discretion of delineating the size of the reference school regions.

Such school regions are to be equated to the educational needs and scope of the programs to be offered. In short, the Board should not approve every application that may be submitted, because it looks promising. The first question the Board must ask is: Does it fit into our state-wide plan for technical and vocational schools, including those operated by the Board?

JOHN W. BENOIT
Assistant Attorney General

July 13, 1966
Maine Industrial Building Authority

Roderic C. O'Connor, Manager

Reference is made to your memo and letter of June 17, 1966 in which you ask two questions.

QUESTION NO. 1:

May the Authority insure payments for a loan solely made for personal property, i.e., machinery and equipment?

ANSWER NO. 1:

Yes.

REASON:

The amendments which were enacted by the 102nd Legislature in its special session changed the statutes to conform to changes made in the Constitution. Basically, the changes were made to authorize the Industrial Building Authority to insure first mortgages on machinery and equipment as well as on real estate.

The signifi ant amendments were to 10 M.R.S.A. § 703 and § 803 by P.L. 1965, Chapter 471.

An analysis of these amendments reveal the following conclusions: In § 803 it is provided that the authority is authorized to "insure mortgage payments required by a first mortgage on any industrial project."

§ 703 subsection 3 defines an industrial project in part as:

> "Any building or other real estate improvement and, if a part thereof, the land upon which they may be located, and all real properties *and machinery and equipment deemed necessary*" etc. (Underlined words added by P.L. 1965, Chapter 471.)

Hence the legislature has now authorized the Authority to insure first mortgage payments on machinery and equipment.

Also note amendment to § 703, subsection 6, wherein a mortgage is defined as a "mortgage on an industrial project and . . . means such classes of first liens . . . given to secure advances on or the unpaid purchase price of, real estate *or personal property*. . ." (Underlined words added by P.L. 1965, Chapter 471.)

Also note § 803, subsection 2, as amended by P.L. 1965, Chapter 471, wherein it provides that a mortgage to be eligible for insurance must involve a limited principal obligation "not to exceed 90% of the cost of the project related to real estate and 75%

of the cost of the project related to machinery and equipment."

When considered as a whole, the intent of the legislature as expressed by its enactments gives the Industrial Building Authority the right to insure first mortgages of machinery and equipment.

QUESTION NO. 2:

May a savings bank originate a loan for which the payments are insured by Maine Industrial Building Authority, made wholly or in part for machinery and equipment?

ANSWER NO. 2:

We respectfully decline to answer this question. It is not a matter which is of concern to the Maine Industrial Building Authority. This is a question which should be more properly addressed to the Bank Commissioner.

GEORGE C. WEST
Deputy Attorney General

July 15, 1966
Secretary of State

Linwood Ross, Deputy

You have requested my opinion on the legality of the withdrawal by a nominee for State Representative who was nominated at the June 20th primary election. Your question is based on the fact that Section 446 of the election laws requires any candidate to file with his primary petitions a consent that he will accept the nomination, that he will not withdraw, and that he will qualify for the office if elected. The consent form which is printed on our primary nomination petitions reads as follows:

> "I consent to the herein proposed nomination, agree to accept if nominated at the primary election; not to withdraw; and, if elected at the general election, to qualify as such officer."

This consent form must be signed by any candidate in a primary.

The question you present appears to be one of novel impression in this State. It has never been considered by our Court. As a matter of fact, there are very few cases on the point in the United States. Over the years there have been questions posed to this Office by reason of vacancies occurring by withdrawals. However, these have usually been inquiries by the Governor's Office with relation to the method of filling such vacancies. The question of whether the withdrawal of a candidate is permissible has never been raised and thus there are no prior decisions of this Office on the point.

My research has disclosed only three cases prohibiting the withdrawal of a nominee in a primary election. These cases all originate in the State of Nevada which requires a similar filing of a consent statement, however, under oath. There are, however, other provisions of our law bearing on the question which in my opinion make the Nevada cases inapplicable.

American Jurisprudence states the general rule to be as follows:

> "As a general rule and *in the absence of a statutory provision to the contrary,* the fact that a nominee has filed his declaration of candidacy for public office and executed a statutory affidavit that if nominated he would accept such nomination

and not withdraw, does *not* prevent him from withdrawing as a candidate whenever he sees fit to do so." (Emphasis supplied)

Cases from California, Montana, Wisconsin, Maryland and New Jersey are cited in support of this proposition.

The question then boils down to whether our consent provision in Maine amounts to a statutory prohibition against resignation. This in turn is a matter of interpreting legislative intent.

In the Nevada cases, the only legislative intent expressed was the provision requiring the filing of the consent form. However, our election laws, namely section 1474, provides:

"If a person nominated for an office . . . at a regular primary election dies, *withdraws* or becomes disqualified before the general election, the Governor shall issue a proclamation as provided in section 1473 . . ." (Emphasis supplied)

The other sections referred to outline the procedure for filling vacancies by the Governor.

We thus have a situation where on one hand the Legislature has required filing an unsworn consent not to withdraw and on the other hand has provided a procedure for filling a vacancy caused by a withdrawal. I am not concerned with whatever moral or ethical commitment may result from a filing of a consent but only with its legal effect. In view of the foregoing, I must conclude that a candidate is not prohibited from withdrawing after nomination regardless of what his reasons may be.

I feel I should point out in view of the public interest in this question that the only question that has been posed to us and the only one which I have considered is whether any prohibition exists against withdrawal. I have not been asked to rule on whether a person can simultaneously seek two offices. I will add that if a nominee withdraws as I have indicated is permissible, I can see no legal objection to his seeking another office in accordance with the provisions of the election laws relating to nomination by petition namely sections 491-494.

RICHARD J. DUBORD
Attorney General

August 23, 1966
Water Improvement Commission

Raeburn W. Macdonald, Chief Engineer

State's program of aid grants to municipalities.

FACTS:

Under existing federal law 30% of the cost of sewage treatment works may be borne by the federal government and under existing state law, the State of Maine may contribute a similar amount. There is at the present moment under amendments to P. L. 660-84th Congress an increase of 10% of the 30% or a total of 33% in net federal aid available if the project for which aid is requested is part of a regional planning program.

Included in legislation presently before Congress are provisions for making 40% federal aid available in cases of a project part of a regional program, and 50% federal aid available if the project is part of a river basin program.

ISSUE:

When the Legislature enacts a law which by reference authorizes the State to provide

financial aid in the same amount as that which the federal government may provide under federal law, does an amendment of the aid provision of the federal law automatically amend the State reference statute?

ANSWER:

No.

REASON:

The applicable State statute as set forth in 38 M.R.S.A. § 411 provides:

> "The 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."

Public Law 660-84th Congress originally provided for federal assistance of 30% of total construction cost of municipal sewage treatment programs or $250,000, whichever is less. Congress in 1961 amended this provision by the enactment of P. L. 87-88th Congress which maintained the 30% aid provision but authorized the federal government to provide as much as $600,000 toward sewage abatement construction works if said figure were less than 30% of total construction costs.

