MAINE PUBLIC DOCUMENTS

1946-48

(In three volumes)

VOLUME I.

REPORT

OF THE

ATTORNEY GENERAL

STATE OF MAINE

1947 - 48

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

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*Temporary Appointment.

*1 Limited appointment to handle cases arising under R. S. 1930, Chapter 138, Sec. 31-33, without cost to the State of Maine.

LIST OF COUNTY ATTORNEYS

Terms Expire December 31, 1948

Androscoggin	A. F. Martin	Lewiston
Assistant	T. E. Delahanty	Lewiston
Aroostook	James P. Archibald	Houlton
Cumberland	Richard S. Chapman	Portland
Assistant	D. C. McDonald	Portland
Franklin	Hubert Ryan	Wilton
Hancock	Edwin R. Smith	Bar Harbor
Kennebec	James L. Reid	Hallowell
Knox	Frank F. Harding	Rockland
Lincoln	J. Blenn Perkins, Jr.	Boothbay Harbor
Oxford	Robert T. Smith	Paris
Penobscot	John H. Needham	Orono
Assistant	Louis C. Stearns, III	Hampden
Piscataquis	Louis Villani	Milo
Sagadahoc	Ralph O. Dale	Bath
Somerset	Lloyd H. Stitham	Pittsfield
Waldo	Hillard H. Buzzell	Belfast
Washington	Thomas S. Bridges	Calais
York	Harry S. Littlefield	Wells

STATE OF MAINE

Department of the Attorney General

Augusta, December 1, 1948

To the Honorable
The Governor and Executive Council

In accordance with the requirements of the provisions of the Revised Statutes, I herewith submit my Report for the years 1947 and 1948.

RALPH W. FARRIS

Attorney General

REPORT

1947 - 1948

The tabulations in the following report include the number of suits and actions in which the Attorney General appeared and the legal matters which came to his attention from the State boards and commissions and heads of departments. They do not include the work that the Attorney General is required to perform under the provisions of the statutes making him *ex officio* a member of many administrative boards and commissions, such as the Committee on the Destruction of Old Records, the Baxter State Park Authority, the committee on payments to towns in lieu of taxes with the State Tax Assessor, and the committee on investment of permanent trust funds with the Commissioner of Finance and the Bank Commissioner. The 1947 Legislature made the Attorney General also an *ex officio* member of the Emergency Municipal Finance Board, in place of the State Auditor (Chapter 26, Public Laws of 1947.) The amendment in 1947 of the Employees' Retirement System, however, relieved the Attorney General as an *ex officio* member of the Teachers Retirement Board.

While your present Attorney General knew of the existing administrative duties of this office when he was elected thereto, he willingly accepted same and did his best to discharge the duties of these several administrative offices. However, the writer of this report is of the opinion that the primary function of the Attorney General is as a legal adviser, and the Legislature might well enter upon a consideration of this problem, especially in regard to changing the 1947 law making him an *ex officio* member of the Emergency Municipal Finance Board, for the reason that the Attorney General is the legal adviser and appears as counsel for the Board, and he himself, acting as attorney therefor, should not be a member of the Board. The other *ex officio* administrative positions do not interfere with his duties as legal adviser to these boards and committees.

LITIGATION

In my report for the biennial period of 1945 and '46, I called attention to the Resolution passed by the 1945 Legislature giving the Kennebec Towage Company authority to bring an action against the State of Maine, and directing the Attorney General to defend the same in any action brought by that company to recover damages for damage to the tugboat SEGUIN, which collided with the abutment of the State drawbridge across the Kennebec River between Richmond and Dresden in 1940. The case was tried in 1946 and the jury awarded a verdict in favor of the company in the sum of

$5200. At the conclusion of my last report the case was pending in the Law Court on exceptions and motion for new trial by the State, filed by the Attorney General. Since my last report the Law Court has upheld the verdict of the jury for $5200, with costs, and the amount has been paid and the case closed.

During the year of 1947, F. H. Vahlsing, Inc., a large potato shipper in Aroostook County, protested against the payment of the potato tax under the provisions of Chapter 14, Sections 206 to 217, of the Revised Statutes as amended, on the ground that said statute, which is known as the Industry Potato Tax, was unconstitutional. As a result, from the first day of January, 1947, until late in 1948, F. H. Vahlsing, Inc., did not pay any tax on potatoes that the corporation shipped out of Aroostook County; and an action was brought to recover the potato tax under said statute, at the November, 1948, term of the Superior Court in Aroostook County. The tax was on 104,991 barrels of potatoes raised, grown, or purchased, and shipped within the State of Maine by the Vahlsing Company, which amounted to $1049.91. The case was heard without the intervention of a jury, and judgment was rendered in favor of the State for that sum with interest from February 1, 1948, at which time the tax was payable to the State of Maine.

In 1944 the Congress of the United States, by Public Law 545, conferred jurisdiction upon the United States District Court of Maine to allow the United States to be sued as a private party by the State of Maine for damage done to the Carlton Bridge on August 17, 1939, when the lighthouse tender ILEX, owned by the United States, collided with said bridge and damaged said bridge in the amount of $6,376. The Attorney General had a Private & Special Act introduced in the 1945 Legislature, conferring jurisdiction upon the United States District Court of Maine for the United States to file a counterclaim for compensation for damages sustained by its lighthouse tender ILEX, which was owned and operated by the said United States.

Suit was brought by the State of Maine against the United States in 1946, and a counter suit was brought by the United States District Attorney against the State in behalf of the United States; and the cases were tried before the United States District Court in Portland. Judgment was rendered in favor of the State of Maine in the sum of $6,376.00, and the judgment has been paid by the United States Government.

The office has had the usual number of writs of error and petitions for habeas corpus seeking to release prisoners serving sentences

in the State penal institutions, and the Attorney General has appeared ex rel. in several cases during the last biennium.

A petition was instituted by the labor unions against the Secretary of State to compel him to place the Tabb Bill upon the ballot at the general election in September, 1948. This was heard before a single Justice of the Supreme Judicial Court in Portland, who ruled that the Tabb Bill was a companion bill of the Barlow Bill, which was sent to referendum by the 1947 Legislature, and ordered that the Tabb Bill be placed upon the ballot with the Barlow Bill. This ruling was taken to the Law Court upon exceptions by the Secretary of State, and the Law Court held that the Tabb Bill should have been submitted to the referendum and placed on the ballot with the Barlow Bill. As a result both the Tabb Bill and the Barlow Bill appeared on the ballot at the general election held in 1948, and both bills were defeated by the electorate by a large majority.

The Attorney General again in 1947 appeared before the joint subcommittee of the Senate and House Judiciary Committees of Congress, urging passage of a Resolution introduced in Congress which purported to quitclaim all right, title and interest to submerged lands three miles from shore, beginning at the low water mark. This Resolution was reported favorably from the Senate Judiciary Committee and was passed in the House of Representatives by an overwhelming vote. When it reached the Senate, however, it was tabled and was on the calendar when the Eightieth Congress adjourned. The suit which was instituted in the United States Supreme Court by the United States against the State of California, claiming title to the submerged tide lands off the shore of California, was decided in 1947. The opinion stated that the Federal Government had domination over the soil under tide lands in the three-mile belt, but did not pass upon title to the soil. However, on the strength of this California decision, the Attorney General of the United States has brought suits against Texas and Louisiana, claiming the oil lands under tide waters off the coasts of those two States; and suit may be brought at any time by the United States against any coastal State having valuable minerals, oil, or ores in the soil under tide waters within the three-mile limit. For that reason the Attorneys General of the coastal States have been on guard in order to protect the interests of their several States against the encroachment of the Federal Government upon the rights of the States to share the wealth in the soil beneath the tide lands bordering their respective States.

CRIMINAL CASES

During the years 1947 and 1948, 45 homicides have been reported to this office: 4 murder and 26 manslaughter cases in 1947; 2 murder and 13 manslaughter cases in 1948, summary of which will be found in the condensed tables at the end of this report. In one murder case the respondent entered a plea of guilty without trial, saving the State considerable trouble and expense. One case was tried in York County, in which the respondent had been bound over to the grand jury for manslaughter, and the grand jury indicted him for murder. However, after a three days' trial in the York County Superior Court the jury found the respondent guilty of assault and battery and he was sentenced to two and one-half to five years in the State Prison at Thomaston.

BAXTER STATE PARK AUTHORITY

The Authority has had several meetings, and the Attorney General brought a petition in equity against the Cassidy Heirs at Bangor in the Supreme Judicial Court of Penobscot County, asking for partition by sale of the interests of the Cassidy Heirs in Township 3, Range 10, Piscataquis County, which is in the State Park area. Our former Governor, the Honorable Percival P. Baxter, under the provisions of Chapter 1 of the Private and Special Laws of 1945, delivered a deed of gift to the Legislature, which was accepted under the provisions of said act, which deed gave the State title to three-fourths interest in said township; title to the other one-fourth interest remained in the Trustees of the Cassidy Heirs. As a result of the petition for partition by sale and after hearing before the Supreme Judicial Court in Equity at Bangor, the court fixed the value of the interest of the Estate of John Cassidy in said land in said township as the sum of $47,136, and ordered that the bill be sustained without cost and that the Trustees under the will of John Cassidy, late of Bangor, convey to Honorable Percival Proctor Baxter the one-fourth interest in common and undivided in this property in the Mount Katahdin area, which was accordingly done, and former Governor Percival P. Baxter paid the purchase price and took deed to the property for the benefit of the State of Maine; and said former Governor Baxter is holding said interest in trust for the benefit of the State of Maine until proper and satisfactory action is taken by the incoming Legislature to make the same a part of the Baxter State Park.

ASSISTANTS

The only change in the personnel of the Attorney General's departmental staff since the last report is the appointment on October

6, 1947, of George C. West of Augusta as Assistant Attorney General assigned to the Department of Health and Welfare.

During the fiscal year 1946-47, my Assistant assigned to Workmen's Compensation cases handled 341 cases, on which compensation in the amount of $45,574.39 and medical expenses in the amount of $19,464.57 were paid. The corresponding figures for the fiscal year 1947-48 were 381 cases, $43,311.35 in compensation and $23,-073.47 for medical care.

The Assistant Attorney General assigned to the State Liquor Commission sat in on a total of 75 cases of alleged violations by licensees, to give legal advice to the Commission. These hearings resulted in several revocations and suspensions.

The Assistant Attorney General assigned to the Unemployment Compensation Commission attended 264 hearings involving the alleged receiving of servicemen's readjustment allowances under circumstances appearing to be fraudulent. He also reviewed 424 cases of alleged fraud and participated in the collection of $30,845.70, contributions due from employers under the provisions of the law.

The Assistant Attorney General assigned to Health and Welfare in October, 1947, has already made recoveries of $10,449 under the Old Age Assistance Law and saved hundreds of dollars in the form of grants for Aid to Dependent Children, Old Age Assistance, and general relief.

I appreciate the untiring efforts of my Assistants in the performance of their duties, and also those of the clerical staff connected with the office of the Attorney General.

The department, during the biennium, has approved the certificates of incorporation of 962 corporations, including 10 mergers, and has received and filed over a thousand reports from medical examiners.

The various opinions of the Attorney General and his Deputy included in this report cover many subjects, but do not constitute all the opinions rendered by the Attorney General's Department within the past two years, as only those which are considered important are printed.

In conclusion I wish to express my appreciation for the coöperation of the Governor and Council during the past two years.

Respectfully submitted,

RALPH W. FARRIS
Attorney General

OPINIONS

January 3, 1947

To: State Highway Commission

As a result of my conversation with Mr. John B. Church, superintendent of maintenance, and Mr. Russell W. Carter, supervising accountant for the Commission, relating to the payment of the snow removal bill for the Town of Minot for the year 1945-46, I have examined the file and the final summary of snow removal costs and the reimbursement payroll sheets which were submitted by the Town of Minot, signed by W. D. Gilpatric, chairman of the board of selectmen, and Susie J. Campbell, treasurer, and approved by Fred L. Robbins, supervisor, on March 14, 1946. I have also examined the article which was published in the *Lewiston Journal* after the town meeting held in March in the Town of Minot, and also noted in the file a statement signed by a majority of the selectmen of the Town of Minot, in which they state that the snow removal bills of the Town of Minot for the season of 1945-6, now in the hands of the Highway Commission, are to the best of their knowledge and belief correct and accurate as to rates paid, hours of machine hire charged, and totals, as shown.

It is my opinion that under the law these snow removal bills are due and payable by the State Highway Commission, and the statement of the town officials in regard to this matter should have preference over statements made in town meeting squabbles by opposing factions.

RALPH W. FARRIS
Attorney General

January 14, 1947

To David H. Stevens, State Tax Assessor

In your memorandum of January 8th, you asked to be advised concerning the excise tax to be collected on motor vehicles under Chapter 19, Section 38. Doubt has arisen as to the levy to be made on a 1946 model automobile sold and delivered in 1947. At the present time, manufacturers have not generally announced the release of 1947 models. The cars now being produced are 1946 models.

This section provides in part and so far as here pertinent:

> "An excise shall be levied annually as herein provided with respect to each calendar year for the privilege of operating upon the public ways,

each motor vehicle to be so operated. . . a sum equal to 23 mills on each dollar of the maker's list price for the 1st or current year of model, 16½ mills for the 2nd year, 12½ mills for the 3rd year. . ."

etc., reducing the mill tax for the succeeding years until the sixth year. This is followed by another provision:

"Provided, however, that whenever an excise tax has been paid for the previous calendar year on the same motor vehicle the excise tax for the new calendar year shall be assessed as if the vehicle was in its next year of the model. . ."

This latter provision took care of the situation as it existed in previous years, when new models were released in the fall of the year and were designated as models for the succeeding year. Thus, if a person bought a 1947 model in the fall of 1946 and paid the excise tax thereon in 1946, when he paid the excise tax in 1947 thereon, the computation was based as though it were a second-year model. On the other hand, a person who purchased that model in 1947 and registered it for the first time paid an excise tax as a first and current year model.

I think that this same rule may be applied in the present situation. Since there are no 1947 models, all '46's are first and current year models, and the excise tax to be levied is to be computed on the basis of 23 mills, except, however, in a case where a person has paid the excise tax in 1946; he will pay in 1947 an excise tax based on the tax to be levied for the second year. A person who registers for the first time, in 1947, a 1946 car upon which no excise tax has been paid for a previous year, pays an excise tax of 23 mills as a first and current year model; and this method of taxation should continue until the manufacturer of that particular automobile releases later models, which will then become the first and current year models.

ABRAHAM BREITBARD
Deputy Attorney General

January 16, 1947

To Harland A. Ladd, Commissioner of Education
Re: Amortization, cost of school building, Brunswick

This department acknowledges the receipt of your memo of January 13th. The inquiry relates to the question whether the Towns of Topsham, Harpswell and Bowdoinham may enter into an agreement with the Town of Brunswick for the amortization of the cost of constructing additional buildings at the high school in Brunswick which are necessary to accommodate additional pupils from these towns which do not maintain free high schools. It would further appear from the plan attached to the inquiry that the maximum tuition of $125 annually is not, at the present time, sufficient to pay the per capita cost to the town receiving such pupils; nor would such tuition fee justify the town in making a capital expenditure to construct additional buildings.

In view of the express provisions of Section 98 of Chapter 37 which limit the tuition payable to the receiving town maintaining the high school to a sum not exceeding $125 annually for any one youth, and the provision in this section that . . . "Towns shall raise annually, as other school moneys are raised, a sum sufficient to pay such tuition charges. . ." I entertain serious doubt that these towns may lawfully enter into a contract with the Town of Brunswick to pay sums other than are expressly authorized by this section, particularly in view of the fact that the only authority to raise money for this purpose is limited to ". . . a sum sufficient to pay such tuition charges."

With regard to the second question contained in your memo, whether the legislature could by specific legislation authorize these towns to enter into such an agreement, I would say that the legislature possesses the power to enact such legislation, providing the obligations of the town do not exceed its debt limit.

ABRAHAM BREITBARD
Deputy Attorney General

January 22, 1947

To Harrison C. Greenleaf, Commissioner of Institutional Service

I received your memo of January 21st concerning the provisions of Section 6 of Chapter 133, R. S. 1944, which provides that municipal courts may commit children to the Pownal State School.

I call your attention to the fact that this statute was amended by Chapter 63 of the Public Laws of 1945, which struck out the words, "12 years or under" in regard to a mentally defective child and substituted the words, "not greater than ¾ of subject's life age nor under 3 years." However, this does not affect the status of your question.

You ask the advice of this office as to whether or not your department has the right to collect from the patient or his relatives for care and board received from the Pownal State School or the State Hospitals, when the person is committed by a court, with particular reference to Section 6 of Chapter 133 as amended.

In this connection I call your attention to Section 153 of Chapter 23, R. S. 1944, which in my opinion would apply to persons who are committed by the court under the provisions of Section 6, Chapter 133, and all persons who are committed to the above named State institutions where they have parents, kinsmen or a guardian bound by law to support such persons; but this is subject to the determination of the department, with the exception of those persons accused of crime who are placed for observation by order of the court on a petition that they will plead not guilty by reason of insanity, because in those cases the crime is against the State, and the State takes charge of the person accused of the crime and the patient is subject to order of court. If he should eventually be found not guilty by reason of insanity and be committed to the hospital for the criminal insane, you would not be able to recover expenses for his or her support in said State hospital for the criminal insane.

RALPH W. FARRIS
Attorney General

January 22, 1947

To Leverett D. Bristol, Commissioner of Health and Welfare
Re: Interpretation of Section 14 of Chapter 22, R. S. 1944

I have your memo of January 21st asking for an interpretation of Section 14 of Chapter 22 of the Revised Statutes, relating to the transfer of appropriations made by the legislature from one division to another by authority of the Governor and Council, when such is deemed necessary. You inquire whether or not this section gives authority to the Governor and Council to transfer funds from one division to another when no excess of funds in the first division is anticipated.

This matter is wholly within the discretion of the Governor and Council. The only question in making the suggested transfer is whether or not you can sell the idea to the Governor and Council that it is necessary to make this transfer. The Governor and Council usually consider the recommendation of the head of the department requesting the transfer from one division to another of the department.

RALPH W. FARRIS
Attorney General

January 27, 1947

To Hon. Horace Hildreth, Governor of Maine
Re: Official End of War

. . . Any proclamation by the Governor or Joint Resolution of the Legislature declaring the official end of the provisions of Chapter 305 of the Public Laws of 1941, known as the Civilian Defense Act, will not, in my opinion, materially affect any Executive Orders now outstanding under the provisions of this Act.

Under Section 13 of said Act, it remains in force until six months after the state of war ceases between the United States and every foreign government, or until such time as the legislature by concurrent resolution or the Governor by proclamation may designate. However, if the provisions of this Act should be suspended by proclamation or resolution of the legislature, it would affect Council Order No. 240, passed September 6, 1945, creating the office of Director of Veterans' Affairs and re-directing the activities of this department, under the provisions of the Civilian Defense Act of 1941, as the statement of facts in said Council Order bases the action in said order on the provisions of Chapter 305, P. L. 1941. The order authorizing the creation of the office and re-directing the affairs of the department is based on that statute. If that statute is repealed, the office will have no standing and will have to be transferred back to the Department of Health and Welfare, together with the appropriation account, No. 4610.

I suggest that in order to save the office of Director of Veterans' Affairs, it might be well to have the Act terminated by Joint Resolution of the Legislature, and in the same resolution that terminates the Civilian Defense Act, you could re-create the office of Director of Veterans' Affairs for a certain period, until the Legislature by act makes the office permanent.

RALPH W. FARRIS
Attorney General

February 3, 1947

To David H. Stevens, State Tax Assessor

I have your memo of January 31st relating to the definitions of "officer" and "real estate" under the provisions of paragraph 3 of Section 6 of Chapter 81 relating to exemptions of real estate of "all literary or scientific institutions occupied by them for their own purposes or by any officer thereof as a residence. . ."

In accordance with legal principles and the interpretation of the statute as enunciated by our courts, the provisions of R. S. Chapter 81, Section 6, paragraph 3, are subject to the limitation that the exemption applies only to property occupied by the corporation for its own purposes. It is my interpretation of the statute that real estate means any property owned by the school or institution which comes within the provisions of this statute and is used for school purposes, such as the residence of an instructor or teacher, who would be deemed an officer charged with a duty by the institution; provided that there is no revenue derived from the use of the real estate or the residential property.

In *Camp Emoh Associates vs. Lyman*, 132 Maine 67, the Court points out:

> "Immunity from assessment depends not upon simple ownership and possession of property, nor necessarily upon the extent or length of the actual occupancy thereof, although this is entitled to consideration, but upon exclusive occupation of such a nature as, within the meaning of the statute, contributes immediately to the promotion of benevolence and charity, and to the advancement thereof. . ."

In the case under discussion, residential property occupied by a faculty member with one or more students living in the property would be considered a dormitory or residence of an officer and would be exempt from taxation, provided it was used exclusively for school purposes. It seems to me that the criterion for the Assessor is whether the work of the institution is of a business character or whether it is devoted to literary and scientific purposes for its own use. If they should rent or lease such real estate during the summer months and receive rental therefrom, it is my opinion that this would take them out of the provisions of the statute, as the property would not be occupied exclusively for their own purposes.

RALPH W. FARRIS
Attorney General

February 17, 1947

To Hon. Harold I. Goss, Secretary of State, and
Col. Laurence C. Upton, Chief, Maine State Police

I have your joint memo of February 7th, signed by both of you, requesting an opinion as to the legality of an appropriation set up in the State Police budget as a sum to be expended in the promotion of highway safety under the jurisdiction of the Highway Safety Bureau of the State Police Department, acting in coöperation with a Highway Safety Coördinating Committee to be appointed by the Governor.

From my conversation with you, I understand that you now have an item in your appropriation for the expenses of the Highway Safety Bureau in the State Police Department, and the break-down in the Finance Commissioner's office discloses same. For that reason it is my opinion that if the Appropriation Committee sees fit to budget the State Police an amount for Highway Safety within your department, you could use said funds in coöperation with a Highway Safety Coördinating Committee appointed either by the Governor or by the State Highway Commission.

RALPH W. FARRIS
Attorney General

February 17, 1947

To Earle R. Hayes, Director of Personnel
Re: Military Leave Law

I have your memo of February 5th relating to the Military Leave Law, especially Section 23 of Chapter 59, R. S. 1944, which provides that any employee regularly employed for at least six months by the State, county or municipality within the State, who has attained permanent status and who enters the military service shall not be deemed to have thereby resigned or abandoned his employment with the State.

The original enactment of this section was, as you state, by Chapter 314 of the Public Laws of 1939, which provided one year; this was reduced to six months by the provisions of Chapter 300, P. L. 1943, which is now the present statute above quoted.

You state that a former Attorney General ruled that at the time that Chapter 300, P. L. 1943, was enacted, the change from one year to six months' employment by the State could not be considered as retroactive. You further state that you did not agree with that opinion and do not now. You further state in your memo that it is your belief that any employee who has six months or more of service, regardless of the time during the war that he left the State service to enter the armed forces, should be entitled to military leave, and you would appreciate my advice at the present time as you have two cases pending.

No law is retroactive unless the intention of the legislature making it so is express in the act itself. Any State employee entering the armed services prior to July 9, 1943, the effective date of Chapter 300, P. L. 1943, would be under the 1939 Act and would require employment by the State for a period of at least one year. After July 9, 1943, any State employee entering the military service would be under the provisions of the 1943 Act, which requires regular employment by the State for a period of only six months.

"Retroactive," as applied to a statute, means a statute which embraces a new or additional burden, duty, obligation or liability as to past transactions. This statute did not impose any additional burden on the State employees. On the contrary it reduced the burden of requiring one year's employment with the State to six months in order to attain permanent status as a State employee.

RALPH W. FARRIS
Attorney General

February 17, 1947

To H. A. Ladd, Commissioner of Education

Your memo of February 7th received, requesting my opinion as to whether an attendance officer resident in Town A can be legally elected to serve in Town B of which he is not a resident.

It is my opinion that an attendance officer must be a resident of the town in which he is elected to serve. The language of the statute reads:

> "The superintending school committee of every city and town shall annually elect one or more persons to be designated attendance officers, etc."

This, with the following language in the same statute,

> "Attendance officers, when so directed in writing by the superintendent of schools or the superintending school committee of their respective towns. . ."

would imply that they should be residents of the town where they are to be elected and to serve.

RALPH W. FARRIS
Attorney General

February 18, 1947

To S. S. Weed, Director, Motor Vehicle Division

I have your memo of February 17th, citing the last sentence of the first paragraph of Section 19, Chapter 19, R. S. 1944, which section relates to the registration of manufacturers of or dealers in new or used trucks, tractors or trailers, and you cite said sentence as follows:

> "No motor truck, tractor, or trailer registered under the provisions of this section shall be used for other than demonstration, service, or emergency purposes."

You ask for an interpretation as to the intent of this sentence, and in reply I will say that in my opinion these registration plates should not be used permanently on motor trucks, tractors or trailers, but should be used only on such trucks, tractors and trailers as are held for sale by the dealer.

RALPH W. FARRIS
Attorney General

February 21, 1947

To E. W. Campbell, Chief Clerk, Barbers and Hairdressers

I have your memo of February 19th, quoting the third paragraph of Section 209, Chapter 22, R. S. 1944, in regard to a license to operate a shop where barbering or hairdressing and beauty culture are practiced. The fee for same is $5 in the first instance and $3 for each yearly renewal thereof.

You state that two ladies formed a partnership and secured a license to operate a beauty parlor as a partnership. Now the partnership has been

dissolved. The license was issued to the partnership in January, 1947, and would expire normally on June 30, 1947, and you ask the following questions:

"(1) Does the license as issued become void by the dissolving of the partnership?"

Answer. When a partnership is dissolved, the law contemplates the entire cessation of business as such, and the firm subsists only for the purpose of winding up its business. Therefore upon the dissolution of the partnership the license becomes void.

"(2) If the license does not become void by the dissolving of the partnership, and in the event that both partners wish to continue to operate beauty parlors, one at the old location and one at another location, may either of these secure credit for the unexpired portion of the partnership license, or must both individuals secure new licenses for the shops which they will operate individually and pay the regular fee of $5.00 for their initial individual shop licenses?"

Answer. These licenses are not transferable; and in view of the fact that the dissolution of the partnership which had the license terminates the rights of these two persons forming the partnership from doing business as such, if they go into business as individuals, each must secure a license for her own shop and pay the regular fee of $5; and there is no provision in the statute for a refund, when a firm or corporation takes out a license and the said firm or corporation is dissolved, to any person formerly a member of such firm or corporation.

RALPH W. FARRIS
Attorney General

February 21, 1947

To Daniel T. Malloy, Chief Warden, Sea and Shore Fisheries
Re: Section 116, Chapter 34, R. S. 1944

I have your memo of February 18th, stating that Section 116 of Chapter 34 has been interpreted by your Department to mean that no person can lawfully fish for lobsters in Maine waters without a lobster fishing license and that the exception therein, which you cite as follows,

". . . except for immediate consumption by himself and family,"

refers to possession of lobsters by an individual for his own use, one who does not hold a license to engage in any phase of the lobster industry. You ask me to inform you if your interpretation of this provision is correct.

In answer I call your attention to the language of the exception:

"No person, firm, or corporation, either by themselves as principal or by their servants or agents, shall, at any time, catch, take, hold, buy, ship, transport, carry, give away, remove, sell, or expose for sale, or have in his or its possession, except for immediate consumption by himself and family, any lobster; . . unless licensed to do so as hereinafter provided. . ."

It is my opinion that that provision was inserted by the legislature to protect people who are not in the lobster business and have purchased lobsters for home consumption and are transporting same from the market, and also after they have them in their possession at their homes, such lobsters having been legally purchased for family consumption. It does not give the right to any such person to go out and catch lobsters without a license for immediate consumption by himself and family. If the law were interpreted otherwise, it would open the door for everybody to set lobster traps.

RALPH W. FARRIS
Attorney General

February 25, 1947

To Harrison C. Greenleaf, Commissioner of Institutional Service

I return herewith the papers that you left with me this morning, namely, agreement which purports to be a compromise with an inmate of the State School for Girls, together with a letter from the lawyer who drafted the agreement, and his check for $100 payable to this inmate. This agreement purports to be made with the acquiescence of her next friend and brother. The brother, however, cannot represent her in this matter, or act for her, and she, being a minor, cannot execute a valid agreement of compromise.

Under Section 86 of Chapter 23, your department is vested with all the powers of the person, property and education of every girl committed to the charge of the department, which parents have over their children. Consequently, no agreement can be made in her behalf without the department acting in that behalf. See *Harding v. Skolfield*, 125 Maine 438. The case cited also involved a girl who was then under the charge of the Trustees of Juvenile Institutions, that body then having the same powers as your department now has.

In cases of this nature, the process issues on complaint in the municipal court in which the putative father is arrested and gives bond for his appearance in the Superior Court where the writ is entered and then held in abeyance until the child is born, after which time a declaration is filed alleging the birth of the child. It is also essential, in order to maintain any action, that the complainant remain constant in her accusation and that upon inquiry during her travail she accuse the respondent as being the putative father of the child.

I mention these steps as it may require the services of an attorney in order to handle this matter properly, whether the case be prosecuted in court or settled out of court.

My suggestion would be that you take the matter up with LeRoy Folsom and let him handle it from now on. Thus the department will be protected as well as the inmate.

ABRAHAM BREITBARD
Deputy Attorney General

March 6, 1947

To E. E. Roderick, Deputy Commissioner of Education
Re: Limitation of the authority of the superintending school committee to let school property for interests outside educational activities

I have your memo of February 28th in regard to the authority of a school committee to lease school property for other than educational purposes.

It is my opinion that Subsection 1 of Section 50 of Chapter 37 applies only to the management of the schools for school purposes and does not include the right to lease to outside parties.

If the town should call a special town meeting and vote to give a group the right to use the school, which is the property of the taxpayers, I feel that it would nullify any ruling made by the superintending school committee.

RALPH W. FARRIS
Attorney General

March 6, 1947

To E. E. Roderick, Deputy Commissioner of Education
Re: Legal Disposal of a Sinking Fund Raised for a Specific Purpose

I have your memo of February 28th, stating that an inquiry has come to your office as to what legal disposition can be made of funds appropriated and deposited as a sinking fund for the erection of a new school building. You state that there is a movement on foot to utilize these funds for other school purposes and you ask whether it is legal for the town to divert these funds for other purposes.

Our Court has ruled in *Bullard v. Allen*, 124 Maine 261, that a town is free to act as it pleases within its legal scope; that it may take action in one direction today and in another direction tomorrow, provided it does not impair intervening rights.

The town, in my opinion, has a right to transfer these funds for other purposes, if it so votes at a legal town meeting. . .

RALPH W. FARRIS
Attorney General

March 11, 1947

To Harrison C. Greenleaf, Commissioner of Institutional Service

Receipt is acknowledged of your file bearing upon the case of a man who at one time was an inmate at Hebron and left against the advice of the attending physicians. While at the institution he was uncontrollable, violated all rules and regulations, went off without permission, got drunk, and committed other infractions which were not conducive to his own health or to the proper conduct of the sanatorium. This inmate is now seeking re-admission. Your inquiry is whether Section 134 of Chapter 22 is applicable to cases involving tuberculosis. This is the so-called quarantine statute which authorizes on complaint a trial justice or a judge of a municipal court to

issue a warrant directed to an officer, requiring him to remove any person afflicted with contagious sickness, "or to impress and take any convenient houses, lodgings, nurses, attendants and other necessaries for the accommodation, safety and relief of the sick, or for the protection of the public health."

In my opinion this statute is not applicable to cases of tuberculosis. This is a very old statute. It was on the books a century ago and was employed to control the highly contagious diseases, such as smallpox, which spread swiftly.

While under Section 74 of Chapter 22, tuberculosis is declared to be an infectious and communicable disease dangerous to the public health, the succeeding sections nevertheless impose upon the persons suffering with this disease the exercise of certain care with regard to the disposal of sputum, saliva, etc., and make it an offense punishable by a fine to violate these provisions. Likewise, provision is made for precautionary measures to be carried out by physicians and local health officers to prevent the transmission of the infection to other persons and to advise the department of the procedures and precautions adopted. Nowhere does it appear that a person afflicted with tuberculosis should be quarantined, nor do I think that Section 134 may be interpreted to authorize a trial justice or judge of a municipal court to commit a person to one of the State sanatoria.

I do not believe, however, that you are obliged to accept this man, or, having accepted him, to detain him, where he disregards every rule of behavior required of him while he is an inmate and does not coöperate so as to arrest the progress of the disease. From the file it would appear as though his former stay at the sanatorium was useless to him, since his conduct was such that improvement in his condition was impossible. There is no authority in the statute for punitive measures or for detaining a person against his will. Consequently, no such measures can be indulged in.

ABRAHAM BREITBARD
Deputy Attorney General

March 21, 1947

To Governor Horace Hildreth
Re: H. P. 185, L. D. 133, An Act Relating to Clerk Hire in the County Offices of Sagadahoc County

This act purports to repeal Section 2 of Chapter 290 of the Public Laws of 1945, which relates to an increase for clerks in the office of the Register of Deeds of Sagadahoc County from $1560 to $1950, an increase for clerks in the office of the Register of Probate of said county from $1040 to $1300, and an increase for clerks in the office of the Clerk of Courts in said county from $1040 to $1300.

Section 2 of said Chapter 290 is a limitation of the act which provides that the act shall remain in force for a period of two years only. It is the intent of the legislature to change the present statute for a period of two years only, after which period the present statute shall return to full force and effect.

In my opinion, if L.D. 133, which is waiting for your signature, is not effective by July 21, 1947, Chapter 290 of the Public Laws of 1945 will be

at an end, and that part of Section 269 of Chapter 79 of the Revised Statutes which relates to clerk hire in these several county offices will be in full force and effect.

As the Constitution provides that no act of the legislature shall take effect until 90 days after the recess of the legislature passing it, unless in case of emergency, if the legislature did not recess before April 21st, then the provisions of Chapter 290, P. L. 1945, would expire on July 21st, and L.D. 133 would not repeal a part of an act that was not in force at the time it took effect.

However, if the legislature should recess before April 21st, the present repealing act would take effect before that Chapter 290 had expired and it would be effective.

In my opinion this bill should be recalled by Senate Order and recommitted to the Committee on Salaries and Fees.

RALPH W. FARRIS
Attorney General

March 27, 1947

To Richard E. Reed, Commissioner of Sea and Shore Fisheries
Re: Sea and Shore Fisheries Rule and Regulation No. 50

I have your memo of March 25th and have had a conference with your assistant, Mr. Malloy, in regard to this matter.

In my opinion this rule and regulation is ineffective, because it was not recorded in the office of the Secretary of State or published in any newspaper, as required by Section 3 of Chapter 34. For that reason the rule and regulation would not be enforceable, as the burden is upon your department to prove that it was promulgated according to the statute authorizing same. Of course the county attorney of Hancock County could not prosecute cases without a certificate from the Secretary of State and a certificate from the town that this rule and regulation had been filed there and without publication in the newspapers.

RALPH W. FARRIS
Attorney General

March 28, 1947

To David H. Stevens, State Tax Assessor

I herewith return letter from the Register of Deeds and bill for $3. You should pay 50c for recording, as provided in Section 77-A of Chapter 41, P. L. 1945. This supersedes the general schedule of recording fees in Section 232 of Chapter 79, R. S. 1944 and is not in conflict with that schedule. The legislature set up the recording of these tax liens and at the same time set the fee not exceeding 50c for recording same, and that law prevails. You may write the Register and tell him to rebill you for 50c for each tax lien, on my opinion.

RALPH W. FARRIS
Attorney General

March 31, 1947

To Harrison C. Greenleaf, Commissioner of Institutional Service

I have your memo of February 26th, inquiring if it is legal for a city clerk to sign an emergency commitment for a patient to a State Hospital under Section 106 of Chapter 23, R. S. 1944.

The statute is clear in this regard. It provides that pending the issuance of a certificate of commitment by the municipal officers, the superintendent of such hospital *may* receive into the hospital any person so alleged on complaint to be insane, provided such person be accompanied by a copy of the complaint and a physician's certificate, and provided further that within 15 days thereafter, unless said superintendent shall be furnished with a certificate of commitment signed by the municipal officers, the detention of such person shall cease. Accompanying this certificate of commitment shall be a statement of facts under oath in regard to the financial ability of such patient or his relatives to pay for his support. Your understanding is correct that only the municipal officers of a city or town can sign the certificate of permanent commitment; but the city clerk can send in copies of the complaint and the physician's certificate, and the superintendent may receive the patient into his hospital for 15 days, awaiting the permanent certificate to be submitted by the selectmen of a town, the city government, or other municipal officers.

Your second inquiry is as to patients committed to the State hospitals under Sections 105 and 106 of Chapter 23, R. S. 1944, in regard to certificates of ability to pay. I have just answered that question as to Section 106. A statement of fact under oath, satisfactory to your department, in regard to the financial ability of the patient, or his relatives legally liable for his support, must accompany the patient when he is admitted under Section 105.

I would advise the superintendents of the two insane hospitals to be sure that the certificate of ability to pay accompanies the permanent commitment certificate signed by the municipal officers of the city or town, committing the patient. It is not so important about the first 15 days; but it is best to insist that the town clerk send in certificates to the superintendents according to the law with regard to ability to pay. If the clerk should fail to furnish it, it would not justify the superintendent in refusing to admit an emergency case. It would not be out of order for the superintendent of the hospital to refuse to accept patients under Section 105 without a certificate of ability to pay, but it might be under Section 106, where an emergency exists.

RALPH W. FARRIS
Attorney General

April 1, 1947

To Arthur N. Douglas, Esq., Register of Deeds, Kennebec County

. . . You advise that the State Tax Assessor on March 14th last filed several certificates signed by him under the provisions of Section 7 of Chapter 41 of the Laws of 1945. Your inquiry relates to your acceptance for recording of such certificates when the certificates do not contain an acknowledgment before some officer authorized by law to take acknowledgements.

The State Tax Assessor, when taxes, interest and costs in unorganized territory are not paid within the time therein provided, is required to

> ". . . record between the 1st and 15th days of March in the registry of deeds of the county or registry district where such land lies a certificate signed by the state tax assessor, setting forth the name or names of the owners according to the last state valuation, the description of such lands assessed as contained in the last state valuation, the amount of unpaid taxes, interest to the 1st day of March, the amount of costs, and a statement that demand for payment and publication of such taxes has been made, and that such taxes, interest and costs remain unpaid."

It is to be noted that the contents of the certificate are set out in detail and the requirement is only that the certificate shall be signed by the State Tax Assessor and recorded in the registry of deeds. There is no specific provision that it shall be acknowledged by him and thus the department does not regard the acknowledgment as essential to the recording of the certificate, where under the statute a public officer is directed to sign it in his official capacity and record it in the registry.

We have in mind the provisions of Section 23 of Chapter 154 relating to the recording of deeds and all other written instruments, but we think that that statute is inapplicable, because of the express directions of Section 7 of Chapter 41, P. L. 1945, which provides for the manner of executing and recording the certificate.

ABRAHAM BREITBARD
Deputy Attorney General

April 2, 1947

To Fernando F. Francis, Sheriff of Oxford County

With reference to your recent inquiry relating to payment by the creditor for the support of a debtor in jail, who was committed by the disclosure commissioner for contempt:

I presume that the debtor was committed under Chapter 107, Section 35, because of his contemptuous behavior before the commissioner.

Under Section 82 of said chapter the creditor is required to pay for the support of the debtor where he is committed on mesne process or execution, or where the debtor delivers himself into the custody of the jailer to save the condition of a bond. In these cases, however, the issuance of the process is initiated by the creditor. The contempt proceedings under Section 35 are initiated by the disclosure commissioner to vindicate the authority of the court which he is holding. I feel, therefore, that the creditor would not be liable for the support of the debtor while he is in jail for contempt.

ABRAHAM BREITBARD
Deputy Attorney General

April 14, 1947

To W. C. Philoon, Administrative Assistant, Executive Department

The letter of Mr. James G. Neill of Philadelphia, which you referred to this department, concerns the appointment by the Governor of a commissioner in any other State of the United States or in any foreign country, to continue in office at his pleasure and for authority to take acknowledgments and proof of the execution of any deed or any instrument concerning lands in this State, to be used or recorded in this State. They may also administer oaths and take depositions and certify the authenticity thereof.

This is governed by Sections 24 to 27 of Chapter 154 of the Revision of 1944. These provisions have been on the statute books for many years past. Appointments are now rarely made, although in some instances applications are made for renewals, where the person has held the office previously. The reason it is very rarely used now is that other statutes of the State have liberalized the manner of taking the jurat to papers to be recorded in this State by requiring merely that the notaries appointed under the laws of other States affix their seals. Formerly, there were requirements that certificates be attached thereto, showing the authority of the notary to act, etc. This is no longer necessary, where the notary impresses his seal.

ABRAHAM BREITBARD
Deputy Attorney General

April 18, 1947

To Francis J. McCabe, Warden
Maine State Prison

Your memo of April 10th received April 16th, via the Commissioner of Institutional Service. You state that it has been the practice at the Prison for a number of years to give $10 to all inmates leaving that institution. This has been carried on under the provisions of Section 48 of Chapter 23. You state in your memo that it seems to you that this money should not be given to inmates when released to federal or county warrants, or when transferred to other federal, State or county institutions.

I agree with you in your contention. However, I call your attention to the wording of the statute, which reads, "The warden *may* furnish him a sum not exceeding $10." Therefore, it is a matter of discretion with the Warden of the State Prison.

In the interest of State economy, I advise against giving money to federal prisoners. I believe it was intended only for prisoners convicted by our State courts and that it should not be considered on transfers to other institutions.

RALPH W. FARRIS
Attorney General

April 22, 1947

To Lester E. Brown, Chief Warden, Inland Fisheries and Game

In answer to your inquiry concerning the taking of smelts as provided in Chapter 33, § 46:

You say that you "find nets being used which have rectangular bows, 20 inches by 16 inches, others having circular bows of 4½ feet in diameter and again a large rectangular shape bow even as large as 4 by 6 feet. These nets are lowered to the bottom of the water while used and allowed to remain until smelts arrive and they are raised quickly to the surface by the use of a pole which is attached to the net by 3 or more guy lines."

The pertinent wording of Section 46 is:

> "During the open season on such waters, smelts may be taken by the use of a dip-net in the usual and ordinary way. No person shall take, kill, catch or have in possession more than 4 quarts of smelts in any one day."

"The usual and ordinary way" of using a dip-net, it seems to me, refers to the "usual and ordinary way" of netting a fish that has been caught on a line. The net is submerged in the water and with a sweeping motion the fish is scooped into the net.

The net to be used, I also believe, is the usual size of net used to scoop the fish up, manually.

The contraptions you describe are not dip-nets, but are rather traps. Nor can they be used in the "usual and ordinary way," which is contemplated by the act.

Smelting in that way is contrary to the statute and in my opinion is illegal.

My interpretation also finds support in the limit of 4 quarts of smelts that may be caught or possessed in any one day.

ABRAHAM BREITBARD
Deputy Attorney General

April 24, 1947

To Charles P. Bradford, Superintendent, State Park Commission

I have your memo of April 22d, referring to Chapter 144, P. L. 1935, stating that you are submitting for my approval the following maintenance and service fees, approved by the State Park Commission on April 21, 1947:

A. Tenting and Trailer Space: 50c per day for party of 3, 25c for each additional person.
B. Shelters: 75c per day for party of 3, 25c for each additional person.
C. Maintenance Fee: 15c per person over 10 years.
D. Ski Tow: $1.00 per day.
E. Toboggan Chute: 25c per person or minimum of 50c.

You should now refer to the 1935 law as Section 23 of Chapter 32, R. S. 1944, as the 1935 law was amended in 1937 by Chapter 221 and in 1943 by Chapter 359.

Under the provisions of subsection III, paragraph (c), of said Section 23 of Chapter 32, I certify that in my opinion the rules and regulations submitted to me for maintenance and service fees are in conformity with the law and are ready for publication.

RALPH W. FARRIS
Attorney General

April 24, 1947

To Stillman E. Woodman, Chairman, State Highway Commission

I acknowledge receipt of your communication of April 17, 1947, requesting me to advise you whether it is the right and duty of the State Highway Commission to pay from the General Highway Fund created under the provisions of R. S. Chapter 20, §105 or from funds appropriated in general terms for the maintenance of bridges, the share of the State in the expense of the reconstruction and maintenance of highway bridges crossing railroad tracks, as ordered by the Public Utilities Commission under the provisions of § 17 of Chapter 293, P. L. 1945.

Section 105 of Chapter 20 defines the General Highway Fund. You will note in the last sentence of Section 105 the following language:

> "After payment from said general highway fund of such sums for interest and retirement as are necessary to meet the provisions of bond issues for state highway and bridge construction, the remainder of said fund shall be segregated, apportioned, and expended as provided by the legislature."

As you know, each session of the legislature reapportions the expenditure of this fund by Private and Special legislation. For instance, Chapter 136 of the P. & S. L. of 1945 makes allocation from the general highway fund in the fiscal years ending June 30, 1946 and June 30, 1947. This act sets up the amount for interest on bonds, bond retirement, general administration of the highway commission, highway planning, maintenance of bridges, maintenance and betterments of state and state aid roads, snow removal, construction of bridges under the general bridge act, compensation for injuries to highway employees, interest and retirement of bonds of the Hancock-Sullivan bridge, State Police, motor vehicle registration under the Secretary of State, administration of the gasoline and use fuel tax, with a general fund for accounting, auditing, and legal services rendered to the State Highway Commission, public service enterprises for toll bridge deficits, funds for the Employees' Retirement System. After the foregoing set-up, the act provides that should it appear, after providing for the foregoing purposes, there will be money available from current revenues in excess of those contemplated, any such excess may be apportioned in accordance with Section 2 of the act making the allocations. Section 2 provides as follows:

> "The unappropriated general highway fund surplus may be apportioned at the discretion of the state highway commission, with the approval of the governor and council, for the following purposes and in accordance with the following schedules and conditions:"

for construction and reconstruction of state aid highways; resolves of the legislature for construction and repair of highways and bridges; expenditures for unimproved roads, $200,000 for each year of the biennium; an amount not to exceed $2,500,000 may be apportioned during the biennium period ending June 30, 1947, to match federal funds apportioned to the State of Maine under the Federal Highway Act of 1944; payment of such costs as may be necessary for bond interest and retirement in addition to the amounts specified in section 1 of this act; maintenance and betterments of state and state aid highways; construction of bridges under the terms of the general bridge Act; extra-administrative costs not anticipated in the budget for any department or agency receiving allocations from the general highway fund, etc.

After reviewing this Act, you can see that the State Highway Commission has broad discretionary powers, as, with the approval of the Governor and Council, it may curtail or eliminate any or all parts of said apportionment or make apportionment from the unappropriated general highway fund surplus which in their opinion is most expedient and for the best interests of the State.

This brings us to Section 17 of Chapter 293, P. L. 1945, which is an amendment of Section 48 of Chapter 84, R. S. 1944, which refers to ways laid out which cross over or under any railroad track or tracks and not at grade, under the provisions of Section 47 of Chapter 84, R. S. This provides:

> "The allocation of the expense of rebuilding, reconstructing and maintaining so much thereof as is within the limits of such railroad shall be determined, as provided by the preceding section (which is Section 47), by the public utilities commission upon application to it by any corporation whose track is, or tracks are, so crossed, or upon application by the municipal officers of any town in which the crossing is located or upon application by the state highway commission."

Section 47 provides in part as follows:

> "The public utilities commission . . . may determine whether the expense of building and maintaining so much of said way as is within the limits of such railroad corporation shall be borne by such railroad corporation, or by the city or town in which such way is located, or by this state, or said public utilities commission may apportion such expense equitably between such railroad corporation and the city, town or state."

After reading these various statutes relating to the expense of building and maintaining ways within the limits of railroad corporations, I am of the opinion that it is within the scope of their authority to pay from the general highway fund created under the provisions of R. S. Chapter 20, Section 105, whatever amount the Public Utilities Commission should apportion under the provisions of Chapter 293, Section 17, P. L. 1945.

You will note by the language of Section 105 of Chapter 20, R. S., that it provides for the construction of state, state aid, and third class highways, for the maintenance of state and state aid highways, and interstate, intrastate and international bridges.

It seems to me that the construction provided for under Section 48, R. S. 84, as amended, refers to ways already laid out, and the expense thereof, allocated under this section, should not be paid from the appropriation for the maintenance of bridges, but from the general highway fund.

RALPH W. FARRIS
Attorney General

May 5, 1947

To Raymond C. Mudge, Commissioner of Finance and Budget

I received your memo of May 2nd, enclosing in quadruplicate a 22-page list of accounts receivable recommended to be charged off . . . together with a letter from Fred Berry, State Auditor, in which he makes a suggestion with respect to these charge-offs. I had a talk with him and told him how these accounts should be handled. I call your attention to the statute providing for charging off accounts, to be found in Section 30 of Chapter 14, R. S. Upon examination of this statute you will find that the Controller should charge off the books of accounts of the State or of any department such accounts receivable, including all taxes for the assessment or collection of which the State is responsible, when recommended by the head of the department, etc., upon certification by the Commissioner of Finance and the State Auditor, subject to the approval of the Governor. Under the statute, the Attorney General has no part in these proceedings, unless upon post-audit by the State Auditor these charge-off accounts are found collectible. Then they should be turned over to the Attorney General's Department for attention.

The State Auditor is not responsible for the collection of money belonging to the State or for the handling or custody of any State funds.

I note Mr. Berry's suggestion to you that the Treasurer's office be contacted to determine what results, if any, they may have had with the collection of these accounts. In this regard I call your attention to Section 8 of Chapter 15, R. S., which provides that the Treasurer shall promptly collect all taxes and accounts due the State, certified to him, as provided therein. In cases of neglect or refusal to pay, he shall institute through the Attorney General such court actions as may be necessary to enforce payment. This section was amended by Section 23 of Chapter 41, P. L. 1945, and does not include taxes collected by the State Tax Assessor; nor does it apply to the Maine Unemployment Compensation Commission.

My suggestion in handling these charge-off accounts is that the regular statutory procedure be followed, except in those cases where the accounts have been turned over to the Department of the Attorney General, and the department has not been able to collect, or there are no assets available in the hands of debtors which would justify spending the State's money in bringing action on these delinquent claims.

In future, before these accounts are submitted to my office for approval for charging off, they should be certified to by the Commissioner of Finance and the State Auditor, and recommended by the head of the department or institution. . .

RALPH W. FARRIS
Attorney General

May 9, 1947

To N. S. Kupelian, M. D., Superintendent, Pownal State School

I have your letter of April 29th, relating to one of your inmates who has been out on trial visit for some time . . . has been self-supporting and has not got into any trouble in the community, and you are considering his dismissal upon eugenic sterilization. You also state that the law requires the signature of the nearest relative and your records show that his mother is feeble-minded and her whereabouts are known. You are therefore wondering if under these conditions it would be legal to have his brother sign the consent in place of the mother.

It is true that the law provides that in case the patient is mentally incapable of giving his consent, the consent of the nearest relative or guardian must be secured. However, if the nearest relative is incompetent and feeble-minded and incapable of understanding the significance of the consent, I will rule in this case that the consent of the nearest relative who is competent must be secured, and it will be sufficient for the purposes of this case to have the brother sign the sterilization papers with a note on the consent that the brother who signs the consent is the next nearest relative mentally capable of giving consent.

RALPH W. FARRIS
Attorney General

May 21, 1947

To Marion Martin, Commissioner of Labor
Re: Hours of Labor for Women

In your letter of May 7th you ask to be advised concerning the hours of labor a female may be employed under § 22 of Chapter 25, R. S. 1944. Your question is: "Would it not be possible for an employer to employ a female 10 hours, 5 days a week in order to reduce the work day of the 6th day so that day is entirely eliminated?"

The section of the statute, so far as pertinent, is as follows:

> "No female shall be employed in any workshop, factory, manufacturing or mechanical establishment more than 9 hours in any one day; except when a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for 1 day of the week; and in no case shall the hours of labor exceed 10 hours in any one day or 54 hours in any one week; . . ."

I think that the adoption by the employer of a 50-hour week spread over 5 days of 10 hours each would be within the letter and spirit of this statute, and I so advise you.