By the enactment of 38 M.R.S.A. § 411 quoted above in 1964, the Legislature made clear that the Commission was authorized to appropriate funds equal to the total contribution which the federal government was authorized to provide. 38 M.R.S.A. § 411 refers only to the aid provisions of the federal law as those provisions existed at the time of their adoption by the Legislature however, to wit: December 31, 1964. The Legislature did not make clear that the State of Maine, acting through the Commission, would be authorized to meet the terms of future amendments to aid provisions which Congress might enact relative to P. L. 660-84th Congress.

In a leading treatise dealing with the subject of statutory construction it is stated:

> "A statute of specific reference incorporates the provisions referred to from the statute as of the time of adoption without subsequent amendments, unless the Legislature has expressly or by strong implication shown its intention to incorporate subsequent amendments with the statute. In the absence of such intention subsequent amendment of the referred statute will have no effect on the reference statute. . . . " Sutherland, *Statutory Construction,* 3rd Ed. (Vol. 2) § 5208.

In October of 1965 Congress enacted P. L. 89-234 which provided for an additional 10% of the amount of grants which Congress might provide, or 33% in federal aid. This Congressional amendment took place after the anactment of the state law (38 M.R.S.A. §411) and does not become a part of the state reference statute.

To construe section 411 of Title 38 of our statutes as meaning that the Legislature determined that the state would be authorized to provide aid in any amount which Congress might decide upon at some future date, would be to allow the state legislature to delegate its lawmaking duties to Congress. This may not be done.

Should the aid provisions of the federal law (P. L. 660-84th Congress) be revised, the Legislature should consider the wisdom of revising the applicable state reference statute (38 M.R.S.A. § 411) so as to incorporate the amended federal provisions.

PHILLIP M. KILMISTER
Assistant Attorney General

August 24, 1966
Maine Aeronautics Commission

Linwood F. Wright, Inspector

Payment of Excise Tax by Non-Resident Owner of Aircraft

FACTS:

Air General Inc. of Boston, Massachusetts owned and operated a helicopter in Maine during the month of July, 1966. The operation was under contract to either the navy or coast guard and operated from Millinocket, Bar Harbor and Belfast.

Air General Inc. has attempted to register the aircraft with the Maine Aeronautics Commission without paying an excise tax on the belief that since they are under contract to the government, they are not operating commercially and need not pay the excise tax.

QUESTION:

May Air General Inc., a non-resident owner of an aircraft operated principally within the State of Maine pursuant to a contract with the United States Government, register the aircraft in the State of Maine without paying an excise tax?

ANSWER:

No.

REASON:

6 M.R.S.A. § 44 (2) provides in part:

". . . All non-resident aircraft owners engaged in air commerce within the State shall register such aircraft with the commission and pay a fee of $25 for each registration.

"A. No aircraft shall be registered under this section until the excise tax or personal property tax has been paid in accordance with Title 36, sections 1482 and 1484."

6 M.R.S.A. § 44 (4) contains exemptions to the requirements for registration pursuant to the section. The first four listed exemptions under 6 M.R.S.A. § 44 (4) pertain to aircraft registration and are as follows:

"4. Exemptions. This section shall not apply to:

"A. An aircraft owned by and used exclusively in the service of any government or any political subdivision thereof, including the Government of the United States, any state, territory or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

"B. An aircraft registered under the laws of a foreign country and not engaged in air commerce within the State;

"C. An aircraft not engaged in air commerce within the State which is owned by a non-resident and registered in another state, or otherwise qualified therein;

"D. An aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;"

Paragraph A does not apply to the given fact situation as the aircraft is not owned by the Government of the United States. Paragraph B does not apply to the given fact situation as the aircraft is not registered under the laws of a foreign country. Paragraph D does not apply as the aircraft was engaged principally in flying within the State of Maine.

The question then arises does paragraph C apply? If so, the aircraft need not be registered nor an excise tax paid. We are satisfied that the aircraft was engaged in "air commerce" within the State of Maine and the exemption does not apply.

"Air Commerce" is defined by our statutes as follows:

> "4. Air commerce. 'Air commerce' means the carriage by aircraft of persons or property for compensation or hire, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation." 6 M.R.S.A. § 3 (4).

It is clear that the contractual relationship between Air General Inc. and the United States Government has resulted in the operation or navigation of an aircraft in the conduct or furtherance of the business of Air General Inc. Hence, the aircraft was engaged in "air commerce."

Since Air General Inc.'s aircraft did not fall within any of the applicable exemptions of 6 M.R.S.A. § 4, Air General Inc. must register the aircraft and pay the excise tax.

JEROME S. MATUS
Assistant Attorney General

September 27, 1966
Audit

Armand G. Sansoucy, State Auditor

Petition for State Postaudit by Municipality

FACTS:

On August 29, 1966, seventy voters in a municipality filed a petition under 30 M.R.S.A. § 5253, sub § 1, asking the Department of Audit to conduct a postaudit of the municipality's books for the years 1963, 1964, and 1965.

Subsequently, on September 2, 1966, twelve of the original signers filed petitions with the Department of Audit stating:

> ". . . we misunderstood the purpose of said earlier petition and had been given to understand that it was for the purpose of calling a town meeting to consider the matter and, therefore, now pray that our names be removed from said earlier petition, and that no audit be made because of the expense to the Town."

On September 23, 1966, twenty-one of the original petitioners, including nine of the twelve who signed the second petition, filed a petition with the Department of Audit containing the same language quoted above in the second petition.

Seventy voters constituted more than 10% of the voters. If twenty-four names are deducted, the remaining forty-six would be less than the required 10%.

QUESTION:

Once a valid petition is filed with the Department of Audit pursuant to 30 M.R.S.A. § 5253, sub § 1, may individual signers withdraw their names from the petition?

ANSWER:

No.

REASONS:

The previously cited statute reads:

> "When there is dissatisfaction with a postaudit made by a public accountant as shown by a petition signed by at least 10% of the voters of a municipality or village corporation, but in no case more than 1,000, and filed with the State Auditor, he shall order a new postaudit to be made by his department, the expense of which shall be paid by the municipality or village corporation."

The wording of the statute contemplates three stages in this process. (1) A dissatisfaction with a postaudit performed by a public accountant (2) the signing of a petition requesting a postaudit by the State Auditor and (3) the filing of the completed petition with the State Auditor.

All three steps must be completed before the State Auditor can act. The process might proceed through the first two steps, i.e., dissatisfaction and the signing of a petition. At this stage nothing has been accomplished. Signers may withdraw, the sponsors may hold up the filing of the petition, but once the signed petition is filed with the State Auditor, he must act. He is given no alternative but "he *shall* order a new postaudit to be made by his department." (Emphasis supplied).

The process has been completed by the filing of the petition with the State Auditor. He must now make the requested postaudit. There is no provision in the statutes for the withdrawal of the petition or of individual names signed on the petition. The Legislature can make provision for withdrawal, but until it does no withdrawal of names may be effected after the petition has been filed.

GEORGE C. WEST
Deputy Attorney General

October 8, 1965
Education

Hayden L. V. Anderson, Executive Dir.
Div. of Professional Services

Requirement that Gorham State College Students Purchase Health and Accident Insurance

FACTS:

Gorham State College requires that each student purchase health and accident insurance, at a cost of $18 per year. The reference college catalogue contains the following proviso regarding insurance:

> "Health and accident insurance, which is required of all students at a nominal fee, covers a portion of hospitalization, surgery, medication, and care by a physician."