You have directed my attention to a ruling made in 1929 by the then Attorney General, which would appear on superficial examination to be in conflict with this ruling. I do not so regard it, since the statute has since been changed. In 1943, by Chapter 285, § 1, the apportionment provisions were amended by limiting the hours to 10 in any one day, where an apportionment is made by the employer. Previous to that, there was no limitation except as to the 54-hour week, and attempts were made by some employers to have 12-hour days and more, and then reduce the number of working days per week. This, the Attorney General held, was not permissible, and I agree with him.

I am of the opinion that the amendment limiting the hours to 10 where an apportionment is made would permit the 5-day week, where the 50-hour week is used.

ABRAHAM BREITBARD
Deputy Attorney General

May 21, 1947

To David H. Stevens, State Assessor
Re: Cigarette Tax

I received your memo of May 12th, relating to the provisions of Chapter 377 of the Public Laws of 1947, which provides for an increase of 2c per packet on cigarettes and a 20% tax on cigars and tobacco products, which new law will go into effect on July 1, 1947. You state in your memo that, due to the fact that the payment of this tax is made evident by affixing a stamp to the tobacco product and also due to the fact that your inspection for tax purposes of tobacco products will be completely fruitless if you do not attempt to collect a tax on those tobacco products in the hands of the retailers on July 1st, it would seem desirable to arrange for the retailers to purchase and affix stamps to cover their inventories on July 1st. You further comment that it would also seem that Section 190 of Chapter 14, R. S. 1944, as amended, would indicate that cigarettes and tobacco products held in this State by any person for sale should bear the correct tobacco tax stamps, if sold after July 1, 1947.

It seems to me that this is a matter of purely administrative procedure. In my opinion it would be entirely legal to arrange for retailers to cover their inventories on July 1st. According to the statute, cigarettes and tobacco products held in this State for sale after July 1, 1947, should bear the correct tobacco tax stamps.

RALPH W. FARRIS
Attorney General

May 21, 1947

To David H. Stevens, State Assessor
Re: Gasoline Tax

I have your memo of May 12th relating to the provisions of Chapter 349, P. L. 1947, which provides for an increase of 2c per gallon in the State tax on gasoline.

This law becomes effective on June 1, 1947. The gasoline tax law provides for the first distributor receiving the gasoline in the State to be responsible for the tax, except as to the case of shipment by tank car or barge.

You request this office to advise you whether you are charged with the responsibility, under the new law, of attempting to recover the 2c on the gasoline held in the hands of distributors who purchased from other distributors, and of retailers, on June 1, 1947, or in other words upon that gasoline on which the 4c tax has already been paid.

In reply I will say that where the gas tax has already been paid by the first distributor, as provided by law, under the provisions of the old law, it is my opinion that you cannot collect an additional 2c tax when the new law becomes effective, as there is no such retro-active provision, relating to inventories, in the act.

RALPH W. FARRIS
Attorney General

May 23, 1947

To A. K. Gardner, Commissioner of Agriculture
Re: Salvage Derived from Condemned Reactors to Tuberculosis

Your memo of May 21st, relating to the above matter, which you have discussed with Mr. Buzzell and Mr. Mudge, received. You refer to Section 7 of Chapter 297. I presume you are referring to the Public Laws of 1945, which amended Section 69 of Chapter 27 of the Revised Statutes by changing the wording of that statute so that the money received from the sale of hides and carcasses of condemned animals shall be credited to the General Fund.

I note what you say in your memo in regard to the salvage, that when the salvage exceeds $50, the owner of the condemned cattle must be reimbursed and that the condemned cattle are usually killed at slaughter houses in Maine and shipped to Boston for inspection; and that the Division of Animal Industry receives the salvage value, less the expense incidental to the slaughter. You ask:

"Is it possible for the slaughterer to pay the Division of Animal Industry for deposit to the General Fund the appraised value up to $50 and to pay to the owner of the condemned animal any amount in excess of $50 when so appraised?"

It is my opinion that this cannot be done, as there is no authority under the statute.

I do not see why you could not issue a voucher to the owner for the balance above the appraised value. This is another case of delay and hardship caused by the amendment of Chapter 297, P. L. 1945, which was intended to simplify the financial structure of the State, but has hampered the administration of the departments that are functioning on a fee basis, and is very unfair to the several departments involved, that is, in crediting the fees to the General Fund and taking payments out of an appropriation for the department in which the legislature has made no provisions therefor.

In case the Controller's office will not accept your vouchers for payment to the owner of condemned cattle for the salvage value beyond the $50 limit, I would go to the Governor and Council and ask that money be taken from the Contingent Fund to pay this excess to the owners.

RALPH W. FARRIS
Attorney General

May 28, 1947

To H. H. Harris, State Controller
Re: Mileage

Receipt is acknowledged of your memo of May 26th concerning Chapter 396 of the Public Laws of 1947, "AN ACT Relating to Automobile Travel by State Employees."

I have discussed the manner of handling the situation here created, with the Attorney General, and we feel that it was clearly the intent of the legislature to provide the increased allowance per mile for the use of privately owned automobiles by employees on the business of the State, to begin immediately after the expiration of the act which increased such allowance in 1945 by Chapter 324. This act will expire on June 30, 1947, the end of the fiscal year, by the specific limitation contained in said act. I therefore advise you that the increased allowance for travel under the 1947 act may commence with the fiscal year beginning July 1, 1947.

ABRAHAM BREITBARD
Deputy Attorney General

May 28, 1947

To A. W. Perkins, Insurance Commissioner

This department acknowledges receipt of your memorandum of May 26th, wherein you ask the following question:

"Will you please inform me whether or not a Fire Inspector appointed in accordance with Section 21 of Chapter 85 of the Revised Statutes of 1944 may appoint a Deputy Fire Inspector and delegate such authorities to said Deputy Fire Inspector as are vested in the Fire Inspector by Sections 24, 25 and 27."

As we read the statute, we are of the opinion that the fire inspector may not appoint a deputy and delegate to him the authority to act under Sections 24, 25 and 27. It would seem, in the first place, that such authority is derived from the municipal officers, who may invest him with such authority in their discretion; and in view of this, I cannot see how he can delegate such authority.

So far as a deputy is concerned, I find no provision which allows the appointment of a deputy.

ABRAHAM BREITBARD
Deputy Attorney General

May 29, 1947

To David H. Stevens, State Assessor

Receipt is acknowledged of your memorandum of May 12, 1947.

In my opinion, the provisions of Chapter 349, Section 1, effective June 1st, which provide that 8 mills of the tax paid on fuel used in motor boats and not refunded under the provisions of Section 166, shall be paid to the Treasurer of State, to be available to the Commissioner of Sea and Shore Fisheries, relate only to fuel purchased on and after June 1, 1947, when this act becomes effective.

ABRAHAM BREITBARD
Deputy Attorney General

June 2, 1947

To A. K. Gardner, Commissioner of Agriculture
Re: Potato Tax

I received your memo of May 26th, enclosing a clipping taken from the May 8th issue of the VICTORIAN, published in Perth, N. B. You state that you are not interested in the article, except that it has steamed up some of the anti-potato tax group in Aroostook County and they are beginning to claim that our potato tax is unconstitutional.

All laws are constitutional until decided unconstitutional by courts of competent jurisdiction, upon a case properly brought before them.

In my opinion our potato tax law is constitutional. The Province of New Brunswick probably has a different tax set-up than we have in Maine. This tax is on the industry and not on all taxpayers of the State. There is nothing in the Constitution of Maine that prohibits any group from assessing a tax on the product that the members of that industry grow; and the only manner in which the question of constitutionality could be brought up is before the courts.

RALPH W. FARRIS
Attorney General

June 2, 1947

To Col. Laurence C. Upton, Chief, Maine State Police
Re: State Police Pay Schedule

I have your memo of May 26th, relating to the provisions of Chapter 385, P. L. 1947, which becomes effective on August 13th, whereas the emergency legislation providing for a temporary increase of $7.20 a week ends on August 10th.

It is my opinion that when Chapter 385, P. L. 1947, was enacted, it was the intent of the legislature that the date of the adjournment would be by May 10th. That was my understanding of the situation at that time. The matter was called to my attention that it was the intent of the legislature that the temporary pay increase remain in force until the new schedule became effective on August 13th, which is 90 days following the adjournment of the legislature.

It is my opinion that the Controller should carry on the increase of $7.20 until the provisions of Chapter 385, P. L. 1947, become effective on August 13th, and it would be legal for you to continue the $7.20 without changing to a new schedule for a period of two days.

RALPH W. FARRIS
Attorney General

June 3, 1947

To Earle R. Hayes, Secretary, Employees' Retirement System

I received your memo of June 2nd, relating to the provisions of Section 1 of Chapter 384 of the Public Laws of 1947, containing the definitions of

various terms used in the Employees' Retirement Act, specifically the following:

1. "employee"
2. "teacher"
3. "public school"

You further call my attention to the definition of "employee" which reads in part, "and for the purposes of this chapter, teachers in the public schools." You inquire if this reference to public schools is controlled or limited by the definition of "public school" or whether the last half of the sentence dealing with the definition of "teacher" in effect makes an exception to both the paragraph dealing with the definition of "employee" and the paragraph dealing with the definition of "public school;" and you say that you would appreciate my early reply, as you have a specific case at Maine Central Institute.

In my opinion the definition of "teacher" includes teachers in *any* school which is supported at least 3/5ths by State or town appropriations, or, in the absence of such support, where the teachers have heretofore contributed to the Maine Teachers' Retirement Association, provided that such contributions have not been withdrawn. You state in your memo that the Maine Central Institute at Pittsfield is a school which is supported at least three-fifths by State or town appropriations, and if this is the case, I feel that teachers in that institution would come within the statutory definition of "teacher," regardless of whether or not it is a public school, because, as you will note, it relates to teachers teaching in *any* school which is supported, etc., etc., which goes beyond the definition of public school as provided in Section 1 of Chapter 384. As I understand the situation, some of the teachers in the Maine Central Institute at Pittsfield have contributed to the Maine Teachers' Retirement Association.

I further call your attention to the last sentence of paragraph four of Section 1 of Chapter 384, which reads as follows: "In all cases of doubt the board of trustees shall determine whether any person is an employee as defined in this chapter."

RALPH W. FARRIS
Attorney General

June 4, 1947

To H. A. Ladd, Commissioner of Education
Re: L.D. 837, (Chapter 384, P. L. 1947) Employees' Retirement System

Your memo of June 3rd received, directing my attention to the above cited document, which is now Chapter 384 of the Public Laws of 1947. You state that your department has had many questions as to whether or not a teacher currently employed, who has reached the age of 60 or who has served for 30 or more years, must be re-elected and serve after August 13th, the effective date of this Act, in order to receive the retirement benefits of the new law.

In answer I will say that it is my opinion that any teacher who has reached the age of 60 and is eligible for retirement after August 13th, does not necessarily have to be re-elected and serve after August 13th as a teacher.

RALPH W. FARRIS
Attorney General

June 4, 1947

To Lester M. Hart, Col. AGD, Ret., Assistant Adjutant General
Re: State Employees as Members of Military & Naval Reserves

Referring again to your letter of April 11, 1947, in which you state that your office has been informed that an employee of the State of Maine has been ordered to duty as a member of the USNR:

The point in issue deals with his absence as a State employee, and the question is whether he comes under the provisions of Section 80 of Chapter 12, R. S. 1944. You call my attention to the language of the statute, which reads, "military and naval reservists," and you further comment that at the present time Maine has no Naval Reserve; there has been none since World War I, and you state that you desire information as to whether or not the Naval Reservists referred to in the above mentioned paragraph of this section were intended to include members of the Naval Reserve of the United States. You further suggest that the Naval Reserve is wholly under federal control and is not among the forces subject to the orders of the Governor of the State of Maine or any other State.

I have had one of my Assistants trace the history of Section 80, and it is the opinion of this office that officials and employees of the State of Maine who are members of the National Guard or other authorized State military or naval forces or organized Reserves of the United States Army or organized Reserves of the United States Navy are entitled to leave of absence from their respective duties without loss of either pay or time for all days on which they are engaged in organized reserve training duties or authorized training mobilization when ordered or authorized either by the Governor of this State or under the provisions of National Defense Acts.

It is our opinion that the second paragraph of Section 80 of Chapter 12, R. S. 1944, about which you inquire in your letter, applies only in peace time in connection with training duties. Military leave in time of emergency or war, under circumstances whereby the official or employee of the State goes on military leave, so that his employment relationship with the State is terminated for the time being, is an entirely different situation. We opine that the statute referred to applies solely to the situation where an official or employee is ordered to temporary training duties, such as two weeks during the summer months. Under these circumstances his employment with the State does not in fact terminate, and he is entitled to leave of absence without loss of pay or time.

RALPH W. FARRIS
Attorney General

June 6, 1947

To H. A. Ladd, Commissioner of Education

Your memorandum of May 13th to the Attorney General has been referred to me. The subject has reference to the question whether a town may enter into a long-term contract to rent a building to be used for school purposes, the rental to include an amount which would amortize the investment in the building.

The facts, as they appear, are that a resident of the town would be willing to construct a building costing $100,000, using plans provided by the Department of Education, and that the town is to agree to rent the building for a 30-year period. The town, at the end of said period, is to own the building, apparently having by that time paid the total cost of construction thereof. You do not say whether the building is to be constructed on land owned by the town.

While a town might, in carrying out the obligations imposed on it by statute to provide schools and school buildings, lease buildings for such purposes upon a payment of an annual rental, a town may not by this method circumvent, or attempt to do so, the constitutional limitation of debt or liability to be created by it. A contract by which it creates a liability in excess of its debt limit is illegal and void.

It would seem that here is not a mere hiring by the town of buildings to be used for school purposes at an annual rental, but rather a contract to purchase, which would create an obligation on the town for a substantial sum of money payable in future annual instalments. Calling it a lease and rental would be form only and would not represent the true nature of the contract. Thus, the question would arise whether its present indebtedness and the limitation on its indebtedness would authorize it to enter into such a contract. If such a contract would be for an amount in excess of the limitation on its indebtedness, the contract would be void.

ABRAHAM BREITBARD
Deputy Attorney General

June 18, 1947

To David H. Stevens, State Assessor

The department acknowledges receipt of your memo of June 9th. You inquire whether, under Chapter 88 of the Revised Statutes of 1944, Sections 168-175, inclusive, a service station selling gasoline may sell from any tank, container or pump gasoline under a trade name or symbol of his own, atlhough the gasoline dispensed from said equipment is that of a well-known refiner or manufacturer which advertises its product under the name adopted by it.

I am of the opinion that under Section 168 of said chapter, such practice would not be permissible. This section reads as follows:

> "It shall be unlawful for any person, firm or corporation within this state to store, sell, distribute, transport, expose for sale, or offer for sale, distribution, or transportation any internal combustion engine fuels, lubricating oils, or other similar products in any manner whatsoever so as to deceive or tend to deceive the purchaser as to the nature, quality, and identity of the product so sold. . ."

While a dealer may adopt a trade name to conduct his service station and do business under that name, he cannot use that name on his pumps or other dispensing equipment with the idea of conveying to the buyer that the gasoline so sold is of that name or manufacture; but he must identify the gasoline sold and dispensed with the true name of the manufacturer and the trade name or trade mark adopted by such manufacturer.

Any other course would be practicing a deception, within the meaning of this act, on the purchaser.

ABRAHAM BREITBARD
Deputy Attorney General

June 20, 1947

To George E. Hill, Public Utilities Commission

Your letter of June 20th received, calling my attention to Chapter 362 of the Public Laws of 1947, approved May 9, 1947, entitled "AN ACT Relating to the Gasoline Tax," which contains a provision amending Chapter 44 of the Revised Statutes by adding thereto a new section to be known as 1-A. You call my attention to the fact that this new section requires interstate bus operators regularly engaged in transporting passengers for hire by motor vehicles on the public highway between points within and points without the State to obtain a permit for such operation from the Public Utilities Commission, which, with certain exceptions, is to be issued to them as a matter of right.

In my opinion the primary purpose of this amendment was to facilitate the administration of the gasoline tax imposed by the provisions of the act aforesaid.

In the third paragraph of your letter you call my attention to the fact that under Chapter 44 intra-state buses must obtain insurance before a certificate may be issued to them; and you inquire whether or not the insurance provisions of Chapter 44 of the Revised Statutes have any application to "permits" to be issued to interstate bus operators under this amendment.

In reply I will say that it is my opinion that the insurance provisions of Section 8 of said Chapter 44 have no application to the permit provided for under Section 2 of Chapter 362, P. L. 1947, but apply only to intrastate operation of motor vehicles.

RALPH W. FARRIS
Attorney General

June 20, 1947

To Marion B. Stubbs, Librarian

I received your memo of June 18th, stating that in many of our free public libraries the housing of the laws, statutes and court reports distributed to them by the State is a serious problem, and calling my attention to Sections 18 and 19 of Chapter 38, R. S. 1944, as amended by Chapters 7 and 378 of the Public Laws of 1945. You state that a library may ask the State Library to refrain from sending any more of these publications, and you ask whether or not a library can dispose of other volumes previously received and now on hand.

It is my opinion that it cannot, as the State is trustee of these volumes placed in the local libraries. Section 29 provides that

> ". . . the same shall be constantly kept in said library for the use and benefit of all the citizens. . ."

and each librarian is supposed to send you a list of all books and documents purchased with the state stipend for the preceding year.

Title is in the State in trust.

RALPH W. FARRIS
Attorney General

June 26, 1947

To Earle R. Hayes, Secretary, Employees' Retirement System

Your memorandum of June 25th has been received. Your first inquiry relates to Chapter 85 of the Resolves of 1947, by which Mr. X was given an increase in his pension. You inquire whether the increased amount should be paid beginning July 1, 1947 or beginning August 13, 1947, when the law becomes effective.

I think it is well at this time to advise you that in all cases unless the Resolve specifically provides for retroactive payment, such payment cannot begin before the effective date of the Act.

Your second inquiry relates to Chapter 82, of the Resolves of 1947, by which Mr. Y was given an increase in his pension. . . This Resolve specifically provides that the pension shall begin on July 1, 1947. This Act does not become effective until August 13, 1947. Thus, after the effective date of the Act and not before, the pension payment can be made retroactively, beginning with July 1st.

ABRAHAM BREITBARD
Deputy Attorney General

June 27, 1947

To Brig.-Gen. George M. Carter, Adjutant General

I have your memo of June 24th relating to our discussion on June 23rd and enclosing attested copies of records of meetings of the State Military Defense Commission on dates of October 9, 1942 and October 12, 1943; also copy of a letter received from the Executive Department, signed by former Governor Sumner Sewall, relating to the matter of $500 compensation voted to you for services as administrative director of the State Military Defense Commission.

You call my attention to the opinion of former Attorney General Cowan recorded in his Report for 1943-1944 on page 83, in which he states that the Commissioner of Finance at that time was justified in assuming that his interpretation of Chapter 349, P. L. 1945, was a reasonable one and there was nothing to prevent an Adjutant General from receiving compensation for services outside of his official duties, if those services are voluntarily assumed by him and the performance thereof does not in any way interfere with the functioning of his official position.

In our discussion of June 23rd, I suggested that you furnish me with data on your duties under the State Military Defense Commission and I would then give you my opinion as to whether or not the fact that you received $500 as administrative director of the State Military Defense Commission would in any way conflict with Section 12 of Chapter 12, R. S. 1944, which reads: "The adjutant general shall receive an annual salary of $4500. He shall receive no other fee, emolument, or perquisite," and which has since been amended as to salary.

It is my opinion, even though you are a member ex officio of the State Military Defense Commission, the sum of $500 per annum for your services

as administrative director for the Commission is not a fee, emolument or perquisite as Adjutant General or as an ex officio member of the State Military Defense Commission, but is for special extra duties assigned to you by the members of the Military Defense Commission, for which they voted to pay you the sum of $500 for these extra duties, and which are not necessarily a part of your duties as Adjutant General, you having taken the place of the original administrative director, who received a salary of $10,000 a year and was succeeded by an administrative director who received a salary of $4000 a year. Your assuming these duties, on a vote of the Military Defense Commission and the recommendation of Governor Sewall, then chairman of the Commission, at a rate of $500 for services rendered, in no way conflicts with the said statute above quoted and in my opinion it saved the State at least $3500. You should receive credit rather than censure for accepting these added responsibilities for the Military Defense Commission and the then Governor of Maine.

RALPH W. FARRIS
Attorney General

June 27, 1947

To A. K. Gardner, Commissioner of Agriculture
Re: Conformity with the Food and Drug Act

I have your memo of June 26th . . . asking for an opinion on a letter written by an officer of a canning company, in which he states:

"Since arriving home from the very pleasant interview with you I have been reading the Maine sardine Law, Revised Statutes 1944, and particularly under section 201 where it clearly states that we are to conform with the Federal Food and Drug Laws, and the laws of the State of Maine, we all know those laws call for no tolerance, and as they are laws clearly made it does not appear that anyone has the right to establish rules and regulations, in any case where the law is clearly defined, therefore it appears that your Department does not have the authority to establish tolerance, but as your department has established a tolerance outside of that law, hasn't the law been violated by your department and also all sardine packers?"

Commenting on this letter, I will say that he did not quote the important part of Section 201 of Chapter 27, relating to this subject. Further on in this section, the law reads:

> "He (meaning the Commissioner) shall make uniform rules and regulations for carrying out the provisions of said sections (meaning sections 198 to 205, inclusive) and shall fix standards of quality when such standards are not fixed by law; . . ."

It is my opinion that the Food and Drug Act of the State of Maine does not fix standards of quality in the packing of sardines, and that the Commissioner has authority under this section to make uniform rules and regulations carrying out the provisions of said sections relating to the packing of sardines, and also to fix standards of quality when such standards are not fixed by law.

It is my opinion that the standards of quality are not fixed by law except in Section 168, subsection 6, paragraph F of Chapter 27, R. S. 1944, where the law of Maine reads as follows, relating to adulterated or misbranded goods:

> "If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter."

After looking into the evidence before you, it is my opinion that this company has been violating Section 168 of Chapter 27, R. S. 1944, relating to the packing of diseased fish without properly branding said cans with the amount of diseased or putrid matter contained in said pack. . .

RALPH W. FARRIS
Attorney General

June 30, 1947

To Earle R. Hayes, Secretary, Employees' Retirement System
Re: Effective Date of Chapter 384, P. L. 1947

I received your memo dated June 27th relating to the above entitled subject matter, in which you call my attention to my memo to Fred W. Hollingdale, Deputy Treasurer, dated June 20, 1947, which is in effect the same as I talked with you some time during the session of the legislature. The law cannot possibly be in effect under the Constitution until 90 days after adjournment of the legislature, notwithstanding anything in the bill saying that it takes effect before the constitutional period concerning the effective date of laws passed by the legislature.

In my memo to Mr. Hollingdale I told him that the law was not effective until August 13, 1947, but it was the intent of the legislature to make the provisions thereof retroactive to July 1, 1947. So, getting down to the real point involved in your memo, you ask:

> "May those employees who are approved for retirement on or after August 13, 1947, have their retirement benefits start as of July 1, 1947 (or any other date between July 1, 1947 and August 13, 1947) on the basis of the provisions of the new law, or must retirement benefits be figured on the basis of provisions of the existing statute up until August 13, 1947?"

Answer. Their retirement benefits start as of July 1st, or at any other date between July 1st and August 13, 1947, on the basis of the new law. In other words, the legislature intended that the provisions should be retroactive. That is what I told Mr. Hollingdale in my memo. It is probable that Question 2 of the memo was not clear and so the answer did not bring out the point that you ask in your memo of the 27th. In other words, it was the intent of the legislature that employees retiring on July 1, 1947, should come under the provisions of the new law after August 13th, the effective date of the law; but they cannot retire until the act takes effect, to get the benefit of the new law.

RALPH W. FARRIS
Attorney General

July 1, 1947

To A. K. Gardner, Commissioner of Agriculture

Re: Authority for making regulations allowing Maine Sardine Packers to pack sardines for export, that do not conform to the Maine Food and Drug Law and the Federal Food and Drug Act.

I received your memo of June 30th. After citing the provisions of law relating to the Federal Food and Drug Act and the Maine Food and Drug Law, and part of Section 201 of Chapter 27, R. S. 1944, relating to the inspection and packing of sardines, which gives the Commissioner discretion in making uniform rules and regulations for carrying out the provisions of the sardine packing law and to fix standards of quality where such standards are not fixed by law, you ask this question:

> "Is it within the authority of the Commissioner of Agriculture to make rules and regulations that will allow packing sardines for export that are not in accord with the standards of quality established in Section 168, paragraph F of Chapter 27, R. S. 1944, and Section 201 of the same Chapter."

Paragraph F of Section 168 reads as follows:

> "If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter."

Section 201 of Chapter 27 I have just quoted from your memo, relating to the fixing of standards of quality by the Commissioner.

Before answering your question I will say that I do not see any standard of quality established in Section 168. It is for you as Commissioner to say whether the sardines consist in whole or in part of a filthy, decomposed or putrid substance or are the product of a diseased animal, and I understand that you do this by having inspectors at the sardine factories when the sardines are being packed. In my opinion you have a right to fix the standard of quality of the sardines that are being packed at the various plants in Maine. There is nothing in our State law in regard to export of sardines, while the federal law permits the shipment of sardines without any federal inspection for export only. It seems to me that it is a matter of discretion with you whether or not you want to follow the federal statute in this regard.

RALPH W. FARRIS
Attorney General

July 1, 1947

To L. C. Fortier, Chairman, Maine Unemployment Compensation Commission

Re: Eligibility for Unemployment Compensation under Chapter 340, P. L. 1947

Chapter 340, P. L. 1947, approved May 6, 1947, becomes effective on August 13, 1947. By virtue of this amendment, the minimum qualifying

wage for eligibility to unemployment compensation is raised from $200 to $300. You have inquired as to the Commission's duty with respect to claimants whose wages for insured work during the base period were in excess of $200 and less than $300, and whose eligibility for unemployment compensation was determined between April 1, 1947 and August 13, 1947.

In order to ascertain the intent of the legislature in enacting Chapter 340, P. L. 1947, it is necessary to study all of the pertinent sections of the statute, of which the amendment becomes a part; that is to say, all of the sections of the unemployment compensation law. This study has been made, and I have arrived at the conclusion that claimants whose potential eligibility has been determined in accordance with subsection (b) of section 6 of the unemployment compensation law within the benefit year and prior to August 13, 1947, should continue to be paid unemployment compensation at the potential rate determined, and within the maximum amount available under such determination so long as they remain continuously unemployed and continue to report weekly, in accordance with the provisions of subsection (b) of section 4 of the unemployment compensation law. Should the unemployment status of any of such individuals be interrupted by employment or by failure to continuously report, in accordance with subsection (b) of section 4, such persons who, subsequent to August 13, 1947, again report and file an additional claim or claims for unemployment compensation, should have their potential eligibility redetermined under the provisions of Chapter 340, P. L. 1947.