This fall, a parent of one of the Gorham State College students has objected to the payment of the insurance fee on the grounds that the charge is illegal.

Your memorandum informs us that the University of Maine presents its students with such insurance on an optional basis. At the University, the insurance is routinely charged to every full-time student; but if the student does not desire insurance protection, he may have the charge removed from his bill by notifying the treasurer's office at the time of registration.

QUESTION:

May Gorham State College legally compel its students to purchase health and accident insurance?

ANSWER:

No.

REASON:

The laws relating to public schools provide, inter alia, that the State Board of Education shall charge $200 for tuition to non-residents of the State and shall charge $100 for tuition to residents of the State. *20 M.R.S.A. § 2304.* An examination of the reference law fails to reveal authority for charging students a sum for health and accident insurance.

A leading text in the field of law contains the following provision which appears to be of significance:

> " * * * In the absence of constitutional prohibition or limitation, the legislature may provide that a state university shall charge each student prescribed tuition and other fees; and in the absence of legislative or constitutional prohibition, a state college or university may charge all students for tuition and may exact from them other fees *in connection with the running of the institution." 14 C.J.S. Colleges and Universities, § 27.* (Emphasis supplied.)

A charge for health and accident insurance does not appear to be "in connection with the running of the institution."

> "The express power to manage and control the business and finances of the institutions carries with it the implied power to do all things necessary and proper to the exercise of the general powers, which would include the exaction of fees, not prohibited, if fees are necessary to the conduct of the business of the institutions." *State v. State Board of Education,* 97 Mont. 121, 33 P. 2d 516, 522.

Suppose that a 'hypothetical parent' has already purchased health and accident insurance coverage for his family. In such an instance, is it not unfair to require the parent to purchase additional health and accident coverage merely because his son or daughter attends the reference State College? Too, the coverage provided by one of the policies might be adversely effected by the existence of the other policy, to the detriment of the parent.

JOHN W. BENOIT
Assistant Attorney General

October 26, 1966
Banks and Banking

Philip R. Gingrow, Director – Finance
Location of Records of a Home Repair Financing Agency

FACTS:

A foreign corporation, primarily engaged in the business of acquiring home improvement paper, has been acquiring at its Boston, Massachusetts office home improvement paper from contractors in Maine for about two years. Approximately 30 Maine contractors sell home improvement paper to this corporation. The Maine contractors submit home improvement contracts and notes to the Boston office of the corporation. If the home improvement paper submitted by the Maine contractors is accepted by the Boston office of the corporation, the home owner is requested to make his payments to that office. All books, accounts, and records relating to the Maine home owners are kept at the Boston office. The corporation indicates it would not be economically profitable to maintain an office in Maine which would assume the functions of the Boston office. The corporation proposes that the residence of a field man located in Portland, Maine, be the licensed office under the Home Repair Financing Act and that the record relating to those transactions with Maine home owners be retained in the Boston office. There would be no State of Maine office with the records relating to the transactions involving Maine home owners. The corporation would reimburse the Bank Commissioner with appropriate expenses of his staff incurred in auditing the records of the corporation in Boston.

QUESTION:

Under the facts set forth, is the maintenance of the records in the Boston office of the corporation as they relate to business with Maine home owners, in violation of section 3748 of the Home Repair Financing Act? (Public Laws of Maine 1966, Chapter 501). 9 M.R.S.A., Chapter 360.

ANSWER:

Yes.

OPINION:

9 M.R.S.A. § 3748, reads as follows:

> "Every home repair contractor, home repair financing agency and holder of a home repair contract shall maintain a place of business in this State and keep at its place or places of business such books, accounts and records relating to all transactions under this chapter as will enable the commissioner to enforce full compliance with the provisions thereof. All such books, accounts and records shall be preserved and kept available for such period of time as the commissioner may by regulation require. The commissioner may prescribe the minimum information to be shown in such books, accounts and records of the licensee so that such records will enable the commissioner to determine compliance with this chapter."

In interpreting section 3748, we construe the following language: "and keep at its place or places of business such books, accounts and records relating to all transactions under this chapter as will enable the commissioner to enforce full compliance with the provisions thereof" – as referring to the preceding language in the first sentence of

section 3748, which reads: "Every home repair contractor, home repair financing agency, and holder of a home repair contract shall maintain a place of business in this State." Thus, a foreign corporation whose licensed office in Maine is the residence of its State of Maine field man, must maintain at the licensed office in the State of Maine, the books, accounts and records relating to all transactions under the Home Repair Financing Act which would enable the Bank Commissioner to enforce full compliance with the provisions thereof. The maintenance of the books, records and accounts outside of the State of Maine, with no such records being maintained within the State, is not contemplated by 9 M.R.S.A., § 3748, and would be in violation of that section.

JEROME S. MATUS
Assistant Attorney General

December 14, 1966
Motor Vehicles

Howard Clark, Assistant Director

Proper Registration Classification of Tractor Mounted Potato Combines.

FACTS:

Several new types of motorized farm equipment have been recently introduced in Aroostook County including a tractor mounted potato combine. Pictorial brochures of this combine were furnished to this office which show that the tractor portion of the combine is mounted on the combine with the wheels all removed and the steering mechanism attached to the front wheels of the combine.

QUESTION:

Are the tractor mounted potato combine and similar motorized equipment properly classified as "farm tractors" or "special mobile equipment"?

ANSWER:

See opinion.

OPINION:

Farm tractor is defined in our statutes as follows:

" 'Farm tractor' shall mean any motor vehicle designed and used primarily as a farm implement for *drawing* plows, mowing machines and other implements of husbandry." (Emphasis supplied.) *29 M.R.S.A. § 1, sub. 3.*

Special mobile equipment is defined in our statutes as follows:

" '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. This enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this section." *29*

M.R.S.A. § 1, sub. 14.

The tractor mounted potato combine is properly classified as special mobile equipment and is not properly classified as a farm tractor. We are limiting this opinion to the equipment described in the brochures. How similar motorized equipment would be classified depends on the points of similarity. Suffice it to say any motorized equipment that is considered as one unit and which does not *draw* plows, mowing machines, and other implements of husbandry cannot be a farm tractor. A farm tractor is a separate power unit attached to the front of farm machinery thereby moving the equipment.

Webster's International Dictionary, Second Edition, gives as its first definition of the word "draw" "to cause to go continuously forward by force applied in advance of the thing moved." The tractor portion of the combine does not draw the combine. It is the motive power of the combine.

Although a tractor mounted potato combine is a farm implement, the tractor portion of the potato combine is an integral portion of the combine and does not draw the combine. It is part and parcel of the combine and cannot be classified as a farm tractor.

The tractor mounted potato combine is a self-propelled vehicle. It is not designed to be used primarily for the transportation of persons or property and it is incidentally operated and moved over the highways. It therefore meets all the statutory criteria set forth for special mobile equipment and should be so classified.

JEROME S. MATUS
Assistant Attorney General

December 28, 1966
Maine State Police

Col. Parker F. Hennessey, Chief

Inspection of Special Mobile Equipment

FACTS:

By memorandum dated December 26, 1966, you ask for an interpretation of 29 M.R.S.A. § 2122.

QUESTION:

Does the law allow the Chief of the Maine State Police to exempt special mobile equipment from being inspected?

ANSWER:

No.

OPINION:

A unit of special mobile equipment must be a vehicle and must be only incidentally operated or moved over the highways. The statutory definition of special mobile equipment clearly sets this forth:

> "Special mobile equipment. '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. This 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.) *29 M.R.S.A. § 1, 14.*

Every vehicle registered in this State must be inspected at an official inspection station. The first sentence of the first paragraph of 29 M.R.S.A. § 2122 permits no other interpretation. The first sentence reads in part as follows:

"The Chief of the State Police shall require twice each year that *every vehicle* registered in this State be inspected at an official inspection station, * * *." (Emphasis supplied.)

The fact that special mobile equipment is only incidentally operated or moved over the highways is recognized by the next to the last paragraph of 29 M.R.S.A. § 2122, which reads as follows:

"The Chief of the State Police is authorized to make necessary rules and regulations concerning the inspection of special mobile equipment which is registered, *but not ordinarily operated over the highway."* (Emphasis supplied.)

This paragraph does recognize that certain of the items listed in the first paragraph of 29 M.R.S.A. § 2122 as required equipment to be inspected may not be applicable to special mobile equipment and hence the right to make necessary rules and regulations concerning the inspection of special mobile equipment. No inference should be drawn from this paragraph or any other paragraph of 29 M.R.S.A. § 2122 that special mobile equipment can be exempted from inspections. To the contrary, this paragraph provides that necessary rules and regulations concerning inspection of special mobile equipment may be made by the Chief of the Maine State Police.

In the making of necessary rules and regulations concerning the inspection of special mobile equipment, the Chief of the Maine State Police must stay within his statutory framework of authority. He cannot by rule and regulation say that there need not be an inspection of special mobile equipment and thus contravene the plain statutory language of the first sentence of the first paragraph of 29 M.R.S.A. § 2122 which requires the inspection of every vehicle registered in this State.

JEROME S. MATUS
Assistant Attorney General

Statistics for the Years
1965 - 1966

MAINE CRIMINAL STATISTICS FOR THE YEARS BEGINNING NOVEMBER 1, 1964 AND ENDING NOVEMBER 1, 1966

The following pages contain the criminal statistics for the years beginning November 1, 1964 and ending November 1, 1966.

Cases included:

The table deals with completed cases as well as cases pending at the end of the year. Disposition of pending cases is left for inclusion in the figures for the year in which it is finally determined. A case is treated as disposed of when a disposition has been made even though that disposition is subject to later modification. For example, if a defendant is placed on probation, his case is treated as completed, even though probation may be later revoked and sentence imposed or executed. No account is taken of the second disposition.

Defendants in cases on appeal who have defaulted bail are treated as pleading guilty.

Explanation of headings:

(a) Total means total number of cases during the year.

(b) Acquitted.

(c) Nol pross., etc., includes all forms of dismissal without trial such as nol-prossed, dismissed, quashed, continued, placed on file, etc.

(d) Pending.

(e) Pleas of Guilty by Defendant.

(f) Includes convicted on plea of nolo contendere.

(g) Under sentence to fine only some cases where sentence is to fine, costs, restitution or support provided there is no probation or sentence to imprisonment.

(h) Includes cases of fine and imprisonment.

(i) Prison sentence only.

(j) Defendant placed on probation.

1965

1965 ALL COUNTIES – TOTAL INDICTMENTS AND APPEALS

Crime	Total (a)	Disposition: Acquitted (b)	Nol-Pross etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	2907	103	1035	214	1552	103 3**	815	38	471	220
Arson	15	1	5	1	8	1			4	4
Assault & Battery	182	7	73	11	91	7	20	1	47	23
Assault with Intent to Kill	4		2		2				2	
Automobile Junkyard	3				3		3			
Breaking, Entering, & Larceny	448	9	156	54	229	9			131	98
Driving Under Influence	347	53	64	20	210	53	186	10	14	
Embezzlement	12		4		8		1		1	6
Escape	32		7	9	15 1****				15	
Forgery	118		52	12	54				38	16
Intoxication	99	1	43	5	50	1	34	3	12	1
Larceny	145	2	51	8	84	2	18	5	43	18
Liquor	53		27	1	21 4*		17	2	2	
Manslaughter	11		3		8				8	
Motor Vehicle	782	16	259	34	472 1*	16	417	10	40	5
Murder	7		2	3	2				2	
Night Hunting	52	6	9	4	33	6	29	2	2	
Non Support	11		6	2	3				2	1
Rape	7		4		3				2	1
Robbery	23		10	2	11				7	4
Sex Crimes	87	2	28	4	50	2 3**	3		37	10
Miscellaneous	469	6	230	44	187 2***	6	87	5	62	33

* (5) License Suspended
** (3) Not Guilty by reason of mental illness or mental defect
*** 2 children committed to state
**** (1) Appeal to Law Court

1965 INDICTMENTS AND APPEALS BY COUNTIES

ARSON

Totals	15	1	5	1	8	1			4	4
Aroostook	7				7				3	4
Kennebec	5		5							
Oxford	1				1				1	
Penobscot	1			1						
Somerset	1	1				1				

1965 INDICTMENTS AND APPEALS BY COUNTIES

ASSAULT & BATTERY

County	Total (a)	Disposition: Acquitted (b)	Not Pross etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	182	7	73	11	91	7	20	1	47	23
Androscoggin	7		4		3		2		1	
Aroostook	19		6		13		2		6	5
Cumberland	38	2	19		17	2	2	1	9	5
Franklin	11		6		5		2		3	
Hancock	9		2	6	1				1	
Kennebec	18		6		12		1		7	4
Knox	6		3	1	2				2	
Lincoln	1				1				1	
Oxford	12	1	2	2	7	1	2		4	1
Penobscot	14		7		7		1		3	3
Sagadahoc	6		3		3		2		1	
Somerset	9	1	3	2	3	1	1		2	
Waldo	7		2		5		2		1	2
Washington	2				2		1		1	
York	23	3	10		10	3	2		5	3

ASSAULT WITH INTENT TO KILL

Totals	4		2		2				2	
Aroostook	1		1							
Kennebec	2		1		1				1	
Penobscot	1				1				1	

AUTOMOBILE JUNKYARD

Totals	3				3		3			
Somerset	1				1		1			
Washington	1				1		1			
York	1				1		1			

BREAKING-ENTERING AND LARCENY

Totals	448	9	156	54	229	9			131	98
Androscoggin	16		8		8				8	
Aroostook	18		2		16				10	6
Cumberland	35	2	6	1	26	2			18	8
Franklin	7		4		3				3	
Hancock	20	1	6	6	7	1			7	
Kennebec	58	2	11		45	2			20	25
Knox	29		11	15	3				2	1
Lincoln	5	1	1	3		1				
Oxford	63	1	20	19	23	1			8	15
Penobscot	85		50		35				21	14
Piscataquis	5				5				4	1
Sagadahoc	7	1	1		5	1			1	4
Somerset	17	1	3	8	5	1			2	3
Waldo	21		9	2	10				7	3
Washington	14				14				3	11
York	48		24		24				17	7