All claimants filing on or after August 13, 1947, should have their eligibility for unemployment compensation potentially determined in accordance with the revised schedule contained in Chapter 340, P. L. 1947.

RALPH W. FARRIS
Attorney General

July 2, 1947

To Earle R. Hayes, Secretary, Employees' Retirement System
Re: Expense Allowance to Highway Engineers Assigned to Field Duty

I have your memo of July 1st, stating that the Board of Trustees have asked you to secure a ruling from me on the following question:

"They are advised that a certain stated amount of money is paid by the Highway Commission to its engineers in addition to their weekly salary at such times as they are away in the field working on assignments, on the theory that it is a partial reimbursement for expenses. The Board of Trustees believe that this amount of money should be considered as maintenance rather than expenses, for purposes of retirement deductions. Do you agree with this position?"

I have checked with the system in vogue in the State Highway Department relating to paying additional sums to Highway engineers, and I find that this is not a continuous practice but is done only in cases where an engineer is assigned to a particular job in a particular field for a short period. It is not a regular wage proposition, but lasts only so long as he is assigned to that position. Engineers do not receive additional sums while on duty in

Augusta or on many jobs that are just temporary, and the Board of Trustees would have to have a full-time bookkeeper to compute the deductions and there would have to be reports on every field engineer who went out when he got $7 a week while on a certain job, and another when he returned to the office at Augusta or went on some other job where there were no expenses allowed in addition to his salary.

For the reason that this is only a temporary allowance to take the place of an expense account, I am ruling that this amount of money should be considered as expenses rather than maintenance, and a part of his salary, and that it would not be subject to retirement deductions.

RALPH W. FARRIS
Attorney General

July 8, 1947

To Stanton S. Weed, Director, Division of Motor Vehicles

Your memo of June 16, 1947, relative to Chapter 348, P. L. 1947, which takes effect on August 13th next, has been received.

This inquiry concerns the limitation of § 3 of said act, which provides that "no trailer attached to a motor vehicle shall exceed in length 26 feet over all including all structural parts thereof, permanent or temporary; provided, however, that the load on any motor vehicle, including trucks, combination of tractor and semi-trailer, passenger buses and passenger cars, and the load on any trailer, may extend not exceeding 1 foot 6 inches beyond the rear of the maximum permissible structural length of such motor vehicle or tractor exlcusive of tailboard."

Specifically the inquirer asks: "Does the 26 feet over all include a tailboard or could a tailboard of four or five feet be used in addition to the 26 feet, provided, of course, that the complete length of the tractor and semi-trailer does not exceed 45 feet? If the tailboard is included in the 26 foot maximum, does the permissible load extension of one foot six inches apply to the tailboard? If the tailboard may extend beyond the 26 foot maximum, is it also permissible to have a one foot 6 inch extension on the rear of the tailboard, providing it is within the 45 foot limitation?"

I interpret this provision to mean that no trailer may exceed 26 feet in length including the tailboard when it is down. The load may extend 1 foot 6 inches beyond the tailboard.

The limitation in the preceding part of this section, which provides that "no motor vehicle, including trucks, combination of tractor and semi-trailer, passenger buses and passenger cars shall exceed in length 45 feet over all including all structural parts thereof, permanent or temporary," would not authorize the use of a trailer attached to a motor vehicle which would be over 26 feet in length, as above defined, even though the combination would not be over 45 feet.

I return herewith the letter you enclosed.

ABRAHAM BREITBARD
Deputy Attorney General

July 8, 1947

To E. E. Roderick, Deputy Commissioner of Education

In answer to your inquiry of June 20, 1947, relative to employment of teachers who have reached retirement age or who are beyond that age, and also the cases where a person 70 or over is employed for the first time to teach, due to the shortage of teachers:

In the former case the statute, Chapter 384, P. L. 1947, Section 6, is very plain that retirement is compulsory when the teacher reaches the retirement age of 70, unless at the request of the Governor and with the approval of the Council the trustees permit the teacher to be continued in employment for periods of 1 year.

As to the latter, the same act by Section 3, paragraph 1, provides that after July 1, 1947, membership in the retirement system shall be a condition of employment. A person 70 or over would be ineligible to become a member because of the compulsory retirement provision above cited. I am therefore of the opinion that in these cases employment may only be sanctioned by request of the Governor as in the cases of continuing a teacher in employment after reaching the retirement age.

I would advise that the local superintendent or school committee inform the Department of Education, which in turn will request the Governor that he obtain the approval of the Council for such employment. This appears to be rather cumbersome, but the administration of the retirement system is by the State and until this is modified the only body authorized to act is the executive body.

Since membership is compulsory, the person will have to contribute to the system and at subsequent retirement either have the benefit of the annuity or the return of the contributions plus interest on withdrawal from the service.

ABRAHAM BREITBARD
Deputy Attorney General

July 18, 1947

To Lester E. Brown, Chief Warden, Inland Fisheries and Game

I have gone over the correspondence which you submitted to me, which deals with the application of a student at Bowdoin College for a resident hunting and fishing license. The clerk of the town refused to issue resident licenses to the applicant.

Without going into the details in full, I feel that I should uphold the town clerk, and therefore advise you that the town clerk was justified in refusing resident licenses, in view of the fact that the applicant had applied to be registered as a voter, claiming his domicile to be in Brunswick, and the selectmen, after giving the applicant a hearing and after due consideration, determined that he was not domiciled in the State of Maine and therefore did not establish a domicile in Brunswick. They therefore refused to place his name on the voting list.

Section 58 of Chapter 33, subsection V, defines who shall be eligible for a resident license. This section is as follows:

> "Any citizen of the United States shall be eligible for any resident license required under the provisions of this chapter, providing such person is domiciled in Maine with the intention to reside here, and who has resided in this state during the 3 months next prior to the date an application is filed for any license under the provisions of this chapter."

Merely having a temporary residence here is not enough. The applicant must be domiciled with the intention of permanency of residence, although of uncertain duration. There is no distinction between the domicile under this chapter and domicile to qualify to register as a voter in the State except that the period which must elapse under this chapter is three months.

In view of these facts and the applicable provisions of the act, the clerk properly refused to consider the applicant as a resident of the State eligible for resident licenses.

I return herewith the file which you submitted.

ABRAHAM BREITBARD
Deputy Attorney General

July 22, 1947

To Fred W. Rowell, Director, Division of Veterans' Affairs

Receipt is acknowledged of your memo of June 24th, asking for an interpretation of Chapters 370 and 386, Public Laws of 1947.

Your first question deals with Chapter 370, section 3, which amends section 302 of Chapter 22, R. S. At the same session, by Chapter 386, P. L. 1947, setting up the Division of Veterans' Affairs, the legislature specifically provided for the repeal of section 302 of Chapter 22, Revised Statutes; but whatever may be the effect of the inconsistent action of the legislature, the policy of the legislature, nevertheless, is very plain that they intended to put a statutory limit on the amount of aid to dependent children of veterans, as clearly indicated by the amendment contained in Chapter 370, P. L. 1947. I am of the opinion, therefore, that in determining the amount of aid to be granted to dependent children the limit prescribed by this amendment will have to be followed by you in the administration of Chapter 386, P. L. 1947, which provides that:

> "In determining the amount of aid the division shall use the same budgetary standards as are being used by the department of health and welfare."

The budgetary standards in effect on August 13, 1947, in the Department of Health and Welfare contain limitations on the amount of aid. I believe, therefore, that these limitations must be read into section 13. Consequently, in determining the amount of aid to be allowed to the dependent parents of a veteran, or a dependent wife, consideration must be given to the limitations found in the various provisions dealing with the grant of aid in the Department of Health and Welfare.

You also inquire whether these grants shall be paid monthly or semi-monthly. The policy as expressed at the last session of the legislature, was that grants shall be paid semi-monthly. I believe that we should follow this policy although there is no express provision for semi-monthly payments in Chapter 386, P. L. 1947. I also believe there should be uniformity as to time of payments in both departments, consequently semi-monthly payments should be adopted.

ABRAHAM BREITBARD
Deputy Attorney General

July 25, 1947

To Earle R. Hayes, Secretary, Employees' Retirement System

I have your memo of July 18th, asking me if I agree with your interpretation of the provisions of Section 8 of Chapter 60, as amended, which is as follows:

"When any pensioner is restored to service, (reëmployed by the State) his Retirement benefits need not necessarily be suspended unless the amount of compensation which he is paid upon such reëmployment, plus his Retirement benefits which he is receiving at the time, amount to or exceed the average amount of final compensation which said pensioner was receiving at the time he retired."

After reading the amended Section 8 of Chapter 60, which is now Chapter 384, P. L. 1947, I agree with your interpretation as stated in your memo of July 18th.

RALPH W. FARRIS
Attorney General

July 28, 1947

To Col. Laurence C. Upton, Chief, Maine State Police
Re: AN ACT Preventing Drinking in Public Places, Chapter 363, P. L. 1947

I received your memo of July 21st, stating that the Maine State Sheriffs' Association and the State Police are preparing material for distribution to your various law enforcement agencies, regarding the above captioned law, which becomes effective August 13, 1947. You further state that there appears to be some confusion as to what constitutes a "public place" as set forth in Section 2 of the act, and you ask, "Under the terms of this law, would a hotel diningroom, or lobby, a restaurant, an outdoor eating place such as a lobster pound and public bathing beaches be considered public places?"

Since the date of this memo I have had a conference with you in my office relating to this matter and we found that the new draft of this bill, Legislative Document 1391, contained the words in subsection II, "any building, conveyance," but that these were stricken out after the committee on temperance reported this bill, and the following words substituted therefor, "any common carrier." It seems to us that the action of the legislature in deliberately striking out "any building," removes a hotel diningroom, lobby,

or restaurant from the definition. If you will note, subdivision I of the act reads: "Any person taking a drink of liquor, or offering a drink of liquor to another, or any person in charge of a public place as hereinafter defined, etc." You will note from this language in the first paragraph of the act that this law is only intended to cover such places as are defined as "public places" in subsection II, which reads as follows: "any common carrier, dance, entertainment, amusement, or sport, or grounds adjacent thereto and used in conjunction therewith, or any highway, street or lane to which the public is invited or has access." This would seem to me to include an outdoor eating place such as a lobster pound or public bathing beach, as the public are invited and have access to such places.

RALPH W. FARRIS
Attorney General

July 31, 1947

To David H. Keppel, Deputy Commissioner, Health and Welfare
Re: Fair Hearing—Delay of Action by Department

I have your memo of July 25th referring to memorandum which I gave Dr. L. D. Bristol, dated May 21, 1947, relating to a fair hearing as the result of delay of action by your department in granting old age assistance. You call my attention to the Conference which was held in my office on May 22nd, attended by members of the administrative staff of the Department of Health and Welfare, including Dr. Bristol and yourself, and Miss Eleanore A. Schopke, regional representative of the Social Security Administration.

You state that it was your understanding as a result of that conference that another opinion would be submitted by me in view of the wishes and attitudes of the Social Security Administration and the prescribed procedures outlined by them in their handbook of Public Assistance Administration.

This handbook material consists of Part 4, Section 6430, etc., item I being entitled "Interpretation of Right to Fair Hearing."

In my memo of May 21st to Dr. Bristol I stated in the last paragraph that I felt that there was no appeal for delay under our Maine statute. That was a matter which should be taken up with Mr. Haines and the Public Assistance group in your department, but no definite ruling was made. At the end of the conference with the members of the administrative staff and Miss Schopke I stated that I would issue a ruling that the department could make a regulation that would coincide with the Social Security Administration's interpretation of the right to fair hearing, provided that the applicant could appeal to the Commissioner if he was aggrieved by unreasonable delay in acting upon the application for assistance, without doing violence to the right of appeal statute set forth in Section 262, Chapter 22, R. S. 1944, which provides that any person . . . who is aggrieved by a decision of the department . . . shall have a right of appeal to the commissioner who shall provide the appellant with reasonable notice and an opportunity for a fair hearing; and as I stated on May 22nd at the conference in my office, there is nothing in this section in regard to the right of appeal by reason of the department's not acting within a reasonable time upon an application for assistance.

In order to coöperate with the Social Security Administration, I rule that the Commissioner will be justified in allowing that item in the interpretation of the right to a fair hearing as set forth in the handbook of the Public Assistance Administration.

RALPH W. FARRIS
Attorney General

July 31, 1947

To David H. Stevens, Commissioner of Health and Welfare
Re: Law Relating to the Confidential Nature of Records

I have your memo of July 31st stating that representatives of the Social Security Administration have expressed concern in regard to possible violations of the State law and incidentally the Social Security Act, relating to the confidential nature of records. You state that there have apparently been some rumors that the information made available to the State Legislature in regard to recipients of old age assistance and aid to dependent children has been handled in such a manner, presumably by individual members of the legislature, that our State law in regard to the confidential nature of this material has been violated. You further state that such information as your department has available consists merely of rumors and no specific member of the legislature is involved.

You also state that when you discussed this matter with representatives of the Social Security Administration, you suggested that it might be advisable for this office to write to the members of the legislature, reminding them of the provisions of our State law, and you inquire whether or not I believe it desirable to write to all members of the legislature.

In my opinion I deem it inadvisable to write to any member of the legislature unless we have specific evidence that some member has violated the statute in this regard. In writing to all members we should be casting reflections on all of them; and while one or a few might be violators, it would not bind the State of Maine. I should like to have specific information and evidence that a particular member of the legislature has violated the statute in regard to confidential records before I act, so that I can take it up with that member individually and the other members will not know anything about it. Under our form of government, the law-making body is the superior power in the State and municipal law is a rule of action prescribed by a superior power in the State, commanding what is right and prohibiting what is wrong. If the legislature has declared that the use of such records, papers, files and communications of the Department of Health and Welfare is limited by law to the purpose for which they are furnished by any other agency or department of government, the fact that some member of another department of the State government violated this provision of the legislature would not in any way bind the whole department or even the State of Maine; but such violators should be ferreted out and called to account. Of course allegations cannot be based on rumors, because anyone accused of violating laws has a right to be heard in his defense. That is the reason I should like to know the name of the member of any department of government who has violated the law regarding confidential records in your department.

RALPH W. FARRIS
Attorney General

August 5, 1947

To Earle R. Hayes, Secretary, Employees' Retirement System
Re: Additional Privileges of Law—Local Participating Districts

You state in your memo that it is your understanding that any local district which was in the System as of July 1, 1947, may continue to operate under the original provisions of Chapter 60 of the Revised Statutes or may elect to take on any or all of the benefits and privileges set forth in the revised law as indicated in Section 22 of Chapter 384, P. L. 1947.

In line with our conversation at my office a few days ago, relating to additional benefits and privileges of which the participating local districts may avail themselves, it is my opinion that your understanding is correct and that any local district which was in the System as of July 1, 1947, may continue to operate under the original provisions of Chapter 60, R. S. 1944, or it may elect to take on any or all of the benefits and privileges as indicated in Section 22, Chapter 384, P. L. 1947.

RALPH W. FARRIS
Attorney General

August 5, 1947

To A. K. Gardner, Commissioner of Agriculture

Your memorandum of July 8th has been received, supplemented by memo of July 31st, regarding land leased by the University of Maine from the United States Government, situated in Stillwater in the city of Old Town. You advise that there are some persons who feel that the University should acquire title to this land, and your inquiry is whether the same would be subject to taxation by the municipality.

I assume that title to this land is going to run to the University of Maine rather than the State of Maine. If to the State of Maine, it would unquestionable be exempt from taxation. If title is to be taken by the University of Maine, then it would be exempt only if used in connection with the purposes for which the University is established.

ABRAHAM BREITBARD
Deputy Attorney General

August 6, 1947

To E. W. Campbell, Director, Sanitary Engineering
Re: Testing of Water Supplies for Public Schools

Your memorandum of July 15, 1947, concerns Chapter 305 of the Public Laws of 1947. You ask whether it would be permissible for the department to charge less than the average cost of making an analysis of water for drinking or culinary purposes, required by said statute.

The statute provides: "The department shall charge the average cost of the analysis for such examination to the municipality required to have such test made."

The language here is clear and unambiguous and therefore does not permit of an interpretation which is opposed to its clear and express terms. The answer therefore is, No.

ABRAHAM BREITBARD
Deputy Attorney General

August 8, 1947

To W. E. Chase, Director Tobacco Tax Division
Re: Amendment to Unfair Sales Act

I have your memo of August 7th, asking for a ruling on the following items:

"(1) Can we revoke a wholesale dealer's cigarette license issued some time ago, if the holder has ceased to act as such, or if he does not now qualify under the definition of sub-jobber in Section 1, sub-paragraph IX, of Chapter 170 as amended?"

Answer. The legislature has authority under its police power to define the qualifications of a sub-jobber, and after this act is effective, August 13th, sub-jobbers must comply with the new statute, notwithstanding the fact that they had a permanent license under the old statute which was undefined.

"(2) Is the attached letter to be sent to all licensed distributors regarding discount to sub-jobbers in keeping with the provisions of Chapters 14 and 170 as amended?"

Answer. In my opinion, this attached letter is in keeping with the provisions of Chapter 14, as amended by the Public Laws of 1947.

RALPH W. FARRIS
Attorney General

August 11, 1947

To Col. Laurence C. Upton, Chief, Maine State Police
Re: Robert Maxwell Associates Agreement for Radio Program

The department acknowledges receipt of your memorandum of August 8th, to which was attached the contract between the Robert Maxwell Associates and the International Association of Chiefs of Police, Incorporated, together with the script of the Wesley Morton Porter murder case.

Under the terms of the contract, the Maxwell Associates agree that fictitious names will be used in the radio broadcast of the cases taken from the actual files of the department, and the same applies with regard to using fictitious names for police officers and officials, unless otherwise agreed in the particular case.

I can see no objectionable matter in the script which you have submitted which would offend the persons there involved so as to create any liability for damages upon anyone.

I return herewith, as you requested, the copy of the contract, and have retained the script.

ABRAHAM BREITBARD
Deputy Attorney General

August 12, 1947

To Earle R. Hayes, Secretary, Employees' Retirement System

In reply to your memorandum of August 8th, which concerns the right to service retirement benefits of an employee of a participating local district, who, prior to his application for retirement, was discharged for good cause, namely the commission of a crime:

The employee at the time of discharge was 66 years of age, and the question you now ask has arisen because of the provisions of law whereby retirement is optional when the employee attains 65 years of age.

Section 5 of Chapter 60 provides in part:

> "Any member in service may retire . . upon written application to the board of trustees . . . provided that such member at the time so specified for the retirement shall have attained age 65."

It seems clear to me that under this section a person at the time of his application for retirement must be "in service," in order to qualify for the retirement benefits.

Section 1, subsection VII, defining "service," is as follows:

> " 'Service' shall mean service as an employee for which compensation is paid by the state." (In this case by the participating local district.)

As the applicant was not in the service of the participating local district, but had been discharged from service before any application for retirement was filed, he cannot qualify for a retirement allowance, even though he could have exercised the right before his services were terminated.

I believe that this view is supported by Section 8 of Chapter 60, which provides:

> "Should a member cease to be an employee except by death or by retirement under the provisions of this chapter, he shall be paid the amount of his contributions, together with such interest thereon, not less than ¾ of accumulated regular interest, as the board of trustees shall allow; . . ."

This applicant ceased to be an employee before retirement and in accordance with the above section is entitled only to the return of his contributions.

ABRAHAM BREITBARD
Deputy Attorney General

August 12, 1947

To E. E. Roderick, Deputy Commissioner of Education
Re: Claim for Refund of Contributions to the Teachers' Retirement Association

I have carefully considered your memo of June 20th with relation to the above matter, and I also have a letter under date of July 12th from Mr. ——.

The claim advanced by him is that he began teaching outside the State prior to 1924 and hence, when he began teaching in this State in 1925, he was entitled to the benefits under the non-contributory teachers' pension provisions now contained in Chapter 37, Sections 212-220, as amended, notwithstanding the fact that in September of 1933 he made written application to the Maine Teachers' Retirement Association to become a member of that system and since that time has made the statutory contributions. His alleged claim to a refund of the contributions made by him is based on the fact that he had "no opportunity to make a choice or to ascertain my (his) status;" but since that time a period of fourteen years has elapsed and he has taken no action whatever to correct his status and comes too late at this time, particularly when the motivating fact must be that the legislature at this last session has passed a retirement act which, it is claimed, provides for more favorable benefits, to teachers who can qualify for non-contributory pensions.

Section 241 of Chapter 38, dealing with the Teachers' Retirement System, provides:

> "Any teacher in service previous to July 1, 1924 may elect between the provisions of sections 221 to 241, inclusive, and the provisions of sections 212 to 219, inclusive, but shall not in any case be eligible to benefits under both."

Having exercised an election to accept the benefits of the Teachers' Retirement System, he cannot at this time have the benefits of the non-contributory pension statutes. Having made choice, he is bound by that choice. Furthermore, there is no provision in the act which authorizes anyone to refund the contributions made by any member except in accordance with the terms of the act. The only instance where provision is made for withdrawing the contributions with interest is where the member withdraws from the service by resignation or dismissal, or in case of death of such member before he becomes eligible for retirement. I therefore advise you that the refund of the contributions made under the facts above stated cannot be made.

ABRAHAM BREITBARD
Deputy Attorney General

Augusta 19, 1947

To Bureau of Taxation

I desire to amplify my memo of June 18, 1947, relative to the propriety of a service station selling gasoline from a tank under a trade name or symbol of its own, notwithstanding that the gasoline dispensed is that of a well-known refiner or manufacturer which advertises its product under the name and symbol adopted by it.

The question then before me was whether a retail seller who conducted a filling station could adopt a name of his own, using that name and symbol on the tank and selling gasoline that he purchased directly from a manufacturer or distributor. I advised that he could not do so under Section 168 of Chapter 88 of the Revised Statutes of 1944.

I am informed by the attorney for a distributor that this ruling has been interpreted by your bureau as applicable to a distributor, in this particular case, who purchases gasoline from various refiners and sells it under a name adopted by him at stations conducted by him and likewise at retail outlets conducted by others who in their tanks use the name and symbol adopted by the distributor.

The action of a distributor in adopting a name of his own for the gas that he sells, and its use either by himself at his service stations or by retail stations purchasing gasoline from him are clearly authorized by Section 169. Hence I want to make clear that my first ruling was not applicable to one who qualifies as a distributor under that section and adopts a symbol or trade name of the product distributed by him.

ABRAHAM BREITBARD
Deputy Attorney General

August 21, 1947

To E. W. Campbell, Director, Division of Sanitary Engineering
Re: Chapter 330, Public Laws of 1947, AN ACT Relating to the Manufacture and Sale of Bedding and Upholstered Furniture

This department acknowledges receipt of your memo of July 15, 1947, in which you ask whether you have correctly interpreted the various sections dealing with permits, tagging, and the attachment of an adhesive stamp to be prepared and issued by your department.

You are hereby advised as follows:

1) After September 1, 1947, a permit is required to qualify those persons who engage in sterilizing or disinfecting secondhand materials intended to be used in the process of making and remaking or renovating any article of bedding or upholstered furniture; and subsequent to September 1, 1947, no person can manufacture for sale, sell, lease, offer to sell or lease or deliver on consignment any article of bedding or upholstered furniture in which any secondhand material has been used, unless the same has been approved by your department in accordance with the regulations of the department.

2) After September 1st, each article containing new material covered by Sections 147-151C, inclusive, must bear a substantial white cloth tag "upon which shall be indelibly stamped or printed, in English, a statement showing the kind of materials used in filling such article, with approximate percentages when mixed, and with the word 'new' clearly printed thereon."

3) After September 1st, each article covered by the same sections, containing secondhand material or a portion thereof shall bear a substantial yellow cloth tag upon which shall be indelibly stamped or printed, in English, a statement showing the kind of materials used in filling such articles, with approximate percentages when mixed, and shall state 'Sterilized and Disinfected.' "

4) The affixing of the adhesive stamp required by Section 151 in addition to the white and yellow tags will not be required until after July 31, 1949.

ABRAHAM BREITBARD
Deputy Attorney General

August 22, 1947

To Ralph C. Masterman, Esq.
Passamaquoddy District Authority

. . An examination of the records here disclosed that you were first appointed on August 9, 1945, to serve for two years. This last appointment is a re-appointment, which under the provisions of the act must be for a term of seven years. Consequently, the fact that you were appointed for a full term would not indicate that you are also the chairman of the board. The act provides that the person designated by the Governor as chairman shall serve the initial term of a director for seven years, and their initial terms were to be determined by lot. It would appear, however, that this procedure was not adopted, but the Governor fixed the initial terms.

Moses B. Pike was appointed for the seven-year term and hence he would be the chairman. I believe, however, that the intention was that the Governor may determine the chairman from the board as constituted. This latter appointment is the Governor's personal appointment and does not require confirmation by the Council. So unless he has, or will designate you as chairman, the mere appointment for a term of seven years does not carry with it the appointment as chairman.

In answer to your other questions I would say that upon your qualification under your re-appointment it would be necessary for you to file a new bond, as these qualification bonds continue only during the term of the appointed official and expire with the expiration of the term. I believe that the premium for this bond would be a part of the actual expenses for which a director would be entitled to reimbursement.

ABRAHAM BREITBARD
Deputy Attorney General

August 25, 1947

To Marion Martin, Commissioner of Labor
Re: Chapter 25, § 24, as amended

With reference to Chapter 25, Section 24, as amended by P. L. 1945, Chapter 278, which in part provides that "no male minor under 16 years of age and no female shall be employed in any . . . hotel . . . more than 54 hours in any one week,":

Your inquiry is whether a sporting camp consisting of a main building where food is served, surrounded by a cluster of camps that are used for sleeping accommodations, would fall within the definition of "hotel."

From what I have read, the courts seem to be inclined to the view that the operation of a business such as is above described would come within the definition of a hotel.

In a case decided in Missouri in 1942 and reported in 164 Southwestern Reporter, 2d Series, at page 613, the Court said:

> "It is quite obvious that the business or occupation carried on by plaintiffs through their tourist camp has all the essential characteristics of the business or occupation of keeping a hotel. It would be strange in-

deed if the business or occupation of keeping a hotel conducted through the use of a single building should be subjected to regulation while the same business or occupation conducted through the use of a group of buildings, such as a tourist camp, should be exempt from regulation. A tourist camp is none the less a hotel because the business or occupation is conducted through the use of a group of buildings rather than through the use of one."

I am therefore of the opinion that the above provisions of the statute quoted would be applicable to a sporting camp or a tourist camp.

ABRAHAM BREITBARD
Deputy Attorney General

September 1, 1947

To Harland A. Ladd, Commissioner of Education
Re: Legal Debt Limit of a Town

I have your memo of September 2d, stating that a question has arisen concerning the debt limit of towns. You state that in some instances there is considerable difference between the valuation of a town as determined by its local assessors and as determined by the State Tax Assessor, and you inquire: "Is the legal debt limit of a town (.05 of its valuation) based on local valuation or on State valuation?"

Answer. Article XXXIV, Amendments to the Constitution of Maine, provides:

"No city or town having less than forty thousand inhabitants, according to the last census taken by the United States, shall hereafter create any debt or liability, which single or in the aggregate, with previous debts or liabilities shall exceed five per centum of the last regular valuation of said city or town; . ."

On a close reading of the Constitution, you will note the words that I have underlined, "the last regular valuation of said city or town," which would be that of April 1, 1947, by the local assessors of the town, rather than the last regular valuation determined by the State Tax Assessor.

RALPH W. FARRIS
Attorney General

September 12, 1947

To W. E. Chase, Director, Division of Tobacco Tax

Your memo of September 12th received, relating to the amendment to the Unfair Sales Act, provided in Chapter 130, P. L. 1947. You call my attention to the fact that this statute defines the term "sub-jobber" as follows:

IX. "The term 'sub-jobber' shall mean and include a wholesaler who purchases cigarettes at wholesale for the purpose of resale to retail dealers,

and who maintains a regularly established place of business where stocks of cigarettes are kept for sale and whose sales are chiefly to other persons for resale."

In connection with this you state that your department is preparing new application forms for wholesale dealers' licenses, and you request my opinion in regard to the following question which you plan to print on said application:

"Will you sell at least 75 per cent of your cigarettes, cigars, and tobacco products to other persons for resale?"

You inquire if you have authority to set 75% of the applicant's sales as a minimum, or if this figure should be 51%, or some other amount, in order to determine whether their sales are "chiefly" at a wholesale rate.

In answer to your question I will say that the word "chiefly" in the clause, "whose sales are chiefly to other persons for resale," in the amendment, Chapter 130, P. L. 1947, means in law, "in the first place, principally, pre-eminently, above all, especially, for the most part, mostly, mainly." Our courts have decided in some cases, where people were required to be "chiefly" engaged in tillage of the soil, that if they devoted only about 50% of their time to it, they were not farmers within the federal act. Therefore in my opinion 75% of the sales would comply with the wording, "whose sales are chiefly to other persons for resale," and you have a right to set that percentage.

RALPH W. FARRIS
Attorney General

September 12, 1947

To Harland A. Ladd, Commissioner of Education
Re: Contracts for School Buses

Referring to your memo of September 5th, relating to time-purchases of school buses and requesting an opinion as to the legality of towns purchasing school buses to be paid for over a period of three years:

I refer you to Section 8 of Chapter 37, R. S., relating to the transportation of pupils, which provides that contracts for said conveyance may be made for a period not to exceed three years. I feel that that is broad enough to cover the purchase of school buses for the purpose of carrying out the provisions of this section.

As you well know, the law provides that in all cases the conveyance of children shall conserve their comfort and safety, shall be in charge of a responsible driver, etc., and if the selectmen and the superintending school committee see fit to purchase buses on conditional sales contracts for a period not to exceed three years, I think this would be well within their rights under Section 8.

RALPH W. FARRIS
Attorney General

September 24, 1947

To the Members of the Westport-Wiscasset Bridge District:

Question has been raised as to the meaning of Section 9 of the Act creating the Westport-Wiscasset Bridge District, Chapter 103 of the Private and Special Laws of 1947. This section in part provides:

> "No sum shall be expended by the district unless and until the district shall have received a license or permit satisfactory to the district from the United States government to construct, operate and maintain said bridge and its highway approaches in, on and over the Back river . . ."

The question is whether the members of the district are justified in incurring the expenses involved in obtaining engineering surveys which are essential in order to apply for a permit from the United States government, to construct and maintain said bridge over said waters.

I am of the opinion that such an expenditure may be made in a sum, however, not to exceed $2500, provided in Section 8, as I believe that the limitation of Section 9 on expenditures to be made by the district before obtaining the permit relates to the construction of the bridge and not to the preliminary steps necessary in order to obtain the permit.

You are therefore advised that you may contract for these engineering surveys.

ABRAHAM BREITBARD
Deputy Attorney General

September 25, 1947

To C. T. Russell, Deputy Commissioner of Labor and Industry
Re: Chapter 25, § 36

Receipt is acknowledged of your memorandum of September 24th, asking for an interpretation of Section 36 of Chapter 25 of the Revised Statutes of 1944, which reads as follows:

> "The proprietor, manager, or person having charge of any mercantile establishment, store, shop, hotel, restaurant, or other place where women or girls are employed as clerks or help therein in this state shall provide chairs, stools, or other contrivances for the comfortable use of such female employees for the preservation of their health and for rest when not actively employed in the discharge of their respective duties. Whoever violates any of the provisions of this section shall be punished by a fine of not less than $10, nor more than $100."

The inquiry is whether a mill where goods are manufactured would come within the provisions of this section.

The word "shop" has been defined in a number of cases as a place of manufacture or repair. Thus, a place used for the manufacture and repair of pianos and a roundhouse were each held to come within the definition of the term "shop" as used in the statutes there considered; but if there is any question about it, it would seem to be answered by the clause, ". . or other place where women or girls are employed as clerks or help. . . ."

I am therefore of the opinion that a mill or other manufacturing plant would be included within the terms of this statute, and the owners would be obliged to comply therewith.

ABRAHAM BREITBARD
Deputy Attorney General

September 30, 1947

To Homer M. Orr, Purchasing Agent
Re: Supplies for State Institutions

Receipt is acknowledged of your memo of September 25, 1947, regarding purchase of milk for State institutions, or advertising for bids.

Authority for this purpose is vested only in the Bureau of Purchases, and consequently under the provisions of Chapter 14, Section 35 et sequitur, the State Purchasing Agent is the only one who may purchase or contract for supplies, after requesting bids therefor.

ABRAHAM BREITBARD
Deputy Attorney General

October 6, 1947

To David H. Stevens, Commissioner of Health and Welfare
Re: Review of Opinions regarding OAA, ADC and AB, July 1 and 8, 1947, by Assistant Attorney General Bird

I have your memo of October 6th stating that "in view of the number of hardship cases that have occurred, and also because of the questions which have been raised as to the soundness of the legal interpretation whereby income must be deducted from the maximum grant, I am writing to ask you to review these opinions as they relate to this subject in connection with Old Age Assistance, Aid to Dependent Children, and Aid to the Blind."

In reply to your memo I will say that I have studied the three opinions rendered by Mr. Bird as of July 1st and 8th, 1947, and I am hereby revising said opinions of Mr. Bird to conform more to the spirit and intent of the law.

On July 1st Mr. Bird rendered an opinion on Aid to Dependent Children, consisting of five pages which contain construction of many words in the statute; but I have to deal in this opinion only with the last paragraph of said opinion on page 5, which reads as follows:

"It is my opinion that the administrative agency in fixing the amount of the grant to a recipient in Aid to Dependent Children cases should first determine the resources of the recipient and the expenditures necessary to provide a reasonable subsistence as defined herein. The grant should be the difference by which the total expenditures or the statutory maximum, whichever is the lesser amount, exceeds the resources. . . ."

In revising this opinion I have studied carefully the amendment contained in Section 2 of Chapter 370, P. L. 1947, and I note that the legislature has not changed the language relating to due regard to the resources and necessary expenditures of the family and the conditions existing in each case,

"when added to all other income and support available to the child, to provide such child with a reasonable subsistence compatible with decency and health," but it did write in the following language by way of amendment, "but not exceeding $50 per month for such dependent child. . ."

It is my opinion that the legislature set a maximum amount of the grant for such dependent child; but the income and resources should not be deducted from the maximum amount in determining what is a reasonable subsistence compatible with decency and health for such dependent child, under the rules and regulations of the department.

On July 8th Mr. Bird, then Assistant Attorney General, rendered your department two opinions, one relating to Old Age Assistance and the other relating to Aid to the Blind.

The Old Age Assistance opinion construed the provisions of Section 260 of Chapter 22, R. S., as amended, and he stated in the last paragraph of said opinion, on page 3:

"It is my opinion that the administrative agency, in fixing the amount of the grant to recipients in Old Age Assistance cases, should first determine the resources of the recipient and the expenditures necessary to provide a reasonable subsistence, as defined herein, (compatible with decency and health, but not exceeding $40 per month.) The grant should be the difference by which the total expenditures or the statutory maximum, whichever is the lesser amount, exceeds the resources."

I have reviewed the statute in this case as amended in the 1945 and 1947 legislatures, and I am constrained to reverse this opinion by advising you that it appears to me that the legislature did not intend, after adding the income and other resources of the recipient, that this amount should be deducted from the $40 which is the maximum grant to be made under the statute, and that your department should determine the amount of assistance which any person should receive on a budgetary basis with due regard to the conditions existing in each case and in accordance with the rules and regulations made by the department; and this assistance should be sufficient when added to all other income and support of the recipient, to provide such person with a reasonable subsistence compatible with decency and health, and income should not be deducted from the maximum grant.

The other opinion of July 8, 1947, relates to Aid to the Blind, Section 285 of Chapter 22, R. S., as amended by Sections 3 and 4 of Chapter 251, P. L. 1945.

In this opinion Mr. Bird stated in the last paragraph of the third page thereof, "It is my opinion that the administrative agency in fixing the amount of the grant to a recipient in Aid to Blind cases should first determine the resources of the recipient and the expenditures necessary to provide a reasonable subsistence as provided herein. The grant should be the difference by which the total expenditures or the statutory maximum, whichever is lesser in amount, exceeds the resources."

Section 285 of Chapter 22, as amended, reads as follows:

> "The amount of aid which any such person shall receive shall be determined on a budgetary basis with due regard to the conditions existing

in each case and in accordance with the rules and regulations made by the department. This aid shall be sufficient, when added to all other income and support of the recipient, to provide such person with a reasonable subsistence compatible with decency and health, but not exceeding $40 per month."

In this case I rule the same as I did in the Old Age Assistance case, that the income should not be deducted from the maximum grant in arriving at the amount of relief that each person should receive under this statute.

RALPH W. FARRIS
Attorney General

October 7, 1947

To Hon. Horace Hildreth, Governor of Maine
Re: Letter, Col. Loring F. Stetson, Jr., to Governor Hildreth regarding personnel stationed at Dow Field—hunting licenses

To clarify the situation for the colonel, I think the section of the law applicable would be helpful. Section 58, subsection V, of the Inland Fish and Game Laws, is as follows:

"V. Any citizen of the United States shall be eligible for any resident (fishing or hunting) license required under the provisions of this chapter, providing such person is domiciled in Maine with the intention to reside here, and who has resided in this state during the 3 months next prior to the date an application is filed for any license under the provisions of this chapter."

As used in this statute, domicile with the intention to reside here would be the same as that required in order to be eligible to vote here, except that in the latter case six months must elapse after the domicile is established, while here it is three months. "Domicile" has been defined to mean that place where a person has his fixed habitation with the intention to make it his permanent home. To constitute a permanent residence, the intention must be to remain for an indefinite period.

Applying these principles generally you have a situation where these men are stationed at this airfield in Bangor, which would not be a residence of their choice, but rather selected by the military authorities as the place where they are to be stationed. They come from different parts of the country, where presumably they have their domiciles and intend to return to their domiciles of origin just as soon as their terms of service in the Air Corps expire; or if they are regulars, then wherever they may be transferred. It is thus doubtful whether any of the personnel has formed an intention to remain permanently in Maine. Assuming that there may be some . . . who are married and residing with their families in the city of Bangor or off the government reservation, it is true that the latter may abandon their former domicile and establish a domicile here, by intending to make this their permanent domicile and with the intent to return here, irrespective of where they may be transferred. As to this phase, each case would have to be examined and decided on its own facts.

The problem is purely one for the legislature. It is not for the Governor, or for this department, as we do not legislate. We apply the law as we find it. Thus, by Section 32, subsection II, all employees of the Veterans Administration Facility were classified as residents of the State for the purposes of obtaining fishing licenses; and then later, by amendment in 1947, the area was limited to within five miles of Togus; but the legislature has not provided for military personnel located at government reservations, and hence they must be considered as non-residents, excepting, of course, those who are residents of the State.

ABRAHAM BREITBARD
Deputy Attorney General

October 14, 1947

To Lucius D. Barrows, Chief Engineer, State Highway Commission

I have your letter of October 6th in which you say that the Highway Commission is uncertain as to the interpretation of Section 3 of Chapter 329, P. L. 1947, known as the Town Road Improvement Fund Act. You state that the particular provision upon which an opinion is requested reads as follows: "provided, however, that the above limitation shall not apply to the $200 referred to in section 42-B." You further state that the Commission assumes that this $200 can be spent upon improved roads, but in what manner?

"(1) Is the $200 still subject to the purposes and limitations described in section 2? (Several municipal officers have inquired if it may be spent for gravel stumpage on state aid roads or town roads)."

In answer to question (1) I will say that the $200 mentioned in Section 3 of the 1947 Act would be subject to the purposes and limitations described in Section 2. Section 2 provides that the various towns shall furnish all local road material, including rocks, sand, gravel, etc. I note that the legislature struck out the authority of the State Highway Commission to allocate money for stabilizing with tar or other material.

"(2) For what purpose may the $200 be used where the only road is all improved and is being maintained by the Highway Commission?"

My answer to No. 2 is that the $200 cannot be used in a township where the roads are all improved and being maintained by the State Highway Commission.

"(a) May it be spent for additional maintenance work by the municipal officers or the Highway Commission?"

My answer is, No.

"(b) May it be used as a part of the town's share of the cost of maintenance? (Towns contribute to the state $70 per mile for maintenance of improved state highways and $40 per mile for improved state aid highways)."

My answer to subsection (b) is, No.

"(c) Or should it be rescinded in these cases?"

Answer, Yes. Under Section 4 of Chapter 329, P. L. 1947, a new section is numbered 42-F, and under subdivision III thereof all improved sections of federal, state, state aid, third class and so-called Resolve highways are excepted from the definition.

RALPH W. FARRIS
Attorney General

October 20, 1947

To Hon. Horace Hildreth, Governor

I have been requested by the Chief Warden of the Inland Fisheries and Game Department to advise you whether under our statutes the power is vested in any one to extend the open season in view of the closing of the woods to hunting on account of the long and continuous dry spell which we are now experiencing.

The statutes are very specific in the provisions fixing the periods during which game may be hunted by setting forth the opening and closing days, or by providing for an open season during a specific period and declaring all other time as closed season.

No provision, however, is made to meet a situation when on account of the great fire hazard due to lack of rain, hunting is banned until the danger no longer exists. Nor is anyone vested with the power to change, modify or extend the time for hunting.

While the Governor, by the Public Laws of 1945, Chapter 344, the title of which is AN ACT Relating to the Prevention of Forest Fires, is authorized by proclamation to suspend the open season for hunting and fishing or to prohibit smoking and building fires out of doors in the woods, and to "annul" the suspension when the fire hazard has been eliminated, there is nothing in this act which either expressly or by implication authorizes the Governor to continue the right to hunt during the closed season for the number of days the suspension is operative.

I must, therefore, advise you that the open season for hunting the various types of game cannot be extended beyond the dates specifically fixed in each case by the provisions of the Inland Fish and Game Laws.

I think perhaps that this is a matter that may be referred to the Legislative Research Committee, to study the present legislation and see if the same should not be modified to meet a situation such as now confronts us.

ABRAHAM BREITBARD
Deputy Attorney General

October 31, 1947

To Major Joseph F. Young, Jr., Deputy Chief, Maine State Police

Receipt is acknowledged of your memo of October 15th, wherein you ask this department to advise with regard to Section 116 of Chapter 19 of the motor vehicle laws, as amended by the Public Laws of 1947, Chapter 320. Your inquiry is whether a car may have more than one spotlight, or whether it is limited to one. Doubt has arisen because of the wording of the law, which is:

"There shall not be used on or in connection with any motor vehicle a spotlight so-called . . . except that such spotlight may be used for the purpose of reading signs and as an auxiliary light in case of necessity when the other lights required by law fail to operate."

I believe that the intent was not only to prohibit the use of, but to limit the number of spotlights that may be attached to an automobile. Hence I advise you that this statute would be violated if more than one spotlight were affixed to the motor vehicle.

ABRAHAM BREITBARD
Deputy Attorney General

November 4, 1947

To Laurence C. Upton, Chief, Maine State Police
Re: Chapter 320, P. L. 1947

This department acknowledges receipt of your memo of October 27, 1947, which is in part as follows:

"Reference is made to the above named law relating to the regulation of spot, fog, or auxiliary lights.

"The last sentence of this law provides: 'This section shall not apply to ambulances, police and fire department vehicles, vehicles engaged in highway maintenance, wreckers and public utility emergency service vehicles.'

"We would like your opinion on the exact meaning of '—police and fire department vehicles—'. We have two specific questions in mind: (1) Would this include vehicles used by volunteer firemen? There are two problems presented, one where the municipalities pay mileage for the use of the vehicle, and the second where the vehicle is furnished gratis. (2) Would it include vehicles used by fire investigation and inspection services, such as the Bureau of Fire Prevention, Inspection and Investigation of the State Insurance Department?"

The vehicles above mentioned in categories one and two are excluded from the operation of the excepted vehicles contained in the sentence quoted. The words "police and fire department vehicles" are well understood to mean the vehicles of an organized police or fire department, belonging to the department. In the case of a fire department, it would include not only the fire-fighting apparatus and equipment, but also the vehicles used by the fire chief and his deputy, provided by the municipality as department vehicles. It would not apply to the private pleasure cars used by volunteer firemen. In other words, it would not include a vehicle used for pleasure or business and when the occasion demands it, to go to a fire, but relates solely to vehicles built, equipped and used solely in the extinguishment of fires.

ABRAHAM BREITBARD
Deputy Attorney General

November 5, 1947

To W. Earle Bradbury, Deputy Commissioner Inland Fisheries and Game
Re: Fines and Fees

Your memorandum of October 30th has been received. You inquire whether, under Chapter 33 of the Revised Statutes of 1944, Section 110, which provides that all fees, penalties, officers' costs, and other moneys paid in to the court for violation of the provisions of that chapter (Inland Fisheries and Game Laws) shall accrue to the Treasurer of State, these fees, etc., are payable to the State when the arresting officer is a county sheriff or his deputy or a town constable.

The provision of law, you will notice, is that all fees, costs, etc., shall accrue to the Treasurer of State, for a violation of the provisions of that chapter. It does not then matter whether the offense is prosecuted by officers other than game wardens. Under Section 19 of the Act, sheriffs and their deputies, police officers, and constables are vested with the same powers as game wardens and are entitled to the same fees. The only difference is that in the case of a warden, while the fees are taxed, they are payable to the department, while in the case of a deputy sheriff or constable, he would be entitled to the fees, and the fine or penalty is to be paid by the county treasurer, who receives the same in the first instance, to the Treasurer of State, to be credited to the Department of Inland Fisheries and Game.

ABRAHAM BREITBARD
Deputy Attorney General

November 13, 1947

To Col. Laurence C. Upton, Chief, Maine State Police
Re: Turnpike Authority

The department acknowledges receipt of your memorandum of November 12th relative to the turnpike constructed by the Maine Turnpike Authority, which will soon be opened to public travel between Portland and Kittery.

In your memo you ask: "In order that proper instructions may be issued to our men, will you be kind enough to give us your opinion on the following:

"1. Will the Maine Turnpike be considered a 'public way' as defined in Sec. 1 of Chapter 19 of the Revised Statutes?

"2. If it is not a public way and the general motor vehicle laws do not apply to it, would the State Police have authority to enforce such Rules and Regulations for the governing of the operation of motor vehicles as may be established by the Maine Turnpike Authority?

"3. Will the jurisdiction of the State Police to enforce the general criminal laws be the same on the Turnpike as on other private lands within the State?"

We answer the questions in the order in which they appear.

1. The turnpike road is a public way as defined in Section 1 of Chapter 19 of the Revised Statutes, as it has been established by public authority for

public use. The road is open to every traveler who has the same right to use it, by paying the toll established by the Authority, as he would have to use any other public highway. All provisions of Chapter 19 are applicable to this highway save one exception whereby "The Authority may by regulation prescribe a maximum limitation on the speed of vehicles using said turnpike . . at any point or place thereon, and . . to regulate the . . weight of vehicles admitted to the turnpike." § 11(b), Ch. 69, P. & S. L., 1941. However, unless the Authority does regulate with respect to speed and weight, the provisions of Chapter 19 would be applicable.

2. This has been answered in part by the preceding answer; but in addition the State Police would have authority, if called upon to do so, to enforce such rules and regulations as the Authority may promulgate.

3. The State Police would be authorized under the provisions of law prescribing their powers and duties, to arrest all offenders who violate any criminal law of the State on this highway or who may be fugitives from another State while on this highway.

ABRAHAM BREITBARD
Deputy Attorney General

December 2, 1947

To Honorable Horace Hildreth, Governor of Maine
Re: North Berwick School District

The act creating the North Berwick School District, Chapter 59, P. & S. L. 1947, provided that it shall not take effect unless accepted and approved by a majority vote at a special election to be called or at a regular town meeting not later than three months after the effective date of the act. The act became effective on August 13th and thus acceptance should have been voted on at a town meeting to be held on or before October 13th.

Apparently such a town meeting was held and the act was voted down. Inquiry is now made whether the Governor and Council would have the authority to extend the three-month period. No such authority, of course, exists. The act for all purposes is dead and will have to be re-enacted at another session of the legislature in order to resubmit the same to the inhabitants.

I think I ought to say to you that the criticism made by the inquirer of his inability to obtain the act for any advice thereon has no foundation. The proof of this is that he is the only one who finds himself in that position, whereas of the large number of districts formed—water, sewer, school, and other quasi-municipal corporations—all the others were able to obtain the information so that their meetings were held in due course and their charters acted upon.

Shortly after the legislature adjourned this office had innumerable inquiries from various persons interested in the legislation enacted for the benefit of their towns, and they all received the desired information and any number of conferences were held in this office by attorneys representing various districts, as well as attorneys representing banks to which applications had been made to finance the bonds, etc. That the writer was not diligent is very evident from the fact that although he sponsored the bill, etc., he speaks of the 90-day period. Three months was the time fixed in the bill. There is a difference.

ABRAHAM BREITBARD
Deputy Attorney General

December 3, 1947

To Linwood F. Crockett, Esq., Clerk of Courts, Cumberland County
Re: Witness Fees, State Police

. . The pressure of work here at the office while the Attorney General was away has prevented me from responding earlier to your inquiry. . . Your question concerned the disposition of fees taxed for State Police as either arresting officers or witnesses in prosecutions under the motor vehicle law. Section 134 of Chapter 19 is the one about which you expressed doubt. You brought to my attention the various changes that this section has undergone, beginning with the Revised Statutes of 1930.

This section provides that all fines and forfeitures collected under the provisions of that chapter shall accrue to the county where the offense is prosecuted. The cases hold that the words, "fine" and "forfeiture", when used as a punishment for a statutory offense, are used synonymously and mean the same thing. See *Commonwealth v. Novak*, 272 Mass. 133; *State vs. McConnell*, 70 N. H. 58, and other cases collected in "Words and Phrases, Permanent Edition," volume 17 at page 323.

In *Ryan v. State*, 176 Ind. 281, the words "fines and forfeitures," as contained in the Constitution and statutes of that State, authorizing the Governor to remit such fines and forfeitures as may be prescribed by law, do not include costs in a criminal case. That Court quoted *Anglea v. Commonwealth* (1853), 10 Gratt. (Va.) 696:

> "The fine is imposed for the purpose of punishment. *** But with regard to costs it is different. They are exacted simply for the purpose of reimbursing to the public treasury the precise amount which the conduct of the defendant has rendered it necessary should be expended for the vindication of the public justice of the state and its violated laws. *** The right to enforce payment of them is a mere incident to the conviction, and thereby vested in the commonwealth for the sole purpose of replacing in the treasury the amount which the defendant himself has caused to be withdrawn from it. And it can make no substantial difference whether the money is going directly to the witnesses and others who are entitled to be paid for their services in the prosecution, or the commonwealth having paid them, stands by substitution in their place."

While it is true that when the judgment of the court is a fine and costs, the respondent, in order to comply with the sentence, is obliged to pay the total fine and costs, it does not necessarily follow that the total costs will accrue to the county. Unquestionably, if under this chapter the arresting officer was a constable or deputy sheriff, the county treasurer would not retain the costs taxed for them, but would pay it to them. Likewise, the county treasurer would be obliged to pay it to the State Police, except that Section 5 of Chapter 13 (amended by P. L. 1947, Chapter 385, not pertinent to this inquiry) provides that the State Police shall not receive any fee as a complainant or witness or for making an arrest or for attendance at court. It does provide, however, that such fees may be taxed as costs for such complainant or witness in the usual manner.

By the second section of Chapter 13, such fees shall be taxed on a bill of costs (for a State Police officer) and shall accrue to the Treasurer of State. Without this provision and that contained in the end of Section 5, the State Police officer would be entitled to receive these fees; the legislature, however, has diverted them to the State Treasurer. I can therefore see no inconsistency in these provisions, as when read together, which they should be, it is clear that the taxable costs for these officers go to the State Treasurer. I think that this view is also confirmed by Section 5 of Chapter 137 by which clerks of courts are required to pay the fines, costs and forfeitures collected to the treasurer of the county, and the county treasurer is then, upon approval of the county commissioners, required to pay to the State, town, city or persons any portion of the fines, costs and forfeitures that may be due.