1965 INDICTMENTS AND APPEALS BY COUNTIES

DRIVING UNDER INFLUENCE

County	Total (a)	Disposition: Acquitted (b)	Nol Pross Etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	347	53	64	20	210	53	186	10	14	
Androscoggin	20	4	4		12	4	12			
Aroostook	24	5	4		15	5	12	1	2	
Cumberland	26	5	3		18	5	18			
Franklin	13	1	1		11	1	10		1	
Hancock	19	3	3	6	7	3	7			
Kennebec	26	4	5		17	4	12	3	2	
Knox	16	2	1		13	2	12	1		
Lincoln	2	1			1	1	1			
Oxford	16		3	2	11		11			
Penobscot	55	4	2	7	42	4	33	4	5	
Piscataquis	6	1		1	4	1	2	1	1	
Sagadahoc	10	1	5	1	3	1	3			
Somerset	28	5	3	1	19	5	16		3	
Waldo	5				5		5			
Washington	10	4	2	2	2	4	2			
York	71	13	28		30	13	30			

EMBEZZLEMENT

Totals	12		4		8	1			1	6
Androscoggin	2		1		1	1				
Kennebec	1				1					1
Penobscot	1				1				1	
Washington	5		2		3					3
York	3		1		2					2

ESCAPE

Totals	32		7	9	16*				15	
Androscoggin	6				6				6	
Franklin	1		1							
Hancock	1				1*					
Knox	14		2	8	4				4	
Oxford	2			1	1				1	
Waldo	5		3		2				2	
Washington	1				1				1	
York	2		1		1				1	

* (1) Appeal to Law Court

FORGERY

County	Total (a)	Disposition: Acquitted (b)	Nol Pross Etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	118		52	12	54				38	16
Androscoggin	18		15		3				3	
Aroostook	4		1		3					3
Cumberland	16		2	2	12				10	2
Franklin	4		2		2				2	
Kennebec	19		6		13				8	5
Knox	8		2	6						
Oxford	8		4		4				2	2
Penobscot	19		9		10				7	3
Piscataquis	1				1				1	
Sagadahoc	1		1							
Somerset	9		5	3	1				1	
Waldo	5		1	1	3				3	
Washington	1				1					1
York	5		4		1				1	

INTOXICATION

Totals	99	1	43	5	50	1	34	3	12	1
Androscoggin	1				1		1			
Aroostook	2		1		1		1			
Cumberland	22		10	2	10		9		1	
Franklin	6		3		3		3			
Hancock	5		2	2	1				1	
Kennebec	4		1		3		1		2	
Knox	3	1	2			1				
Oxford	7		4		3		3			
Penobscot	13		4		9		4		5	
Somerset	7		1	1	5		4		1	
Waldo	14		5		9		6	3		
Washington	3				3		2			1
York	12		10		2				2	

LARCENY

Totals	145	2	51	8	84	2	18	5	43	18
Androscoggin	6		5		1				1	
Aroostook	5		2		3		1		2	
Cumberland	19	1	5	2	11	1			9	2
Franklin	12		6		6		6			
Hancock	2			1	1				1	
Kennebec	17		3		14		3		10	1
Knox	6				6				3	3
Oxford	10		8		2				1	1
Penobscot	23		6	2	15				10	5
Piscataquis	2	1			1	1				1
Sagadahoc	7		4		3					3
Somerset	15		3	3	9		1	4	4	
Waldo	6		4		2				1	1
Washington	3		2		1				1	
York	12		3		9		7	1		1

1965 INDICTMENTS AND APPEALS BY COUNTIES

LIQUOR

County	Total (a)	Disposition: Acquitted (b)	Nol Pross Etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	53		27	1	21 4*		17	2	2	
Androscoggin	5		4		1		1			
Aroostook	7		3		4		2	2		
Cumberland	15		8		4 3*		4			
Kennebec	5		2		3		2		1	
Knox	1		1							
Lincoln	1				1				1	
Oxford	4		2		2		2			
Penobscot	3				3		3			
Sagadahoc	3		2	1						
Somerset	2				2		2			
York	7		5		1 1*		1			

* (4) License Suspended

MANSLAUGHTER

Totals	11		3		8				8	
Androscoggin	3		2		1				1	
Kennebec	1		1							
Oxford	3				3				3	
Penobscot	3				3				3	
Waldo	1				1				1	

MOTOR VEHICLE

Totals	782	16	259	34	473*	16	417	10	40	5
Androscoggin	59	1	18		40	1	39		1	
Aroostook	31	1	11		19	1	16	1	2	
Cumberland	130	3	58	3	65 1*	3	64		1	
Franklin	76		14	1	61		51	2	6	2
Hancock	16	1	7	2	6	1	4		2	
Kennebec	38		10		28		18	2	8	
Knox	24		3	4	17		17			
Lincoln	10		8		2		2			
Oxford	58	1	23	7	27	1	24		1	2
Penobscot	104		19	12	73		59	2	12	
Piscataquis	3	1		1	1	1		1		
Sagadahoc	23		10		13		11	2		
Somerset	59	2	13	2	42	2	40		2	
Waldo	18		3	1	14		12		2	
Washington	11		4	1	6		3		3	
York	122	6	58		58	6	57			1

1* License Suspended

1965 INDICTMENTS AND APPEALS BY COUNTIES

MURDER

County	Total (a)	Disposition: Acquitted (b)	Nol Pross Etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	7		2	3	2				2	
Knox	1		1							
Penobscot	5		1	3	1				1	
Somerset	1				1				1	

NIGHT HUNTING

Totals	52	6	9	4	33	6	29	2	2	
Aroostook	7				7		6		1	
Cumberland	3		3							
Franklin	2		2							
Hancock	8	6			2	6	2			
Knox	2			1	1		1			
Oxford	4		2		2		2			
Penobscot	6		1	1	4		3		1	
Piscataquis	2				2		2			
Somerset	2				2		2			
Waldo	6		1	1	4		4			
Washington	10			1	9		7	2		

NON-SUPPORT

Totals	11		6	2	3				2	1
Androscoggin	2		2							
Cumberland	1		1							
Knox	1		1							
Oxford	1				1					1
Penobscot	1		1							
Somerset	4			2	2				2	
York	1		1							

RAPE

Totals	7		4		3				2	1
Androscoggin	2		1		1				1	
Cumberland	2		2							
Kennebec	2				2				1	1
Oxford	1		1							

ROBBERY

Totals	23		10	2	11				7	4
Cumberland	7		3		4				1	3
Franklin	2			2						
Penobscot	6		1		5				4	1
Waldo	3		2		1				1	
York	5		4		1				1	

1965 INDICTMENTS AND APPEALS BY COUNTIES

SEX CRIMES

County	Total (a)	Disposition: Acquitted (b)	Nol Pross Etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	87	2	28	4	50	5	3		37	10
Androscoggin	6		3		3				3	
Aroostook	15		3		12		1		6	5
Cumberland	5		2		3				3	
Kennebec	13		3		8	2*	2		4	2
Knox	1		1							
Lincoln	2				2				2	
Oxford	3		1		2				2	
Penobscot	15		5	2	7	1*			7	
Piscataquis	1				1				1	
Sagadahoc	2	1	1			1				
Somerset	3			2	1				1	
Waldo	3		1		2				2	
Washington	2				2				2	
York	16	1	8		7	1			4	

*3 N.G. by reason of insanity

MISCELLANEOUS

Totals	469	6	230	44	187 2*	6	87	5	62	33
Androscoggin	10		8		2		1		1	
Aroostook	41	1	16		22 2*	1	10		10	2
Cumberland	60	1	38	1	20	1	12		6	2
Franklin	30		12		18		14	1	1	2
Hancock	19		4	9	6		2		4	
Kennebec	44	2	11		31	2	9	1	16	5
Knox	15		5	6	4		2			2
Lincoln	10		5		5		2	1		2
Oxford	46	1	24	5	16	1	3		8	5
Penobscot	53		27	9	17		5		10	2
Sagadahoc	14		14							
Somerset	23	1	6	8	8	1	7		1	
Waldo	20		7	5	8		6	1	1	
Washington	12		3	1	8		4	1		3
York	72		50		22		10		4	8

* (2) Children committed to State.