ABRAHAM BREITBARD
Deputy Attorney General

December 3, 1947

To General George M. Carter, Adjutant General
Re: Wages and Subsistence—Emergency

Receipt is acknowledged of your memo dated November 20th concerning the obligation of local communities to be responsible for the payment of wages and subsistence of National Guard units, when the communities called for their assistance or when National Guard units were sent to assist the civil officers in protecting property in the fire areas.

It is my opinion that under the present law municipalities have no obligation to pay the compensation of these men or for their rations. I have done some research, although I have not examined with particular care the various enactments since 1857, because I have felt that it would not serve any purpose in view of the changes recently made and hereinafter referred to. I start with 1857, because in that Revision, under Chapter 10, Section 92, provision was made, where troops were sent into a city or town, that such city or town shall cause suitable provisions, quarters and ammunition to be furnished to such troops, "and the expenditures therefor shall be reimbursed by the State."

The military laws were omitted by special act from the Revisions of the Statutes which followed in 1871, 1883 and 1903, although the revised acts dealing with this subject in the various session laws which followed thereafter were retained as these Revisions were adopted.

In 1916, and again in 1930, the military laws were again included in the Revised Statutes. I find that under Chapter 18 of the latter, Section 46 was made up of two paragraphs, of which the first provided for the allowance of pay to the various grades of officers and men, and the second provided that when the National Guard is called forth in aid of the civil authorities or assembled in obedience to such calls, its members" . . . shall be paid by the county where such service is rendered." Then there was provision for the raising of this money by the county by certificates of indebtedness which were to bear interest at the rate of 6% per annum and made payable on the first day of January next following two months from their issue. Provision

was then made for the raising of the amount thereof in the next tax budget of said county, and the amount so raised was to be applied to the payment of such certificates.

In 1939 by Chapter 277, Section 2, the second paragraph of Section 46 was amended by striking out all that portion thereof which provided that the compensation should be paid by the county. What remained thereof is now incorporated in the present Revision in Section 58 of Chapter 12, which is as follows:

> "When the national guard, or other authorized state military or naval forces, or any portion thereof, shall be called forth in aid of the civil authorities, or assembled in obedience to such calls, as provided in section 2, all officers and men thereof shall receive the pay set forth in this section."

The pay there referred to is in the preceding paragraph, which fixes the rate of compensation.

In view of the deliberate act of the legislature in striking out in 1939 the obligation of the county to pay, I cannot see any obligation on anyone else but the State, where it now rests.

ABRAHAM BREITBARD
Deputy Attorney General

December 16, 1947

To Fred M. Berry, State Auditor

. . . You ask the following question: "Have the Municipal Officers of a town the legal right to expend monies in excess of the appropriation voted at Town Meetings?" . . .

The municipal officers are bound by the terms of the articles in the warrant calling the town meeting providing for the expenditure of money. The officers should not spend more than the taxpayers appropriated at town meeting, unless the statute expressly authorizes an expenditure in excess of the appropriation. You cite one instance where the statute authorizes the town officers to expend up to 15% of the appropriation for the repair of ways.

Section 4, paragraph 13, Chapter 95, R. S., relating to equity powers, provides that when counties, cities, towns, school districts, village or other public corporations, for a purpose not authorized by law, vote to pledge their credit or to raise money by taxation or to exempt property therefrom, or to pay money from their treasury, or if any of their officers or agents attempt to pay out such money for such purpose, the court shall have equity jurisdiction on petition or application of not less than 10 taxable inhabitants thereof, briefly setting forth the cause of complaint.

I feel that it would be good practice for your office to advise municipal officers to keep within their appropriations, unless otherwise authorized by law to exceed same.

RALPH W. FARRIS
Attorney General

December 16, 1947

To Harland A. Ladd, Commissioner of Education
Re: The State's Contribution to Maine Teachers' Retirement Association

Referring to your memo of October 30th relating to the provisions of Sections 221-224, Chapter 37, R. S. 1944, establishing the Maine Teachers' Retirement Association:

You state that a question has arisen as to the interpretation of Section 227, relating to the accounting policy when reporting in September contributions made by the teachers for a given year, to show the total withholding from teachers' salaries. Paragraph 3, Section 227, Chapter 37, R. S., provides as follows:

> "During the months of August or September of each year, the retirement board shall notify the commissioner of the exact amount paid in between July 1st and June 30th, preceding, by the members of the teachers' retirement association; . . ."

I feel that the law is quite clear in this regard.

You refer to State Auditor Berry's conclusions that the law requires the State to match only those funds actually paid in between July 1st and June 30th. That is my interpretation of the statute as it reads. Your accounting should be based, according to paragraph 3, on the amount paid during the school year but not on what has been paid in during the school year but has not been reported by the Retirement Board.

RALPH W. FARRIS
Attorney General

December 16, 1947

To David B. Soule, Commissioner of Insurance

Referring to your memo of October 28th, on the interpretation of the provisions of Chapter 88, Section 53, R. S., as amended:

First, you ask me whether or not a carnival which comes into this State to play only at a Maine State Fair and then to return to its State of domicile is subject to a license in accordance with the provisions of the statute.

In answer to your question I will say that it would not be considered a traveling amusement, as it does not travel from place to place in Maine.

Your second question is whether a vaudeville show or any theatrical act which exhibits at a theatre or other public auditorium is to be classed as a traveling amusement show.

My answer to that question is in the negative. A theatrical show does not come within the meaning and purport of this statute.

RALPH W. FARRIS
Attorney General

December 17, 1947

To H. H. Harris, Controller

Your inquiry of December 2d has relation to the payment of interest on the non-negotiable bonds of the State held by the University of Maine and the Augusta State Hospital, authorized under the Resolves of the Legislature, 1917, in the former case, Chapter 47, and in the latter, Public Laws of 1917, Chapter 89.

These Acts provided that interest at 4% on said bonds should be paid until their maturity. Each of these bonds matured on July 1, 1947. No provision was made either for payment of the bond or an extension of payment. The legislature, however, did provide by appropriation funds with which to pay the interest over and above what the investment earned. Under these circumstances I am of the opinion that the legislature clearly intended that such interest be paid at the rate of 4% after the maturity, at least for the next biennium.

I think, however, that when the legislature comes in, Resolves should be introduced extending the time of payment of these bonds, or providing means for their redemption.

ABRAHAM BREITBARD
Deputy Attorney General

December 23, 1947

To Ernest H. Johnson, State Tax Assessor

This department acknowledges receipt of your memo of December 22, 1947, relative to Chapter 19, Section 41, of the Revised Statutes, as amended. Your inquiry is:

"The above statute states that any owner who has paid his excise tax for a motor vehicle, which he replaces during the calendar year, may have credit allowed for the excise tax paid in excising the subsequent vehicle, 'provided, however, that only one such credit shall be allowed in any one calendar year.'

"There is no question concerning the above in the case of an individual or corporation owning a single motor vehicle.

"There is question in the case of an ownership of more than one motor vehicle, i. e., does the above statute mean in the case of fleet ownership

"1. The owner shall be entitled in case of transfer to credit for first vehicle transferred during the year and to that one credit only; or

"2. The owner shall be entitled to one credit for each vehicle originally excised but later transferred during the calendar year."

The answer to question 1 is in the negative.

The answer to question 2 is that where the owner has more than one vehicle, he is entitled to one credit on each vehicle.

ABRAHAM BREITBARD
Deputy Attorney General

December 31, 1947

To Harland A. Ladd, Commissioner of Education
Re: Chapter 357, P. L. 1947

I have your memo of December 24th relating to the above chapter providing for the formation of community school districts, and note that the Town of Fort Kent and near-by towns are considering the formation of a community school district to provide for secondary school needs in the area and that people residing in Township 17, Range 5, W.E.L.S., would like to have the benefits of a community high school available for their children. They inquire if the State, acting through your department, could participate in the organization and operation of a community school district. You ask the following questions:

"(1) Is there any way that the State—as responsible for providing school privileges in unorganized townships—can participate in a community school district organized in towns adjacent to or near unorganized townships and providing secondary school opportunities which are available to pupils residing in Unorganized Territory?"

Answer. It is my opinion that the State cannot participate in a community school district under the provisions of Chapter 357, P. L. 1947. However, under the provisions of Section 92-I of said chapter, after organization, the community school committee shall have the powers and duties with respect to the community school conferred upon superintending school committees under the general statutes and those enumerated in Section 92-C of said chapter.

"(2) What, if any, legislative action would be necessary to permit state participation in a community school district?"

Answer. Section 92-H of said chapter provides that when community schools are established, they may be considered the official secondary schools of the participating towns, and all provisions of general law relating to public education shall apply to said schools. Any aid from your department should come through the general statutes relating to secondary schools, with the provisions of which you are familiar. They need not, therefore, be enumerated here.

RALPH W. FARRIS
Attorney General

January 16, 1948

To D. T. Malloy, Sea and Shore Fisheries
Re: Taking and Canning of Herring

I have your memo of January 15th stating that questions have arisen in connection with the taking and canning of herring during the period, December 1st to April 15th of the following year, under the provisions of Section 34, Chapter 34, R. S.; and you ask my opinion as to whether or not any herring less than 8 inches long may be taken in Maine waters for canning purposes during this period; also whether or not any herring less than 8 inches in length, regardless of where they have been taken and regardless of the name under which they are labeled, may be processed and canned during the same period.

In answer to your question I call your attention to Chapter 248 of the Public Laws of 1947, which amends Section 200 of Chapter 27, R. S., and Section 24 of Chapter 34, R. S. The first section of Chapter 248 attempts to define sardines for the purposes of Sections 198-205 inclusive of Chapter 27, R. S., and it describes a sardine as "a clupeoid fish, being the fish commonly called herring, particularly the clupea harengus." Then the legislature provided that the fish and fish products described as herring shall be excluded from the meaning of the term "sardine," so that the words "herring" and "sardine" are used synonymously in this Act. This Act excludes from the definition of sardine and herring:

I. Pickled herring of any type packed in tin or glass, provided that the product is not hermetically sealed and heat processed;

II. Kippered snacks, kippered herring, cocktail spread, sardine spread, Riga sprats, sardine salad, or sardine luncheon, provided that none of these products are packed in the 1/4 or 3/4 sardine tins and provided that none of these products shall be primarily labeled with only the term "herring" or "sardine."

I again call your attention to Section 34 of the Sea and Shore Fisheries Law re-enacted in 1947, which is now Chapter 34 of the Revised Statutes of Maine by enactment of the Maine Legislature and became effective August 13, 1947. The last paragraph of Section 34 of Chapter 34, R. S., as re-enacted in 1947, practically nullifies the provisions of Section 34 of Chapter 34, R. S., with this language, "Nothing contained in this section nor in the 3 succeeding sections shall be so construed as to prohibit the taking, processing, and sale of fish and fish products which may be taken, processed, and sold by virtue of sections 198 to 205, inclusive, of chapter 27 and acts amendatory thereof."

In view of this legislation which I have described it is my opinion that herring or sardines can be taken, processed and sold, so long as they are not packed in 1/4 or 3/4 sardine tins and labeled "herring" or "sardines," under the exceptions contained in Chapter 248, P. L. 1947.

RALPH W. FARRIS
Attorney General

January 21, 1948

To Earle R. Hayes, Secretary, Employees' Retirement System
Re: Auburn Public Library

I acknowledge receipt of your memo of January 15th raising the question of whether or not the Auburn Public Library is a quasi-municipal corporation under the provisions of Section 17 of Chapter 384, P. L. 1947. In said memo you quote from a letter which you received from George C. Wing, Esq., attorney of Auburn, Maine, in which he stated substantially as follows:

"The Auburn Public Library is a corporation organized under the charitable and educational statute and is a separate entity from the City of Auburn. It received a grant from Carnegie forty odd years ago and the City of Auburn makes an annual appropriation for its maintenance and operation.

"The help are paid by the Auburn Public Library and not by checks of the City of Auburn. They are employees of Auburn Public Library."

From the statement of facts contained in your memo I believe that this library was not established by the town. While it has an annual appropriation from the town in accordance with Section 28 of the charitable and educational chapter of the Revised Statutes as a private corporation, it is not authorized by law to perform governmental functions or to create subdivisions of its territory, endowed with power to perform and fulfill some part of its own functions within a limited territory. *Augusta vs. Augusta Water District*, 101 Maine at page 150, and *Woodworth vs. Livermore Falls Water District*, 116 Maine 86; also *D. & F. Water District vs. Sangerville Water Supply Company*, 130 Maine 217.

In view of the facts contained in your memo, and taking into consideration the definition laid down in the Augusta Water District case, 101 Maine 148, which reads as follows: "A body politic and corporate, created for the sole purpose of performing one or more municipal functions . . . is a quasi-municipal corporation." . . it is my opinion that the Auburn Public Library is not a quasi-municipal corporation under the provisions of Section 16, Chapter 384, P. L. 1947, so as to bring it within the provisions of the State Employees' Retirement System.

However, I should advise Attorney Wing, when you answer his letter, that it might be well for him to look into the status of the employees of the Auburn Public Library from a standpoint that they may be employees of the City of Auburn and come within the provisions of Section 16 of Chapter 384, P. L. 1947, by virtue of their employment as such, even though they may not be paid by checks of the City of Auburn. There may be some provision in the charter which would make them city employees.

RALPH W. FARRIS
Attorney General

January 22, 1948

To Harold I. Goss, Secretary of State

I have your memo of January 22d, calling my attention to the provisions of Section 17 of Chapter 19, R. S., with particular reference to the 8th paragraph of said section, which reads in part as follows:

> "Notwithstanding the preceding provisions of this section, the secretary of state may provide and issue a suitable device in lieu of new registration plates for any calendar year."

You state in your memo that under the authority of this provision of law you have issued a single number plate for use during 1948 and that the legality of this action has been questioned. You request an opinion as to whether you have authority to issue the single number plate for 1948 or any subsequent year, so long as the above provision of the statute remains in force.

In answer to your question I wish to advise that it is my opinion that, notwithstanding the first part of said Section 17 which provides that the Secretary of State shall furnish double number plates, etc., the eighth para-

graph of said section, which you quote, grants the Secretary of State broad powers in providing a suitable device in lieu of new registration plates for any calendar year. You will note that "number plates" means more than one plate; but if you deem one plate a suitable device in lieu of two number plates, you would be acting well within the exception to the provisions of this statute requiring the issuance of two plates, in issuing one plate as you have done for 1948.

One definition of "device" in Webster's New International Dictionary reads as follows: "an emblematic design, generally of one or more figures with a motto. . ." Another definition of "device," which is the word used in this statute, is: "a mechanical or practical contrivance to serve a special purpose."

While one number plate is not in any sense of the word a mechanical contrivance, it is an emblematic design consisting of figures with a motto, "Vacationland," on same, which serves a special purpose, which in this case is to keep within the budget set up by the legislature for this purpose.

This part of Section 17 of Chapter 19 of the Revised Statutes was enacted at a special session of the legislature in January, 1942, and will be found in Chapter 306 of the Public Laws of 1941.

RALPH W. FARRIS
Attorney General

January 23, 1948

To John C. Burnham, Administrative Assistant, Highway
Re: Section 80, Chapter 12, R. S. 1944

I have your memo of January 16th in which you say you would like me to let you know whether the last sentence of the above mentioned section means that the department should pay the full salary regardless of what the member of the military reserve received from the government, or pay the difference between the military pay and the State pay in case the military pay is less than the State salary.

My answer to this inquiry is that the employee should get the full amount of the salary, regardless of what the government pays him while he is on military leave, either by order of the Governor or under the provisions of the National Defense Acts.

Another question on which you would like an opinion is on the case of a highway employee who while in Naval Reserve training, becomes ill and is absent several months from State service. You ask, "Is this employee eligible to full pay up to the extent of the sick leave time which has been accumulated to this employee's credit?"

My answer to that question is that he should be taken off the State payroll as soon as the temporary training period is over, which is usually two weeks to thirty days during the summer months. A case of this kind should be handled under the Personnel Law and the Rules and Regulations promulgated thereunder. He is entitled to pay for his sick leave during the time after his temporary military training duties cease.

RALPH W. FARRIS
Attorney General

January 26, 1948

To Earle R. Hayes, Secretary

I have your memo of January 23rd relating to the definition of "teacher" in Section 1 of the Retirement Law, which includes those teachers in schools which are supported at least 3/5 by State and/or town funds. In the second paragraph of your memo you go on to state that this means in effect that all teachers presently teaching in any academy or other school which is being directly supported at least 3/5 by public moneys are not only eligible for membership in the Retirement System but must become members, since there is no election provided for teachers under the present law. Then you ask this question in your third paragraph, whether or not prior service credit for all teaching service prior to July 1, 1947, shall be credited to these teachers for all years which they have taught in these academies regardless of whether or not, during some of those years, the schools may or may not have been supported 3/5 by public funds.

In answer to your question it is my opinion that the board need not go back and check each year in connection with each school involved, in order to determine whether or not it was being 3/5 supported by public funds. You should base your decision to issue prior service certificates on the present provisions of the Retirement Law as enacted by the last legislature.

In paragraph 4 of your memo you direct my attention to the definition of prior service which is found in the same section of the law, wherein it provides that "prior service" shall mean service rendered prior to the date of establishment of the System, and the date of establishment, so far as teachers are concerned, is fixed under the provisions of Section 2 as being July 1, 1947.

You also call my attention to the fact that under the provisions of Subsection V of Section 4 of the new law, the Board of Trustees "shall issue Prior Service Certificates certifying to each member the length of service rendered prior to the applicable date of establishment. . . ." You further state that this means that the board, in view of the facts that teachers in these schools which are supported 3/5 by public funds are included in the specific definition of "teacher" in Section 1, that the date of the establishment of the System for teachers was fixed as of July 1, 1947; and further that the Board is required to issue prior service certificates to all "teachers," should issue prior service credits for all their teaching service to all the teachers involved.

In answer to your conclusions stated in the last two paragraphs of your memo, it is my opinion that the teachers now come under the Act who are teaching in schools supported 3/5 by public funds and should receive prior service certificates for all their teaching service.

RALPH W. FARRIS
Attorney General

January 28, 1948

To Harrison C. Greenleaf, Commissioner of Institutional Service

Agreeably to your request on the above date, under the provisions of Section 137 of Chapter 23, R. S., which provides that your department may in its discretion investigate the fact that any person may be lawfully liable for

the support of the insane, and may collect said money due the State institutions for board and care, and that all moneys collected under the provisions of this section shall be forthwith turned over to the Treasurer of State, who shall receipt for the same, and that the expenses of the collection of said moneys shall be charged against and paid out of any sums so collected and turned over, I authorize you to employ an attorney for the purpose of investigating such facts relative to liability for the support of the insane inmates of said State institutions and collecting such sums as may be due the State.

All suits against persons liable for the support of inmates of the institutions shall be brought through the Attorney General's office.

Will you please have any attorneys or investigators whom you employ report to this office when money cannot be collected without suit, and proper action will be taken in the courts of this State to recover.

RALPH W. FARRIS
Attorney General

January 30, 1948

To Fred M. Berry, State Auditor

I have your memo of January 29th, stating that the Department of Audit was recently requested to make an audit of the Norway Water District's accounts. In compliance with said request, you are now auditing said books.

You state that a question arises as to whether the auditing of a water district's accounts may be conducted by the Department of Audit, and you cite the law with regard to the annual audit of towns as contained in Section 116 of Chapter 82, as amended by Chapter 361, P. L. 1947.

You further state that it would appear from this statute that it would not be mandatory for a water district to have its accounts audited, even though it performs a municipal function and operates under its own charter. You further state that any quasi-municipal agencies that have requested audits by your department could rightfully do so in that they are agencies of the State.

In answer to your question I wish to state that a water district is not an agency of the government. It is a private corporation performing a public function, supplying drinking water and water for fire protection, and it is not a State agency and has nothing to do with the operation of the government of the municipality where its office and plant may be located.

The section of the statute which you cite does not give you authority to audit the books of a water district.

Section 13 of Chapter 378, P. L. 1945, authorizes a post-audit of the accounts and records of the State Normal Schools and Teachers' Colleges, the Maine Port Authority, the Maine Forestry District, and the Maine Teachers' Retirement System, and that is all.

It must be remembered that districts of this character do not possess police powers properly belonging to municipal police bodies exercising local governmental functions. Although in the nature of public corporations, they are not municipal corporations in the proper sense of that term. In the case of *Kelley vs. Brunswick School District*, 134 Maine 414, the Court said, "Con-

sistent with the three-fold division of governmental power, political divisions other than cities and towns may be erected by the legislature for public purposes. Towns must provide funds for the support of public schools within their limits. It does not follow that the legislature can do no more for the same general purposes. Municipal corporations organized for different purposes may include the same territory as a city or a county or a school district. Two authorities cannot exercise power in the same area over the same subject at the same time. But identity of territory, putting one municipal corporation, full or quasi, where another is, is immaterial, if the units are for distinct and different purposes."

Norway Water District was incorporated under the provisions of Chapter 55, P. & S. L. 1941, as you state in your memo. You will note in Section 10 of said Chapter that "the district through its trustees is authorized to contract with persons and corporations including the town of Norway, and said town of Norway is authorized to contract with it for the supply of water for municipal purposes." This indicates that the district is a separate entity from the Town of Norway.

I refer further to the rules of construction in Chapter 9, Section 21, subsection XX, "The word 'municipality' includes cities, towns and plantations." Therefore the legislature did not intend to include water districts with village corporations which exercise police powers and perform a municipal function. For that reason, in Section 116 of Chapter 82, as amended by Chapter 361, P. L. 1947, the legislature included village corporations as the subject of audit; and if you wish to include municipally owned water districts, or quasi-municipal water districts, the matter should be brought to the attention of the legislature and this provision of the statute amended to cover water districts, school districts, or whatever quasi-municipal corporations the legislature may see fit to have audited by the State Department of Audit.

RALPH W. FARRIS
Attorney General

January 30, 1948

To Col. Laurence C. Upton, Chief, Maine State Police
Re: P. L. 1945, Chapter 74, Section 87

You refer to the above entitled statute permitting the transportation of poles by means of a combination tractor and semi-trailer without the owner thereof being restricted to the provisions of law relating to the over-all length of the vehicle and load.

You further state that there has been more or less confusion as to just what constitutes a pole as defined in this law. You had assumed that the term "pole" meant a manufactured object such as a finished telegraph or telephone pole, but, as some believe that the word as used would include a rough log in its natural state, you ask my opinion on this subject.

It is my opinion that the word "pole" means either wood or metal poles to be used for perches some time or other for the stringing of wires for electric power transmission or telephone or telegraph purposes. In other words, the pole is to be used as a lineal perch and does not include a rough log in its natural state.

RALPH W. FARRIS
Attorney General

January 30, 1948

To William O. Bailey, Department of Education
Re: Hartland School District, Chapter 29, P. & S. L. 1947

I have your memo of January 27th, together with letter from Harvey B. Scribner, superintendent of schools, dated January 26th, in which he calls attention to the fact that the board of selectmen forgot to bring this matter before the town within the period stated in the emergency clause, and states that he had contacted Senator Ela, who had then contacted the Attorney General for a ruling which would give the town the legal right to vote acceptance of the school district at the next regular town meeting. . . .

As I advised Senator Ela over the telephone, inasmuch as the town did not accept the charter within the four months provided in Section 9 by the legislature, after the approval of the Act, the charter is ineffective and cannot be made effective until the legislature grants the town further time for a meeting to approve this Act. The legislature provided in Section 1 of Chapter 29 that this incorporation would be subject to the provisions of Section 9, and inasmuch as the voters did not take advantage of the provisions of said Section 9, the provisions of the charter have failed of approval within the specified time of four months.

Therefore it is my opinion that any action after the four-month period by the voters of the town would be of no effect and would prevent the district from securing funds for the purposes of the Act. . .

RALPH W. FARRIS
Attorney General

February 4, 1948

To Col. Laurence C. Upton, Chief, Maine State Police
Re: CID Contract—Department of the Army

I received your memo of February 3rd, concerning our recent conversation relating to a contract between the State Police and the Department of the Army for the training and equipping of a Criminal Investigation Division within the State Police. At the time I talked with you, I had before me a form of a contract to be used between the State Police and the Department of the Army, which, as I stated at the time, met with my approval. You state that there is another question which you would like to have answered. In executing this contract with the Department of the Army, have you the authority to sign it in behalf of the State Police without obtaining an order from the Governor and Council?

In view of the fact that sub-paragraph VI of Section 1 of Chapter 13 provides that you shall make rules and regulations subject to the approval of the Governor and Council for the discipline and control of members of the State Police and for the examination and qualification of applicants for enlistment therein, etc., it is my opinion that you should secure an order from the Governor and Council authorizing you to execute this contract with the Department of the Army in behalf of the State Police and the State of Maine, so that there will be no question raised as to the legality of the program which you plan to institute with the Department of the Army under this proposed contract. . .

RALPH W. FARRIS
Attorney General

February 6, 1948

To Earle R. Hayes, Secretary

Subsection I of Section 3 of Chapter 60 provides in part:

> ". . . any service rendered as a teacher, superintendent or supervisor prior to becoming a member of this system shall be considered as creditable service. . ."

You state in your memo of February 4th that in order to determine whether or not such "creditable service" may be granted to a teacher who became a State employee on August 4, 1947, you have been asked the following question:

"Was the provision of this law above cited in force and effect up to August 13, 1947, the date when the new amendment as provided in Chapter 384, P. L. 1947 became effective?"

Answer. Under the provisions of Section 16 of Article XXXI of the Amendments to our Constitution, no act shall take effect until 90 days after the recess of the legislature which passed it, unless in the case of emergency, when the facts constituting the emergency shall be expressed in the preamble of the act. Chapter 384, P. L. 1947 did not contain the emergency clause and therefore took effect on August 13, 1947, 90 days after the recess of the legislature passing said Act.

The provisions of Section 3 of Chapter 30, R. S., were in effect on August 4, 1947. The last section of Chapter 384 provided that the provisions of this chapter shall take effect on July 1, 1947, but when the provisions of a statute conflict with the Constitution, the Constitution must prevail. Therefore the Act did not take effect until August 13, 1947.

It is my opinion that the legislature intended that this chapter should be retroactive to July 1, 1947, when once it had become effective under the provisions of the Constitution above cited.

RALPH W. FARRIS
Attorney General

February 9, 1948

To Arthur J. Fenton, Director of Taxation

Re: Tax on Property in Indian Township No. 4, Penobscot

Referring to your memo of October 29, 1947 and mine of January 23, 1948, and based on my conversation with you in my office concerning the heirs of Lydia E. Smith owning one-fourth undivided of a three acre lot, on which there is a building, and the other three-fourths undivided is owned by the Great Northern Paper Company:—

You state that as the matter now stands, the whole three acres will be taxed to the Great Northern Paper Company et als., the others being the Smith Heirs, the tax being divided for purposes of valuation, three-fourths to the Great Northern and one-fourth to the heirs of Lydia E. Smith, and you ask if the State's interest is protected by this procedure, in case of a tax delinquency.

You should tax these three acres to the Great Northern Paper Company and the Heirs of Lydia E. Smith, setting forth their respective interests in this parcel. If this is done, the State's interest will be protected in case of a delinquency. . .

RALPH W. FARRIS
Attorney General

February 12, 1948

To Ernest H. Johnson, State Tax Assessor

I have your memo of February 11th, relating to Chapter 281, P. L. 1945, imposing a blueberry tax, in which you cite Sections 224 and 227 of said chapter and ask the following question:

"Are blueberries grown and purchased in Canada but processed in Caribou, subject to this tax?"

Answer. It is my opinion that the language of Section 224 includes tax on blueberries processed in this State, as that section seems to be all-inclusive, covering "blueberries grown, purchased, sold, handled or processed" in this State. Section 227 provides for the processor or shipper to deduct the tax from the purchase price. This seems to be regardless of whether or not the berries are grown in the State of Maine, so long as they are processed here.

RALPH W. FARRIS
Attorney General

February 27, 1948

To Ernest H. Johnson, State Assessor, Bureau of Taxation
Re: Resignation of an Assessor

I have your memo of February 27th attached to a draft of a letter directed to the chairman of the Board of Selectmen in Bar Harbor, which letter is self-explanatory. You state that you would appreciate any comments which I might make on the same.

I agree with the contents of your letter. There would be no vacancy in the office until one member had been declared by legal authority totally incapacitated or he had resigned and his resignation had been accepted by the proper authority.

Under our State Supreme Court decisions, assessors of taxes, though chosen by the city or town, are public officers and in the discharge of their duties they are not subject to the direction or control of a municipality. *Rockland vs. Farnsworth*, 93 Maine 178; *Telegraph Co. vs. Cushing*, 131 Maine 333; *Walsh vs. Macomber*, 119 Maine 73.

The right of public officers to resign is well recognized. 43 American Jurisprudence, § 166, "Public Officers." "But the view generally prevailing is that to be effective the resignation must be accepted by a competent authority either in terms or by something tantamount to an acceptance, such as the appointment of a successor," citing *Thompson vs. U. S.*, 103 U. S. 480; *Edwards vs. U. S.*, 103, 471.

So I would advise the selectmen to be careful about accepting the resignation of an assessor who is considered incompetent but who has been declared incompetent by the court.

I think your letter is correct in allowing him to continue in office and the majority of the board to do the work until the next election.

I must advise you that it is my opinion that I would leave out the possibility of *quo warranto* in a case of this kind, where the majority of the board can act legally in signing the commitment.

It is my opinion that because assessors are public officials they may not resign unless they secure approval of the act of resignation from the State, county and local governments.

You will note that the statute which you cite in your letter to the selectmen, Section 38 of Chapter 80, refers to persons chosen to a town office, but does not contain a provision for election of a public officer. This is dangerous ground and I would not advise them to ask at the present time for the resignation of the assessor who is incapacitated.

In regard to your second matter, abatement of county taxes imposed upon the town, I agree with you that I can find no statute providing that the county commissioners can abate town taxes due the county or that the State Tax Assessor has any such authority.

RALPH W. FARRIS
Attorney General

March 4, 1948

To Fred Rowell, Veterans' Affairs
Re: Veterans' Preference in State Employment

Your memo of February 20th received. You call to the attention of this department Chapter 360, P. L. 1945, which provides for certain preferences in appointments to the classified service of the State to honorably discharged male and female veterans, widows of veterans, and wives of disabled veterans. This section provides:

> "For the carrying out of the provisions of this section, the following dates of active service in the United States armed forces shall be: . . .
> "V. World War II, December 7, 1941, and the date of cessation of hostilities as fixed by the United States government. . ."

By proclamation #2714 the President of the United States proclaimed the cessation of hostilities in World War II, effective at twelve o'clock noon on December 31, 1946. In the preamble it was stated in part,

> "Although a state of war still exists, it is at this time possible to declare, and I find it to be in the public interest to declare, that hostilities have terminated."

I am of the opinion that this proclamation is controlling in determining when, under our statute above referred to, cessation of hostilities was "fixed by the United States government." Thus, a veteran, to be entitled to the preferences provided for in this act, must have been in the active service between December 7, 1941, and December 31, 1946, at 12 o'clock noon.

ABRAHAM BREITBARD
Deputy Attorney General

March 4, 1948

To U. S. Immigration and Naturalization Service

This department acknowledges receipt of your letter concerning the status of a child born in England of an English mother who subsequently married in this State an American citizen who acknowledged that he was the father of the child and who, at the time of acknowledgment, was in the service of the U. S. Army, stationed in England. Your inquiry is whether, under our statutes, the subsequent marriage in this State and the fact that previously thereto the child's mother and father signed some documents in England, which you say were a birth record and an affidavit before a notary, would have the effect of legitimating the child.

Our statute does not legitimate the child, although the parties subsequently intermarry. "Only one objective is in the statute—heirship of intestate estates to and from illegitimates." *Crowell's Estate*, 124 Maine 71, 73. The right of inheritance only is dealt with by our statute.

We have no knowledge of the effect of the signing of the various documents before stated by the father and mother, in England. If the effect was to legitimatize the child in England, it would have no such effect here. We find that while usually the status created in one country is recognized in every other, an essential element is that the father be domiciled in the country where the acts of legitimation take place. Since the father of this child was not domiciled in England, his acts in England cannot have the effect of legitimatizing the child here. *Irving vs. Ford*, 183 Mass. 448.

ABRAHAM BREITBARD
Deputy Attorney General

March 4, 1948

To Hon. Harold I. Goss, Secretary of State
Re: Northeast Airlines, Inc.

I have read the letter of Mr. R. H. Herrnstein, Assistant Treasurer of Northeast Airlines, Inc., to you, relative to Northeast Airlines, Inc., qualifying in this State as a foreign corporation. The question has arisen whether this corporation is a "public service company" within the provisions of Section 123 of Chapter 49, which excepts certain corporations from the operation of said section. You will notice that the corporations enumerated are banks, surety and safe deposit companies, insurance companies "or public service company." All of the former are corporations that are organized under some special act of the legislature or special provisions of the law relating to the organization of companies of that type.

In my opinion a public service company excluded from this provision would be a public utility organized by some special act of the legislature or by some special provision of law for the organization of a utility.

The documents submitted, when this company registered in a previous year, show that the corporation was organized under a general law with purposes which permit it to operate in enterprises that are purely private and not public. The fact that it carried passengers for hire, freight, and mail under contract would not be the criterion; but rather whether it was organized under a law which created it as a public utility.

The corporation, in my opinion, should therefore comply with the law, if it is doing business in this State, and appoint a resident of the State as its true and lawful attorney, etc. . . .

ABRAHAM BREITBARD
Deputy Attorney General

March 9, 1948

To Earle R. Hayes, Secretary, Employees' Retirement System
Re: Portland Public Library

I have your memo . . . requesting me to give you an opinion as to whether or not the Portland Public Library may be considered in the status of a quasi-municipal corporation for the purpose of participation in the State Employees' Retirement System.

It is my opinion that the Portland Public Library is not a quasi-municipal corporation under the provisions of the State Employees' Retirement System. The employees are on the payroll of a private corporation which is not performing a municipal function in a sense that would qualify it as a quasi-municipal corporation under the provisions of Section 16 of Chapter 384, P. L. 1947.

RALPH W. FARRIS
Attorney General

March 15, 1948

To Ernest H. Johnson, State Tax Assessor
Re: R. S., Chapter 81, Section 6, Subsection X

Your memo of January 29, 1948, seeks an interpretation of Chapter 29 of the Public Laws of 1947, which amended R. S. of 1944, Chapter 81, Section 6, subsection X. Your inquiry concerns the veterans who would be eligible to an exemption of their estates to the value of $3500 because of the provisions which allow such exemption to a veteran ". . who served in the armed forces of the United States during any federally recognized war period and who was honorably discharged or honorably separated from such service and retired to the Reserve, and who has reached the age of 62 years or is receiving a pension, retirement pay, or compensation from the United States Government for total disability. . ."

Specifically, your inquiry relates only to veterans under 62 years of age who may be eligible to this exemption.

Prior to the amendment of the statute the exemption was confined to veterans under 62 years of age ". . receiving a pension or compensation from the United States Veterans Administration for total disability." In your memo you say:

"It is our understanding that this part of this paragraph has for sometime dealt with veterans benefits arising as a result of the veteran receiving Federal Benefits because of his being a veteran; that pensions are also paid by the U. S. Government to civil service employees who are not able to do their

work as a result of 'total disability', which pension is one of the features of the payroll deduction towards retirement; and that a veteran might be eligible for compensation for 'total disability' from the 'U. S. Veterans Administration' but for the fact that his outside income, as from a civil service pension which he elects, is greater than a certain amount.

"Question: (1) Are veterans under 62 years of age, who satisfy the general requirements of this statute, eligible for property tax exemption to the amount of $3500, if their 'compensation from the U. S. Government for total disability' is derived exclusively from their Civil Service Pension contract and not from the benefits of service in the armed forces during certain war periods?"

The purpose of the amendment in the respects above indicated was to allow the exemption to those persons who served in the various branches of the armed forces, namely, the Army, Navy and Coast Guard, who are receiving pensions, retirement pay or compensation for total disability from those service branches. As it stood prior to the amendment, it was limited to veterans receiving pensions or compensation for total disability from the U. S. Veterans Administration. It was brought out before the committee on taxation before which the hearing was had on the amendment, that the compensation for total disability to commissioned officers was not paid by the Veterans Administration, but rather by the War and Navy Departments, and consequently they were denied this exemption, since the statute was confined to veterans receiving pensions or compensation from the Veterans Administration. It was to correct this situation that this amendment was proposed and later enacted. By the use of the words, "United States Government," the intent was to include within its provisions all veterans receiving pensions, retirement pay or compensation for total disability from any of the service branches of the land and naval forces, which since 1941 include the Coast Guard, and not from the government under a civil service act.

ABRAHAM BREITBARD
Deputy Attorney General

March 17, 1948

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

I have before me the letter which you submitted to this office . . and also the form of the bond whereby the surety agrees to comply with certain conditions therein, particularly relating to the discharge of any indebtedness incurred as a result of hospitalization of the inmate while under release and to indemnify any damage caused by the destruction of property by the inmate.

I can find no provision in the statutes which authorizes you to take a bond or a cash deposit as a condition for the release of an inmate of the hospital. You may in your discretion permit an inmate to leave an institution temporarily "in charge of his guardian, relatives, friends, or by himself for a period not exceeding 6 months, and may receive him when returned by any such guardian, relatives, friends, or on his application within such period. . ." and "on receipt of formal application in writing before the date of expiration of such leave of absence grant an extension of time for another 6 months."

It seems to me, however, that before doing so you must satisfy yourself that the condition of the patient is such that he may be safely released; and if released to relatives or friends, that they are proper persons to receive him. The matter is one in which you must exercise your own judgment, having in mind the mental condition of the inmate.

ABRAHAM BREITBARD
Deputy Attorney General

March 22, 1948

To Charles P. Bradford, Director, State Park Commission
Re: Rules and Regulations for State Parks and Memorials

In accordance with your memo of March 9th, I certify that in my opinion the rules and regulations above set forth are in conformity with the law.

Section 11 will be modified in the following manner:

"*Violations*
Any person found guilty of violating the above rules and regulations shall be punished as provided in Chapter 32, Section 26 of the Revised Statutes of Maine, 1944; except where the offense is of a nature for which a greater punishment is provided under other provisions, then the punishment shall be in accordance with such provisions."

The reason for the above is that there are offenses described, for example, driving under the influence of intoxicating liquor or drugs, and carrying concealed weapons, for which a greater punishment is provided under other provisions of law; and I believe the same is true of reckless driving.

ABRAHAM BREITBARD
Deputy Attorney General

March 22, 1948

To Earle R. Hayes, Secretary, Employees' Retirement System
Re: Former Employees of E. R. A.

I received your memo of March 16th, stating that the Board of Trustees are in receipt of requests from present State employees who are members of the Retirement System relative to credits toward retirement for certain periods of time which they formerly worked for the E. R. A., and that the Board requests my opinion as to the status of this former agency as it relates to State employees.

In the case of *State vs. Martin*, 134 Maine, page 455, the Supreme Court stated as follows:

"There was co-operation concerning the administration of relief in that the State Controller, the State Treasurer and their assistants lent administrative help, but administration was always Federal; funds were so earmarked; all reports of expenditures were made to the United States, and unexpended balances accounted for, accordingly. Emergency relief administration in Maine was by the United States and not by the State."

Therefore my opinion in this matter follows the language of the Supreme Court, and former employees of the E. R. A. would not be considered as State employees.

RALPH W. FARRIS
Attorney General

March 30, 1948

To H. H. Harris, Controller
Re: Council Order #76, March 3, 1948

With reference to Council Order #76 of March 3, 1948, by which $10,000 is made available to the Department of Education for repairs and improvements in the dormitory and classroom facilities at Madawaska Training School, Fort Kent, and by which the Commissioner of Education is authorized to employ one John Cyr of Fort Kent to perform the work on a "day-labor basis":

At the time when this Council Order was passed, the Governor and Council had before them facts which showed that it was impracticable to let out this work on competitive bidding. In the first place there were no contractors in that area and therefore you could not have competition in bidding. Also there was the fact that the nature of the work was such that it would be difficult to prepare plans and specifications to be submitted for competitive bidding, as the extent and the time to be consumed in doing this work would develop as the repairs were undertaken.

The Governor and Council also considered the representation that the cost of the work would be greatly increased by submitting it to competitive bidding, since the contractors would be obliged to travel some distance from where they are located, and likewise their employees would have to travel from their homes and take up quarters at Fort Kent for room and board during the progress of the work.

In view of these circumstances, the Governor and Council determined, as their order indicates, that these repairs and improvements should be done on a day-labor basis.

I think that this order falls within the spirit of Chapter 14, Sections 43 et sequitur, and is not in conflict with the law.

ABRAHAM BREITBARD
Deputy Attorney General

March 30, 1948

To Ernest H. Johnson, State Assessor
Re: Revised Statutes, Chapter 142, Section 15

In your memo of March 18th you ask whether, under the authority granted by Chapter 142, Section 15, permitting the State Tax Assessor to extend the time of payment of the inheritance tax, you can grant an extension with conditions as to the payment of interest during the time of the extension, to compensate the State for non-use of the money.

I have talked this matter over with the State Auditor, and I am of the opinion that under the statutory authority you have a right to grant extensions of the tax payment upon terms, if you so desire, as there are many estates where the tax due the State cannot be computed, owing to conditions in the wills of the deceased persons. Where it is needful and necessary to grant lengthy extensions, I believe that you have the authority under that statute to compromise on the interest.

It is my opinion that, when the legislature granted the State Tax Assessor this power, it included the authority to act within that power in protecting the State's financial interests; as the statute authorizes the Assessor to extend the time of payment without charging interest, it would naturally follow that he may extend the time of payments upon terms that would bring in a revenue to the State which it would otherwise lose, if it did not have this authority.

A high rate of interest is in the nature of a penalty for not paying the tax and can be exacted only when the taxpayer is at fault, does not pay as required by statute, and has not received an extension from the State Tax Assessor. A compromise on the interest would not be in the nature of a penalty, but in the nature of a revenue to the State, and should be considered on a business basis and not on a penalty basis.

RALPH W. FARRIS
Attorney General

March 31, 1948

To E. E. Roderick, Deputy Commissioner of Education

I have your memo of March 31st, requesting an interpretation of the phrase used in the act to incorporate a town school district without the emergency preamble, particularly that section which refers to the effective date of the act, which reads in part: "not later than 1 year after the approval of the act."

You state that your office has been requested to secure a legal interpretation of the term "approval of the act," and you ask, "Must the time be reckoned from approval of the act by the Governor, or the effective date of the act without the emergency preamble, which means ninety days subsequent to the adjournment of the legislature which enacted this law?"

In my opinion the words "not later than 1 year after the approval of the act," mean one year after the approval of the act by the Governor, because there is no constitutional or statutory approval by the legislature, as the legislature is the enacting body and the Chief Executive has the duty of approving the act.

I feel that we should take the act as it reads. It would be dangerous to try to interpret it as to the effective date of the act, especially as there are several other school district charters which use the word "approval" instead of "effective date."

RALPH W. FARRIS
Attorney General

April 12, 1948

To E. E. Roderick, Deputy Commissioner of Education
Re: Interpretation of the legality, involving the approval of the Act, Chapter 102, P. & S. L. 1947, relating to the School District of the Town of New Gloucester

I have your memo of April 12th, stating that the superintending school committee of New Gloucester request an opinion as to whether or not, the town once having approved Chapter 102, P. & S. L. 1947, at its annual meeting, it is possible to rescind the action taken, either to nullify the provisions of this act or to require that the act be carried out. You state that the article in the warrant reads:

> "To see whether or not the inhabitants of the town (New Gloucester) will vote to reconsider the vote taken at the annual meeting of the town last held accepting the act to incorporate the Town of New Gloucester School District."

It is my opinion that this act took effect when approved by the majority vote of the legal voters of the district present and voting at the annual town meeting of the Town of New Gloucester, and that the article in the warrant for a special town meeting, which you cite in your memo, would have no effect upon the effective date of the act, for the reason that the mandate of the legislature has been complied with, and once the act was approved, it took effect on the date of the annual town meeting.

You state that some of the inhabitants of the town maintain that it is permissible to take action to nullify what has already been enacted by the legislature and favorably acted upon by the town.

In order to settle this question, those who contend that the act is not effective must resort to the courts.

RALPH W. FARRIS
Attorney General

April 13, 1948

To Hon. Horace Hildreth, Governor of Maine
Re: Trustees—University of Maine

With reference to letter of April 6th of Edward E. Chase, President of the Board of Trustees of the University of Maine, to you, concerning one of the trustees whose term expires on May 9th, the question is whether he holds over after the expiration of his term until the appointment and qualification of another or until he is reappointed and qualified.

It is the opinion of this department that, in all cases where the term of the trustee expires, he holds over until the appointment and qualification of a trustee in his place and stead, or until the same person is reappointed and qualified.

In this respect the rule with regard to holding over differs from the case of a trustee who has attained the age of seventy years, although the term for which he was appointed has not expired.

The rule in that case is governed by Section 4 of Chapter 532 of the Private and Special Laws of 1865, creating the University, which provides:

> "No person shall be a trustee who is not an inhabitant of this State, nor anyone who has reached the age of 70 years."

In such a case the department ruled that the office becomes vacant when the trustee reaches seventy years of age, by reason of the provisions of the section of the charter quoted.

ABRAHAM BREITBARD
Deputy Attorney General

April 20, 1948

To Earle R. Hayes, Secretary, Employees' Retirement System

In your memo of April 6th, which reached this office on the 8th, you requested an opinion as to whether or not the provisions of Section 9 of Chapter 384, P. L. 1947, namely, "otherwise to his estate," may be interpreted to mean that you can pay such funds of a deceased member to the duly appointed administrator or personal representative, or whether checks should be drawn to "the estate."

Checks should be drawn to the administrator or executor, whichever the case may be. If there is no administrator or executor qualified and there are heirs, the check could be made payable to the heirs, if they would all sign a release and file a bond to hold the State harmless from any liability for payment of such funds to the legal heirs of the deceased.

Checks made payable to the estate of any person cannot be cashed unless signed by a duly appointed representative of the deceased.

RALPH W. FARRIS
Attorney General

April 26, 1948

To H. A. Ladd, Commissioner of Education

I have your memo of April 12th about which I conferred with Mr. Roderick on April 23rd and which concerns the arrangements for raising funds to construct a new school gymnasium in Island Falls. You state that a woman has promised to raise $10,000 from individual givers if the town will match the sum. As you understand it, the town has not raised its share, but there seems to be a general agreement among the voters that they should fulfill their part, if this lady can produce $10,000 as promised.

You state further that since the town meeting she has purchased a new Plymouth car and presently plans to sell tickets and give the car to a lucky winner. You advised them to go slowly on this matter, as you feel that the proposal is outside the pale of law, and you agreed to confer with my office in regard to this matter. In this connection you asked the following questions:

"(1) Is action of this sort permissive?"

Answer. No, it is not permissible.

"(2) If illegal, what penalties are likely?"

Answer. A fine may be imposed of not less than $10 nor more than $1000, and an offender may be further punished by imprisonment for 30 days on the first offense, 60 days on the second, and 90 days on the third. Also the automobile may be seized, as this is a game of chance, which is prohibited by statute. Anything that involves a lucky winner is a violation under Section 18 of Chapter 126.

"(3) Can the procedure be legalized by selling tickets to a dance or other entertainment and giving the car to the lucky ticket holder?"

I do not feel that it is fair to ask the Attorney General to provide opinions for evading the law.

I will say that the admission tickets are subject to a tax by the Federal Government, and if door prizes are given, the drawing would be investigated by the Internal Revenue Department.

RALPH W. FARRIS
Attorney General

April 26, 1948

To E. E. Roderick, Deputy Commissioner of Education
Re: Liability of parents evading the compulsory school attendance law

I have your memo of April 6th, which we discussed in my office on April 23rd, when I advised you that there seems to be no statutory provision covering the matter contained in your memorandum.

Where the parents of children of school age take their children to the Aroostook potato fields in harvesting season, they take them out of the jurisdiction of their legal residence temporarily.

I do not see where the compulsory attendance statute could authorize the Department of Education to take any action. There is no statute which would permit prosecution of parents for removing their children to another town to earn money during the harvesting season in Aroostook.

RALPH W. FARRIS
Attorney General

April 30, 1948

To A. M. G. Soule, Chief, Division of Inspection,
Department of Agriculture
Re: Produce Dealers Supply Co.

I have your memo of April 30th relating to the provisions of Sections 225-231 inclusive of Chapter 27, relating to the branding of potatoes; also two exhibits you left in my office—one, a ten-lb. bag labeled

10 lbs. net U. S. Grade No. 1
MONARCH
BRAND
MAINE
POTATOES
Produce Dealers Supply Co.
Presque Isle, Maine

and the other a 50-lb. bag labeled

WIND MILL MAINE POTATOES
Produce Dealers Supply Co.
Presque Isle, Maine

You state that the Produce Dealers Supply Co. own a warehouse in Presque Isle and supply bags to dealers and shippers but do not buy, sell or ship any potatoes; and you ask the following questions:

"(1) Are the Produce Dealers Supply Co. responsible for the quality and character of the potatoes enclosed and shipped in such containers?"

In answer to this question, I will say that they are not, because the Produce Dealers Supply Co. does not buy, sell or ship potatoes. As I gather from your memo, this company furnishes the bags for dealers and shippers, some of whom probably store their potatoes in the Produce Dealers Supply Co.'s warehouse.

Your next question is, "(a) Is the Potato Branding law violated by shipping and selling a package containing potatoes that is not conspicuously tagged and branded with the name and address of the person or persons truly responsible for grading and packing of the potatoes contained in a package bearing the legend above described?"

My answer to Question 2 is in the affirmative, as the law requires potatoes prepared for market to be tagged, branded, labeled or stenciled before being removed from the premises where they are prepared for market, with the name and address of the person or persons responsible for the grading and packing, and the name of the grade, together with true net contents. . . .

RALPH W. FARRIS
Attorney General

April 30, 1948

To H. H. Harris, Controller
Re: Mileage—Inspectors, Certified Seed Potatoes

Mr. Witham of your pre-audit department brought in a copy of a memo which you wrote to this office on November 12, 1947, which I answered orally to you on the telephone. Mr. Witham indicated that you would like a written memo on this matter, which has to do with the interpretation of Chapter 396, P. L. 1947, relating to employees who are regularly employed by the Department of Agriculture and work on a part-time basis as inspectors of certified seed potatoes.

As I pointed out to Mr. Witham, this statute provides for not more than 8c a mile for the first 5000 miles actually traveled in any one fiscal year, not more than 5c a mile for the next 9000 miles, and not more than 4c for all miles exceeding 14,000. This relates to regular State employees. Then the legislature saw fit that the State shall pay inspectors of seed potatoes 7c for every mile so traveled, which makes two classes of mileage among State employees.

In my opinion this proviso relates to mileage to the regular inspectors of seed potatoes and not to the general employees of the Department of Agri-

culture. In my opinion, the regular employees of the Department of Agriculture should proceed under the 8c a mile for the first 5000 miles and keep on that schedule. When they do part-time work as inspectors of certified seed potatoes, they would come under the second classification of 7c per mile. When they cease inspecting seed potatoes, they should go back to their regular mileage schedule as general employees of the department. . . .

RALPH W. FARRIS
Attorney General

May 6, 1948

To Marion E. Martin, Commissioner of Labor and Industry
Re: Sections 38 and 39 of Chapter 25, R. S.

I have your memo of May 6th requesting a ruling on Sections 38 and 39 of Chapter 25, R. S., to which memo was attached a letter from Wood Products Co., Inc., of Brewer, Maine, dated May 5, 1948.

Section 38 of Chapter 25 was originally enacted by the legislature under Chapter 39, P. L. 1911, and at the time of the enactment of this section, the contents of Section 39 were Section 51 of Chapter 40, R. S. 1903.

Upon comparison of Section 39, R. S. 1944, with Section 51 of Chapter 40, R. S. 1903, I find that no amendment or change has ever been made in this statute.

However, Section 38 has been amended by the legislature since its enactment in 1911, in the 1935 session, in 1937, 1939, and 1941. In 1915, the Maine Supreme Court had occasion to pass upon these two statutes, and the late Chief Justice Savage wrote an opinion in which he held that the law of 1911, which is now Section 38, Chapter 25, R. S., 1944, was not inconsistent with Chapter 40, Section 51, R. S. 1903, which is now Section 39, Chapter 25, R. S. 1944. I quote from the language of Chief Justice Savage on page 258 of 114 Maine, the case of *Veitkunas vs. Morrison:*

> "It is obvious that the apparent purposes of the two statutes are unlike. (This refers to Sections 38 and 39.) They do not touch each other. Though both relate to wages, they relate to entirely distinctive features of the wage question. The earliest statute which includes also a provision requiring an employer having a forfeiture contract with an employee to pay him an extra week's wages if he discharges him without notice, is evidently intended to prevent the injurious consequences which might result to the one or the other, if the employer discharged the servant, or the servant left the employer, without notice. It has nothing to do with the time of the payment of wages. On the other hand, the act of 1911 relates solely to the time of payment. (This is now Section 38, R. S. 1944.)"