1965 LAW COURT CASES

County	Name of Case	Outcome
Androscoggin	No Cases.	
Aroostook	Gene V. Graves	Appeal denied. Remanded to Superior Court for Sentence – Sentenced to 1½ to 5 years to State Prison
Cumberland	Duane S. Littlefield	Exceptions overruled; appeal dismissed; motion for new trial denied.
	Lawrence A. Sinclair	Exceptions overruled; appeal dismissed; motion for new trial denied.
	Clifford G. Small, III	Pending
	John J. White	Pending
	Edric A. Littlefield	Pending
Franklin	Clyde M. Hathaway	Appeal sustained, new trial granted.
Hancock	No Cases.	
Kennebec	Burleigh James	Judgment for State
	Ronald Bey	Judgment for State
	Peter F. Carll	Judgment for State
Knox	No Cases.	
Lincoln	No Cases.	
Oxford	George H. Breau	Pending
Penobscot	Kenneth MacKenzie	Judgment for State
	Oscar W. Malloch	Pending
Piscataquis	No Cases.	
Sagadahoc	No Cases.	
Somerset	No Cases.	
Waldo	No Cases.	
Washington	Wyman Farnsworth	Dismissed as moot.
York	No Cases.	

FINANCIAL STATISTICS, YEAR ENDING November 1, 1965

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	$23,822.68	$ 37,166.95*	$2,294.30	$14,403.20	$ 4,796.99	$ 26,475.74
Aroostook	15,681.34	38,435.14	1,998.80	11,421.60	6,980.00	2,549.00
Cumberland	75,116.14	107,928.72	2,638.85	12,227.60	12,050.00	196,176.20
Franklin	1,875.21**	9,148.27	510.20	2,037.70	2,267.00	24,316.92
Hancock	17,568.05	21,186.73	810.20	8,398.00	1,970.00	36,262.10
Kennebec	30,218.55	28,411.29	3,700.33	13,603.50	5,965.00	6,522.00
Knox	1,764.76	17,424.31	1,603.10	4,323.60	11,914.00	5,871.20
Lincoln	944.51	3,328.66	989.30	5,320.75	569.00	569.00
Oxford						
Penobscot	51,777.05	30,831.54	4,782.60	25,789.76	12,161.54	30,961.00
Piscataquis	2,724.54	7,519.50	563.90	2,077.10	330.00	330.00
Sagadahoc	4,206.66	4,047.74	968.70	4,964.30	1,225.00	3,073.00
Somerset	24,112.65	22,157.87	2,822.66	9,729.90	2,660.00	67,077.20
Waldo	23,986.07	24,586.74	822.00	7,883.50	3,825.00	19,685.30
Washington	11,031.11	17,940.34	1,078.80	4,815.60	1,831.00	4,622.72
York	32,220.63	46,041.70	2,147.00	46,798.10	10,172.60	50,011.65

* Received $3,957.17 from Sagadahoc and Oxford Counties.
** October bills not paid yet.

1965
POST-CONVICTION PETITIONS

Type of Petition	Total	Superior Court	Outcome	Appeal to Law Court	U.S.D.C.	U.S.C.A.	U.S. Supreme Court	Out-come
Habeas Corpus (State & Federal)	7	1			Dismissed (6) Discharged (1)	Dismissed (1) D.C. Reversed (1) (MacKenzie)	(3)	cert. den. (3)
Post-Conviction Habeas Corpus (14 MRSA § 5502, et seq.)	57	57	Dismissed (42) Pending (5) Discharged (8) Resentenced (1) Case Remanded (1)	Appeal Dismissed (5) Pending (1) Lack of Prosecution (3)				
Mandamus	1	1						
	65	59	57	9	7	2	3	3

1966

1966 ALL COUNTIES – TOTAL INDICTMENTS AND APPEALS

Crime	Total (a)	Disposition: Acquitted (b)	Nol Pross Etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	2853	81	909	314	1546	84	938	31	356	217
Arson	7	2	2	2		2 1*				
Assault & Battery	206	6	69	21	110	6	46		37	27
Assault with Intent to Kill	7			2	4	1*			4	
Automobile Junkyard	5		2	2	1					1
Breaking, Entering and Larceny	297	3	89	50	155	3			80	75
Driving Under Influence	357	31	76	35	215	31	181	15	18	1
Embezzlement	14		9	1	4				1	3
Escape	21		1	7	13				13	
Forgery	87	2	23	10	52	2	1		28	23
Intoxication	99		30	17	52		37	1	8	6
Larceny	130	1	43	14	72	1	21	1	27	23
Liquor	72	3	27	8	32 2**	3	25		4	3
Manslaughter	5	2	2		1	2			1	
Motor Vehicle	995	10	344	62	578 1**	10	497	7	65	9
Murder	16	1		12	2	1 1*			2	
Night Hunting	33	5	4		24	5	24			
Non Support	9		4	2	3		3			
Rape	9		6	1	2				2	
Robbery	17		7	3	7				7	
Sex Crimes	73	8	27	4	34	8	3		20	11
Miscellaneous	394	7	144	61	181 1***	7	100	7	39	35

* (3) Not Guilty By Reason of Mental Defect or Mental Illness
** (3) License Suspended
*** (1) Sent to Augusta State Hospital

1966 INDICTMENTS AND APPEALS BY COUNTIES

ARSON

Totals	7	2	2	2	3*
Androscoggin	1		1		
Aroostook	2	2			2
Penobscot	2			1	1*
Washington	2		1	1	

* (1) Not Guilty By Reason of Mental Defect

1966 INDICTMENTS AND APPEALS BY COUNTIES

ASSAULT AND BATTERY

County	Total (a)	Disposition: Acquitted (b)	Nol Pross Etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	206	6	69	21	110	6	46		37	27
Androscoggin	12		9		3		2		1	
Aroostook	16		7	1	8		4		3	1
Cumberland	34		13	3	18		8		5	5
Franklin	10	1	1	5	3	1	1			2
Hancock	13		6	4	3		2		1	
Kennebec	9	2	1		6	2	1		3	2
Knox	3		2	1						
Lincoln	12		2		10		2		3	5
Oxford	12		1	3	8		5		3	
Penobscot	27		7	3	17		5		7	5
Piscataquis	2		1		1					1
Sagadahoc	4		2		2		1		1	
Somerset	13		8		5		3		1	1
Waldo	9		1		8		1		5	2
Washington	2		1		1				1	
York	28	3	7	1	17	3	11		3	3

ASSAULT WITH INTENT TO KILL

Totals	7			2	4	1*			4	
Cumberland	4			2	2				2	
Knox	1					1*				
Penobscot	1				1				1	
York	1				1				1	

* (1) Not Guilty by Reason of Mental Defect

AUTOMOBILE JUNKYARD

Totals	5		2	2	1					1
Cumberland	2			1	1					1
York	3		2	1						

BREAKING, ENTERING AND LARCENY

Totals	297	3	89	50	155	3			80	75
Androscoggin	11		5		6				6	
Aroostook	16		8		8				3	5
Cumberland	33	1	7	3	22	1			15	7
Franklin	17			13	4				2	2
Hancock	13		9		4				4	
Kennebec	43	1	8		34	1			15	19
Knox	11		2	4	5				3	2
Lincoln	2		2							
Oxford	38		11	18	9					9
Penobscot	26		4	1	21				12	9
Piscataquis	14		5		9				3	6
Sagadahoc	4		2		2				1	1
Somerset	31	1	10	10	10	1			6	4
Waldo	12		6		6				4	2
Washington	6		2		4				2	2
York	20		8	1	11				4	7

1966 INDICTMENTS AND APPEALS BY COUNTIES

DRIVING UNDER INFLUENCE

County	Total (a)	Acquitted (b)	Nol Pross Etc. (c)	Pending (d)	Disposition Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	357	31	76	35	215	31	181	15	18	1
Androscoggin	22	1	8		13	1	12		1	
Aroostook	26	3	3	1	19	3	14	1	4	
Cumberland	44	4	11	4	25	4	23		2	
Franklin	14		2	2	10		9	1		
Hancock	24	3	5	4	12	3	10	1	1	
Kennebec	20	2	4		14	2	9	4	1	
Knox	14		1	3	10		10			
Lincoln	12		6	5	1		1			
Oxford	20			4	16		16			
Penobscot	53	2	9	3	39	2	32	1	6	
Piscataquis	5	1			4	1	4			
Sagadahoc	7	1			6	1	3	1	2	
Somerset	20	4	1	4	11	4	10	1		
Waldo	7			1	6		3	3		
Washington	10	1		1	8	1	5	1	1	1
York	59	9	26	3	21	9	20	1		

EMBEZZLEMENT

Totals	14		9	1	4				1	3
Aroostook	2		2							
Cumberland	1		1							
Franklin	2		1	1						
Oxford	2		2							
Penobscot	2				2				1	1
Somerset	2		1		1					1
Washington	3		2		1					1

ESCAPE

Totals	21		1	7	13				13	
Androscoggin	5		1		4				4	
Cumberland	2				2				2	
Hancock	1			1						
Knox	6			3	3				3	
Oxford	1			1						
Penobscot	1			1						
Piscataquis	1				1				1	
Somerset	1			1						
Waldo	3				3				3	

FORGERY

County	Total (a)	Disposition: Acquitted (b)	Nol Pross Etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	87	2	23	10	52	2	1		28	23
Androscoggin	5		1		4		1		3	
Aroostook	17		9		8				4	4
Cumberland	10		4	1	5				3	2
Hancock	3	1	1		1	1			1	
Kennebec	10		2		8				5	3
Knox	7			6	1					1
Oxford	6		1	1	4				2	2
Penobscot	14		1		13				7	6
Piscataquis	2		1		1				1	
Somerset	4		1	1	2				1	1
Waldo	3		1		2					2
Washington	2	1		1		1				
York	4		1		3				1	2

INTOXICATION

County	Total (a)	Disposition: Acquitted (b)	Nol Pross Etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	99		30	17	52		37	1	8	6
Androscoggin	5		2		3		3			
Aroostook	4		2	1	1		1			
Cumberland	27		10	6	11		7		4	
Franklin	2		1		1		1			
Hancock	4		2	1	1				1	
Kennebec	7		4		3		1	1		1
Knox	5			3	2		1			1
Lincoln	4		1	1	2		1			1
Oxford	4		1	1	2		2			
Penobscot	13			2	11		6		3	2
Piscataquis	1		1							
Sagadahoc	1		1							
Somerset	10			1	9		9			
Waldo	4		1	1	2		2			
Washington	2				2		1			1
York	6		4		2		2			

LARCENY

County	Total (a)	Disposition: Acquitted (b)	Nol Pross Etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	130	1	43	14	72	1	21	1	27	23
Androscoggin	8		3		5		2		3	
Aroostook	4		1		3		1		2	
Cumberland	19		7	2	10		4		4	2
Franklin	6			3	3		1		1	1
Hancock	6		2	1	3		1		2	
Kennebec	9		5		4		1	1	1	1
Knox	4			3	1					1
Lincoln	2		1	1						
Oxford	25		10	1	14		4		3	7
Penobscot	21		5	2	14		3		6	5
Sagadahoc	2				2		1		1	
Somerset	5			1	4				1	3
Waldo	8		4		4				1	3
Washington	1				1		1			
York	10	1	5		4	1	2		2	

LIQUOR

County	Total (a)	Disposition: Acquitted (b)	Nol Pross Etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	72	3	27	8	34	3	25		4	3
Androscoggin	4				4		4			
Aroostook	4		1		3		3			
Cumberland	11		7	1	2 1*		2			
Franklin	1				1		1			
Hancock	1				1		1			
Knox	4			2	2		2			
Lincoln	1				1*					
Oxford	15	2	6	3	4	2	3		1	
Penobscot	14		6	1	7		7			
Somerset	5			1	4				1	3
Washington	2		2							
York	10	1	5		4	1	2		2	

*2 License Suspended

MANSLAUGHTER

Totals	5	2	2		1	2			1	
Franklin	1		1							
Lincoln	1				1				1	
Sagadahoc	1	1				1				
Washington	1	1				1				
York	1		1							

MOTOR VEHICLES

Totals	995	10	344	62	579	10	497	7	65	9
Androscoggin	63	1	26		36	1	34		2	
Aroostook	42	1	16	2	23	1	18	2	3	
Cumberland	226	1	97	13	115	1	106		9	
Franklin	59		17	7	34 1*		22	1	8	3
Hancock	33		16	4	13		12	1		
Kennebec	30	1	4		25	1	22	1	2	
Knox	23		5	6	12		8		4	
Lincoln	16		7	4	5		5			
Oxford	75	2	21	15	37	2	32		3	2
Penobscot	110		20	4	86		60	2	23	1
Piscataquis	11		2		9		8		1	
Sagadahoc	27	1	9		17	1	16		1	
Somerset	64	1	3		60	1	55		5	
Waldo	25		5		20		18		2	
Washington	23		3	3	17		14		2	1
York	168	2	93	4	69	2	67			2

* (1) License Suspended

1966 INDICTMENTS AND APPEALS BY COUNTIES

MURDER

County	Total (a)	Acquitted (b)	Nol Pross Etc. (c)	Pending (d)	Disposition Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	16	1		12	2	2*			2	
Aroostook	2	1				1				
						1*				
Franklin	1			1						
Knox	3			1	2				2	
Penobscot	7			7						
Somerset	3			3						

* (1) Not Guilty by reason of insanity

NIGHT HUNTING

Totals	33	5	4		24	5	24			
Aroostook	8		1		7		7			
Cumberland	3		2		1		1			
Franklin	2				2		2			
Hancock	3	2			1	2	1			
Knox	1				1		1			
Oxford	1				1		1			
Penobscot	4		1		3		3			
Piscataquis	2				2		2			
Somerset	5	3			2	3	2			
Waldo	1				1		1			
Washington	3				3		3			

NON SUPPORT

Totals	9		4	2	3		3			
Androscoggin	3				3		3			
Aroostook	2		1	1						
Cumberland	2		1	1						
Sagadahoc	1		1							
Waldo	1		1							

RAPE

Totals	9		6	1	2				2	
Androscoggin	2		1		1				1	
Cumberland	1			1						
Kennebec	4		4							
Oxford	1		1							
Penobscot	1				1				1	

ROBBERY

Totals	17		7	3	7				7	
Androscoggin	1				1				1	
Cumberland	3		1		2				2	
Kennebec	4		1		3				3	
Penobscot	2			2						
Washington	3		3							
York	4		2	1	1				1	

1966 INDICTMENTS AND APPEALS BY COUNTIES

SEX CRIMES

County	Total (a)	Disposition: Acquitted (b)	Nol Pross Etc. (c)	Pending (d)	Guilty (e)	Not Guilty (f)	Fine (g)	Fine & Prison (h)	Prison (i)	Probation (j)
Totals	73	8	27	4	34	8	3		20	11
Androscoggin	4	1			3	1			3	
Aroostook	10		6		4		3			1
Cumberland	7		1	2	4				3	1
Franklin	2		2							
Hancock	8	5	1	1	1	5			1	
Kennebec	10	1	3		6	1			2	4
Lincoln	1		1							
Oxford	8		2	1	5				4	1
Penobscot	6		1		5				3	2
Piscataquis	3	1			2	1			2	
Sagadahoc	6		5		1				1	
Waldo	2		2							
York	6		3		3				1	2

MISCELLANEOUS

Totals	394	7	144	61	182*	7	100	7	39	35
Androscoggin	22		15		7		3		4	
Aroostook	35		10	2	23		7	5	7	4
Cumberland	47		20	7	19		13		1	5
					1*					
Franklin	21		3	8	10		7	1	2	
Hancock	35	1	17	2	15	1	11		4	
Kennebec	32		12		20		7	1	4	8
Knox	14	1	2	8	3	1	1			2
Lincoln	8		3	2	3		3			
Oxford	23		9	8	6		2		1	3
Penobscot	58		14	20	24		5		10	9
Piscataquis	4		1		3		3			
Sagadahoc	7		5		2		2			
Somerset	30	4	6		20	4	18		2	
Waldo	16	1	3		12	1	7		4	1
Washington	7		1	2	4		4			
York	35		23	2	10		7			3

(1) Sent to Augusta State Hospital

1966 LAW COURT CASES

County	Name of Case	Outcome
Androscoggin	Harold J. Saucier, Jr.	Pending
Aroostook	No Cases.	
Cumberland	Clifford G. Small, III	Exceptions overruled
	John J. White	Appeal sustained
	Edric A. Littlefield	Appeal sustained; New trial ordered
	John D. Hamilton	Pending
	Charles Rodney Allen	Pending
Franklin	Gerard C. Castonguay	Pending
Hancock	No Cases.	
Kennebec	Robert Doyon	Judgment for State
	Richard Howe	Judgment for State
Knox	Fred H. O'Clair	Exceptions overruled
Lincoln	No Cases.	
Oxford	George Breau	Appeal Sustained; Verdict set aside; Case remanded; Defendant discharged
	Richard Tyler	Appeal Dismissed
	Brien Oliver	Pending
Penobscot	Oscar W. Malloch	Pending
	Simon P. Cote	Pending
	Milton R. Swett	Pending
	William H. Reed	Pending
	Joseph E. Pinnette	Pending
Piscataquis	No Cases.	
Sagadahoc	No Cases.	
Somerset	David MacFarland	Pending
Waldo	Daniel Trask	Appeal denied.
Washington	No Cases.	
York	No Cases.	

FINANCIAL STATISTICS, YEAR ENDING NOVEMBER 1, 1966

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	$41,879.58	$40,502.80*	$2,447.50	$23,455.10	$ 3,996.00	$ 6,986.00
Aroostook	23,992.20	48,369.02	2,711.10	19,349.40	8,245.00	1,987.00
Cumberland	81,736.43	116,402.97	1,971.85	17,985.60	14,057.00	146,844.05
Franklin	9,128.56	12,105.93	248.00	4,607.50	6,700.40	16,030.60
Hancock	20,865.95	19,061.30	1,301.40	8,573.95	2,965.00	19,263.54
Kennebec	40,994.74	34,366.46	2,956.80	22,422.60	3,862.07	4,140.27
Knox	3,840.40	18,455.15	900.20	4,430.41	2,532.00	2,532.00
Lincoln	1,299.86	3,629.54	894.60	5,350.80	2,350.00	2,350.00
Oxford						
Penobscot	19,735.00	24,664.00	3,165.00	15,974.00	13,656.00	14,447.00
Piscataquis	1,028.51	6,741.17	507.40	3,229.50	1,405.25	1,405.25
Sagadahoc	9,670.58	4,145.90	1,103.60	6,927.81	602.40	1,817.40
Somerset	18,979.97	25,150.75	1,550.20	7,687.20	6,450.40	22,396.40
Waldo	14,299.38	20,726.00	1,989.40	4,510.00	2,707.00	14,116.00
Washington	20,787.61	17,810.44	2,077.00	8,610.60	2,775.50	4,914.60
York	58,650.00	40,145.79	2,046.00	20,851.00	6,825.00	6,825.00

*Received $2,771.85 from Sagadahoc County.

1966
POST-CONVICTION PETITIONS

Type of Petition	Total	Superior Court	Outcome	Appeal to Law Court	U.S.D.A.	U.S.D.C.	U.S. Supreme Court	Out-Come
Habeas Corpus (State & Federal)	13				Dismissed (11) Pending (1) Discharged (1)	D.C. Upheld Small (1)	(1)	Pend-ing (1)
Post-Conviction Habeas Corpus (14 MRSA 5502, et seq.)	48	48	Dismissed (30) Pending (5) Discharged (13)	Appeal Dismissed (1) *Pending (6) Lack of Prosecution (1) Appeal Upheld (1)				
Mandamus	1	1						
	62	49	48	9	13	1	1	1

(*includes cases not yet argued.)

MEDICAL EXAMINERS REPORTS

	1965	1966
Androscoggin	14	13
Aroostook	110	40
Cumberland	200	202
Franklin	40	37
Hancock	38	27
Kennebec	125	130
Knox	18	None
Lincoln	31	37
Oxford	62	26
Penobscot	196	184
Piscataquis	31	28
Sagadahoc	16	16
Somerset	66	68
Waldo	1	10
Washington	32	34
York	191	231

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