Section 38 provides that the employee is entitled to his weekly wages earned by him to within 8 days of the date of the weekly payment; "but any employee, leaving his or her employment, shall be paid in full on demand at the office of the employer, etc. . . but an employee who is absent from his regular place of labor at a time fixed for payment shall be paid thereafter on demand."

I can appreciate the confusion caused by these two sections. . . The Law Court has held that it assumes that the employee leaves rightfully, when he is entitled to his pay in leaving. In that case he is entitled at once on leaving to the full wages due him, but not to wages that he had forfeited if there is a contract under the provisions of Section 39 of Chapter 25, R. S.

You may advise Mr. Marvin that it is not sufficient to place the statute on the board. It should be done by a contract between the employer and the employees under Section 39, relating to giving one week's notice of intention to quit. The terms are binding upon both parties, once the contract is consummated.

In the case in 114 Maine, *Veitkunas vs. Morrison*, the Court held that the employee was not entitled to recover from the employer in an action to recover pay for one week's labor, having left without one week's notice of intention to leave, under the provisions of the statute.

In regard to the question of reasonable cause of discharge by the employer or of leaving without notice by the employee, I will say that the Maine Labor Law does not cover that question, as it would be impossible for the legislature to cover every state of facts that might arise between an employer and an employee. The question of what constitutes a reasonable cause is left with the employer and the employee in each case of discharge or quitting without notice. If the employer and employee have entered into a contract under the provisions of Section 39 of Chapter 25, R. S. 1944, they should live up to the contract, and that section would, in my opinion, be strictly construed by the Court, because what might be considered reasonable cause by the employer might not be considered reasonable cause by the employee, and vice versa. If an employer discharges an employee who is working under a contract under Section 39, he should pay the week's wage without any quibbling about what is a reasonable cause. This provision was passed on by the Law Court in 91 Maine, page 59, *Cote vs. Bates Mfg. Co.* In this case the defendant claimed that the plaintiff quit work without working a week's notice, and retained one week's wages. The plaintiff claimed that he was discharged without notice and that he was entitled to recover a week's wages due him and another sum equivalent to a week's wages as a forfeiture by defendant. The Court held that the facts of the case did not support the claim of forfeiture by either party and that the plaintiff was entitled to recover the amount due him when he quit work for labor then performed. In this case the mill reduced the rate that the employee was receiving for his work, and the employee refused to work any further at the cut and quit his job. Under these circumstances, the Court held that the plaintiff was justified in leaving and incurred no forfeiture thereby. . . .

RALPH W. FARRIS
Attorney General

May 12, 1948

To Charles P. Bradford, State Park Commission
Re: Power line right of way—Sebago Lake State Park

I have your memo of May 11th, in which you state that the Park Commission has had a request from the Central Maine Power Company to extend power lines beyond the last outlet needed by the State for the new water and

sewerage system. You state that it is your interpretation of Section 23 of Chapter 32, paragraph 1, that the Commission cannot enter into an agreement with the Central Maine Power Company for such a right of way for a period of more than one year; and you state that the State's interests indicate the need of 7725 feet of right of way and private interests beyond will require 5075 feet of right of way; and you ask me to give you my decision and suggestions on this matter.

Your interpretation of paragraph 1 of Section 23 of Chapter 32, R. S. 1944, is correct. That section provides that the Park Commission with the consent of the Governor and Council may sell and convey lands or interests therein, or lease the same, provided no lease shall be for a term longer than one year, etc.

My suggestion to your Commission is that you try to make an agreement with the Central Maine Power Company to grant a right of way for the period of one year, with the proviso that it is to be extended by authority of the next legislature, and the Park Commission will request such authorization from the legislature.

I have talked with a representative of the Central Maine Power Company, and the company feels that it should not run power lines over a right of way which would be leased for only one year, as they have to make five-year or longer contracts with the consumers whom they serve, and it would be very embarrassing and expensive to them to take a lease from the Park Commission for the term of one year and have to vacate after that period without assurance that their lease would not be disturbed after the end of the year.

Another suggestion is that you grant a lease to the Central Maine Power Company for such a right of way for a period of one year, to be extended at the end of each year by the Park Commission with the consent of the Governor and Council for a period of five years or whatever the Commission and the Central Maine Power Company can agree upon.

This is about the only suggestion that I have on this matter, inasmuch as your privilege to lease is limited by law to one year.

RALPH W. FARRIS
Attorney General

May 12, 1948

To Earle R. Hayes, Secretary, Employees' Retirement System

I have your memo of May 10th, based on a discussion which the Board of Trustees of the Retirement System had with me at its last regular meeting, May 7, 1948. The Board requests an opinion as to the payment into the System of back contributions by teachers. You call my attention to the case which was discussed at the Board meeting on May 7th.

You state in your memo that this member did not choose to make contributions to the Maine Teachers' Retirement Association during certain years (so-called "free years") between 1924 and 1930 or during certain years which were prior to his having attained age 25. The then Teachers' Retirement Law provided that teachers need not make contributions during such years, if they did not wish to do so. It was also understood, however, under the old law, that they would receive no credit for such years, unless they did

make the contributions. You call my attention to the provisions of the existing Employees' Retirement System Law, as it appears in Subsection VIII of Section 4 of Chapter 384 of the Public Laws of 1947, which provides as follows:

> "Prior service credit will be granted to those employees formerly subject to the provisions of sections 221 to 241, inclusive, of chapter 37 of the revised statutes of 1944 for service rendered prior to their attaining age 25, provided that such employees pay into the teachers' savings fund 5% of the salary received during such service, and provided further, that for each year of such service such payments shall not be less than $20 or more than $100."

It seems to me from a reading of this provision of the 1947 Retirement Act and paragraphs A, B, D, and F of Subsection II of Section 14 of said Act, that there is a strong inference that a teacher would have credit only for what he had paid in; and my opinion is that the Board's position in this matter is correct.

RALPH W. FARRIS
Attorney General

May 18, 1948

To Marion Martin, Commissioner of Labor and Industry
Re: Section 38, Chapter 25, R. S.

I have your memo of May 12th, asking for a ruling on Section 38 of Chapter 25, R. S. 1944, as follows:

"Does the sentence beginning 'but any employee leaving his or her employment shall be paid in full on demand at the office of the employer where payrolls are kept and wages are paid' apply only to the corporation, person, or partnership engaged in the businesses itemized in the opening statement of that section, and which is specific that anyone engaged in those businesses must pay weekly to within 8 days of the date of such payment."

Supplemental to this question you state, "The problem that has raised this question is that a Houlton corporation hired some women to make addressograph plates and refuses to pay them on the ground that they are not engaged in any of the stated occupations."

In answer to your question I will state that in my opinion Section 38 is broad enough to cover the Houlton case, as being engaged in making addressograph plates would be either manufacturing, mechanical or mercantile. A corporation should not escape the provisions of the statute by resorting to such a subterfuge. Our Court has said that in the construction of statutes it is the obvious intent rather than the literal import which is to govern. It is my opinion that that section was intended to cover all types of work where employees must be paid the wages earned by them to within 8 days of such payment. Otherwise the legislature would not have provided that this section shall not apply to cutting and hauling logs and lumber and the driving of same, nor to an employee of a coöperative association, if he is a stockholder, etc.

RALPH W. FARRIS
Attorney General

May 20, 1948

To John C. Burnham, Administrative Assistant, State Highway Commission
Re: Advertising near the Turnpike

I received your memo of May 14th, relating to the enforcement of Chapter 279 of the Public Laws of 1947. You want to know if, in the enforcement of this Act, the Highway Commission is to consider as illegal billboards and other advertising signs if erected within 500 feet of the right-of-way boundary of roads constructed and maintained by the Turnpike Authority as approach roads to the main part of the Turnpike.

You state that the question has been asked of the Commission if billboards and other advertising signs can be erected adjacent to Route U. S. #1, if located within 500 ft. of the point where the different approaches to the Turnpike intersect Route U. S. #1. Another question has been asked, if billboards can be erected along the approach roads, provided they are not within 500 feet of the right-of-way line of the main part of the Turnpike.

No person or corporation should be allowed to erect or maintain within 500 feet of the nearest right-of-way boundary line of any State Turnpike any billboard or other advertising as defined in Chapter 279 of the Public Laws of 1947.

In reply to the question whether advertising signs can be erected adjacent to Route U. S. #1, if located within 500 feet of the point where the different approaches to the Turnpike intersect Route U. S. #1, my answer is in the negative. They must not be within 500 feet of the nearest right-of-way boundary line of the Turnpike. That will be a question of measurement for your inspectors.

In regard to your question whether billboards can be erected along the approach roads, provided they are not within 500 feet of the right-of-way line of the main part of the Turnpike, my answer is in the affirmative. My reason for this answer is that the approach roads are not a part of the Turnpike.

RALPH W. FARRIS
Attorney General

May 25, 1948

To Milk Control Board
Re: Milk Sales at Veterans Administration

Receipt is acknowledged of your memo of May 19, 1948, requesting that we advise the Board whether it may enforce minimum prices for sales of milk applicable to the area wherein is located the Veterans Administration at Togus, so-called. The entire tract where the Veterans Administration is located is within the exclusive jurisdiction of the United States, and it has exercised exclusive jurisdiction over that area for a great many years.

The United States Supreme Court has held in *Pacific Coast Dairy vs. Department of Agriculture*, 318 U. S., page 285, that a State Milk Control Board may not regulate contracts to sell and sales consummated within an area over which the United States exercises exclusive jurisdiction, under Article I, Section 8, Clause 17, of the Constitution of the United States.

I am therefore of the opinion that the Board would have no authority to enforce the State Act in so far as contracts are concerned which involve the sale of milk in the territory where the Veterans Administration is located, to the Administration or to any Federal Agency there located.

ABRAHAM BREITBARD
Deputy Attorney General

May 28, 1948

To Ernest H. Johnson, State Tax Assessor

I have your memo of May 24th in which you state that the Bureau now assesses and collects the insurance premium tax, under the provisions of Section 136 of Chapter 14, R. S. 1944. You further state that this tax is assessed on gross direct premiums, less deductions due to return premiums and dividends paid or credited thereon, the rate being 2% except where the rate is retaliatory.

You further state that the American Guarantee and Liability Insurance Company of Chicago filed with the Bureau a return covering the period January 1 to December 31, 1947, on which return they requested a refund of $15.22 for the following reasons. During the period in question the company collected gross direct premiums of $459.46, but paid in return premiums the amount of $1220.44, an excess of return premiums of $760.98. In the amount of return premiums paid by them there was an amount returnable on business written by them during 1946 and on which a premium tax was paid April 8, 1947, in the amount of $24.48.

You call my attention to the fact that there is no specific provision in the law whereby the State Tax Assessor has authority to make a refund in such a case. The peculiarity of this case is that the return premiums exceed the direct premiums paid, and you ask the question: "Has the State Tax Assessor authority to direct a refund of this $15.22?"

I am unable to cite any statutory authority for the State Tax Assessor to direct the refund of any State Tax. However, the State Tax Assessor, subject to the approval of the Governor and Council, may make an abatement of any State tax and the amount of the same may be transmitted to the State Controller and deducted from the taxes.

If, in your opinion, the amount of $15.22 is due the insurance company in this case, you might handle same under the provisions of Chapter 31 of the Public Laws of 1947, as aforesaid.

RALPH W. FARRIS
Attorney General

June 3, 1948

To George J. Stobie, Commissioner of Inland Fisheries and Game
Re: Fishway—Meddybemps

I acknowledge receipt of your letter of May 27th, inquiring about reimbursement for the erection of a fishway by the Commissioner, where the owner or occupant neglects to obey an order of the Commissioner to construct one, and also whether the Commissioner would be obliged thereafterwards to maintain and repair the same.

Section 10 of the Inland Fish and Game Laws provides that where all the owners or occupants refuse or neglect to erect, maintain, or repair or alter a suitable fishway, the Commissioner may do so and "shall have an action on the case against all delinquents for their proportion of the expense thereof."

In the present case there is only one owner of two dams which obstruct the passage of fish.

The word "case" refers to the form of action, but the recovery here would be for the total expense in erecting the fishway; and any property of the owner may be attached in that action and sold on the execution issued on the judgment that may be recovered.

As to further repair and maintenance in such a case, the obligation would rest on the owner or occupant, as the Commissioner, in erecting, merely does what the owner or occupant should have done and the Commissioner is allowed reimbursement therefor from the owner. Thereafterwards the duty devolves upon the owner or occupant to keep it in repair, and the failure to do so would subject him to another action of the same form, if the Commissioner is again obliged to do so.

ABRAHAM BREITBARD
Deputy Attorney General

June 7, 1948

To Marion E. Martin, Commissioner of Labor and Industry

I have your memo of June 1st, relating to the exemptions in Sections 24 and 25 of Chapter 25, and in reply will say that in my opinion the exemptions in Section 24 also apply to Section 25.

Then you inquire, "Does the classification 'personal office assistants to any person working in an executive, administrative, professional, or supervisory capacity,' include all office workers such as stenographers, file clerks, etc., who receive more than $1200 per year?"

In my opinion this statute does not apply to all office workers, but only to those who are personal office assistants to any person working in an executive, administrative, professional or supervisory capacity. Many file clerks, bookkeepers, stenographers, etc., in mercantile establishments, stores, restaurants, laundries, telegraph offices, etc., may not be personal office assistants to these persons enumerated in Section 24. In my opinion it is a matter of administration in your office, as to whether or not a certain stenographer or file clerk is a personal office assistant to those exempted under the language of the statute. I will admit that the language of the statute is very broad and might cover stenographers and file clerks, if the facts disclosed that they were personal office assistants to those persons enumerated in Section 24.

Your third question is, "If their salary is rated on a monthly rather than a yearly basis, would this mean that they are exempt from this exception unless they are employed in an executive, administrative, professional or supervisory capacity?"

It does not matter whether their salaries are rated on a monthly or a yearly basis, so long as it is not less than $1200. The statute reads as follows, "who receives remuneration on an annual basis." In my opinion it would make no difference whether they were paid on a monthly or a yearly basis, so long

as the entire remuneration which they receive is not less than $1200 per year, from the personnel department of the employer. In other words, this is not a matter about which the administrative authority should be too technical, rather basing each case of exemption on the facts given the Commissioner by the inspector.

RALPH W. FARRIS
Attorney General

June 10, 1948

To Ernest H. Johnson, State Assessor
Re: Corporate Franchise Tax, R. S. Chapter 14, Sections 102-108

My understanding is that when we are notified by the Clerk of Courts of the filing of a bill in equity for dissolution, notice of which must be given to the Attorney General in accordance with statute, we notify the Secretary of State, and that office in turn notifies the State Tax Assessor. Whether or not the State Tax Assessor should discontinue assessing the corporate franchise tax should depend on the nature of the bill and the appointment of receivers.

In the case under consideration, the business was an active and profitable one. The bill was brought because of a fight amongst the stockholders for the control of the corporation. That, however, is a rare case. By far the majority of the cases are those where the corporation has either ceased to do business or is so hopelessly insolvent that liquidation and dissolution are sure to result.

Our Court has held that a franchise tax may not be assessed against a corporation in receivership, where dissolution and liquidation of the assets are the main purpose. On the other hand, courts have generally held that where a receiver continues and operates the business, the corporation is subject to the franchise tax. It is otherwise where the receiver is merely in possession to liquidate.

Therefore, I would advise you not to discontinue corporate franchise tax assessments, unless receivers have been appointed by the court, as, when receivers are appointed, the corporation "thereafter (has) no right to exercise for itself any of the privileges conferred upon it by the State." *Johnson vs. Johnson Bros.*, 108 Maine 272, at page 275. This tax, it is there said, is "in the nature of an annual license fee for the right to continue to exercise the privileges conferred upon it by the State."

ABRAHAM BREITBARD
Deputy Attorney General

June 16, 1948

Hon. John M. Dudley, Judge Calais Municipal Court . . .

I acknowledge receipt of your letter of June 15th regarding the alleged illegal possession of perch which, on the facts agreed upon, were caught in waters of New Brunswick. The catch, while lawful in New Brunswick, was in excess of the legal limit in Maine. Your letter seems to indicate that the arresting warden was under the impression that the Department of Inland

Fisheries and Game had a policy that persons possessed of fish, as in these circumstances, were subject to prosecution in Maine, notwithstanding the fact that the fish were caught in waters outside of the State.

I inquired from the Commissioner and he informs me that he is unaware of any such policy. The question has always been whether the fish were caught in our waters and whether the claim that they were caught in foreign waters was a sham.

As I read our statute, Section 37 of Chapter 33, being the Ninth Biennial Revision, the prohibition is directed specifically to waters of this State, and a reading of the context would indicate to me that the possession which is made an offense necessarily relates to fish taken and caught in the waters of this State.

On the conceded facts I should be of the opinion that no crime has been committed within the meaning of our statutes. See in this connection *Woods vs. Perkins*, 119 Maine 257, and *State vs. Bucknam*, 88 Maine 385. . . .

ABRAHAM BREITBARD
Deputy Attorney General

June 23, 1948

To Fred M. Berry, State Auditor
Re: Duties and Repsonsibilities of the Department of Audit relating to the University of Maine

I have your memo of June 14th relating to the above entitled subject and have been giving this considerable study, because of the several citations in your memo, together with an opinion of former Attorney General Cowan who cites the *Orono v. Sigma Alpha Epsilon* case, 105 Maine 215. He states in the last paragraph of his opinion, on page 182, Report of the Attorney General, 1941-42,

"From the above it is plainly evident that the University of Maine is a private institution having all the rights and privileges of any private corporation within the limits of its charter. That charter is subject to modification, just as the charters of every other corporation in the State of Maine set up during the last hundred years are subject to modification. The fact that the legislature can modify the charter and at times has done so, does not change the nature of the college as a private institution, any more than the right of the State to change the charter of the Todd-Bath Shipbuilding Company changes the nature of that corporation."

The legislature in 1945, under the provisions of Chapter 98 of the Public Laws of 1945, declared the University of Maine to be an instrumentality and agency of the State for the purpose for which it was established and for which it has been managed, etc., under the provisions of the Private and Special Laws of 1865 and supplementary legislation relating thereto; but it is my opinion that the 1945 Act did not alter the provisions of Section 1 of Article I of Chapter 216 of the Public Laws of 1931 as cited in the third paragraph of your memo, for the reason that said provision was not repealed in the Revision of 1944. If you will consult page 2240, Volume II, R. S. 1944, under the Repealing Act, you will find that this provision was specially excepted from the Repealing Act.

The Administrative Code Act language was as follows: "The provisions of this act shall not be construed to apply to the judiciary, the University of Maine, the state normal schools, the Port of Portland Authority, the executive council, nor the legislature, except when expressly specified."

The legislature, in the 1945 Act making the University an instrumentality of the State, did not in any way alter the application of the Administrative Code Act, as it relates to the University of Maine. Therefore, in my opinion, it is not a part of the Department of Finance and does not fall within the provisions of Section 3 of Chapter 16, R. S. 1944, which is also a part of the old Administrative Code as amended by Chapter 206 of the Public Laws of 1937, Chapter 27, P. L. 1941, Chapter 345, P. L. 1943, and Chapters 337 and 378, Section 13, P. L. 1945.

The Judiciary is an agency of the State, and that was specifically excepted by the Administrative Code Act. In my opinion there is no conflict of these statutes and the ruling of former Attorney General Cowan, which would affect the rights, powers and duties of the Department of Audit in this matter.

RALPH W. FARRIS
Attorney General

June 28, 1948

To R. E. Reed, Commssioner, Sea and Shore Fisheries
Subject: Section 1, Chapter 349, P. L. 1947.

I have your memo of June 25th, calling my attention to the provisions of Section 1 of Chapter 349, P. L. 1947, which provides that eight mills of the tax paid on fuel used in motor boats, which is refunded under the provisions of Section 166, shall be paid to the Treasurer of State, to be made available to the Commissioner of Sea and Shore Fisheries for the purpose of conducting research, development and propagation activities by that department. You state that there is a question as to balances on hand, whether they are to be carried over or should lapse to the general fund under the general statute.

I note in your memo that you will have, at the end of the fiscal year 1947-48, a balance of approximately $7000 in this fund, and you ask my interpretation of the statute.

It is my opinion that it was the intent of the legislature that this balance should be carried over and not lapsed, because of the fact that it is to be used for research, development and propagation activities of your department; and if it were allowed to lapse, the purpose of the legislation would be defeated.

RALPH W. FARRIS
Attorney General

July 6, 1948

To John C. Burnham, Administrative Assistant
Re: Amounts due Deceased Employee

Your memo of July 1st received, inquiring as to whether or not you can pay for vacation not used, to the estate of an employee who has recently died.

Vacation is not a matter of right, but a matter of privilege or grant and is not considered pay after the employee has died.

However, his estate is entitled to pay for any days that he actually worked for the State, and the administrator of his estate or the executor of his will can sign a receipt for pay for the days worked before the decease of the employee. For the Saturdays and Sundays that he worked his estate is entitled to receive pay at the regular rate therefor.

RALPH W. FARRIS
Attorney General

July 6, 1948

To H. A. Ladd, Commissioner of Education
Re: Records, Maine Teachers Retirement Association

Referring to your memo of June 14th, relating to the request of Earle Hayes of the Employees' Retirement System that your department turn over every record of any sort which you have in your department bearing on teachers' pensions, I will say that the legislature did not provide for such a transfer of records as is demanded by Mr. Hayes, and at this time the records of the administration of the Commissioner of Education should be kept in your office, until a Resolve is passed by the legislature ordering them turned over to the Secretary of the Employees' Retirement System.

The records are in your office and are available, but these are the records of another Board.

I presume that the records of all meetings of the Pension Board are available in your office, and it would be proper to lend Mr. Hayes the record relating to any particular case that he had in mind.

As to the wholesale turning over of the records of the Teachers' Retirement Association, I advise against it until you have authority from the legislature to do this.

RALPH W. FARRIS
Attorney General

July 6, 1948

To Richard E. Reed, Commissioner, Sea and Shore Fisheries
Re: Section 2, Chapter 23, Laws of 1937 (Resolves)—Beam Trawls

On June 10th I talked with you in regard to the use of otter trawls in places where the statute prohibits the use of the beam trawl, and you left a memo in my office asking for an interpretation of Section 2, Chapter 23, Resolves of 1937, which regulates fishing for ground fish in Sheepscot Bay.

This Resolve provides that the Commissioner shall repeal the rules and regulations numbered 6 and 7 and issue two new rules in place thereof, and I presume that these rules and regulations have been legally promulgated and are now in effect. Regulation (2) in Chapter 23 provides:

> "It shall be unlawful to fish for or to take with beam trawls any fish from the waters subject to the jurisdiction of this state northerly from a line drawn from Cape Small Point to the North End Sequin Island thence in an easterly direction to Pumpkin Island and thence in a northerly direction to Ocean Point."

This was an emergency Resolve and became effective on March 18, 1937, when approved by the Governor.

There is a difference in construction between the beam trawl and the otter trawl, and if you went into court on a complaint issued for violating this rule and regulation, alleging that a beam trawl was used, you would have to prove that it was a beam trawl of another construction or make, as the statute authorizing rules and regulations and the rule and regulation must be strictly construed. I doubt whether a judge of a municipal court would allow your wardens to "prove" in court that the accused persons were using a beam trawl if they were not actually doing so. The burden is on your department to prove beyond a reasonable doubt that they were violating this rule and regulation by taking fish with a beam trawl.

Your only remedy is action by the legislature to have this statute authorizing this rule and regulation amended, taking care of otter trawls or any type with a similar construction.

My advice is to try to stop these people if you can, but do not take a chance of losing a case in court by attempting to say that they are using a beam trawl when they are not, but are using a substitute therefor which is of a different construction, although it answers the same purpose.

RALPH W. FARRIS
Attorney General

July 12, 1948

To Ernest H. Johnson, State Tax Assessor
Re: Stamp Shipments

Your memo of July 6th received, in which you stated that on shipments of cigarette or tobacco tax stamps to distributors you are insuring them for $50 which will cover the manufacturing cost, but not the face value thereof, and in seven years have had no difficulty and suffered no losses. In case of loss in transit the Railway Express Company will pay the $50 declared value, and the Post Office will pay the actual manufacturing cost up to $50 on presentation of the proper forms and claim sheet. Since the distributor pays the carrying charges it will be necessary, in the case of express shipments, for the consignee to waive his claim in favor of the State, and, in the case of shipment by mail, for both the consignee and the State to indicate to whom the indemnity should be paid.

You further state that you have taken this matter up with the local Railway Express Agent and the Augusta Postmaster, and you have decided that, in case of loss in transit, the Tobacco Tax Division will, upon proof of loss, send a duplicate order of stamps to the consignee at no cost to him, arrange to collect the indemnity from the Railway Express Agency or the Post Office, and adjust the loss on your books. You state that this matter has been taken up with the State Controller and the Deputy State Auditor, and both have agreed with your arrangements. You ask if this plan meets with my approval.

As far as I can see, this plan is perfectly all right, as far as this office is concerned.

RALPH W. FARRIS
Attorney General

July 19, 1948

To Ernest H. Johnson, State Assessor
Re: Taxation of Indians

I have your memo of July 6th, calling my attention to sub-section VIII of Section 6 of Chapter 81, R. S., as amended by Chapter 191, P. L. 1947, which provides that the polls and estates of only those Indians "who reside on tribal reservations" are exempt from taxation.

You ask, "Do the words 'tribal reservations' include the entire area of Indian Township in Washington County?"

I have checked the Indian Treaties, and I find that in the Maine Resolves of 1843, on page 264, a treaty agreement was signed by a committee appointed by the General Court of the Commonwealth of Massachusetts to treat with and assign lands to the Passamaquoddy Tribe and others connected with them; and in that Treaty they set off Township No. 2 in the First Range surveyed by Mr. Samuel Titcomb in 1794, containing about 23,000 acres more or less, which in my opinion would make this territory a part of the tribal reservation of the Passamaquoddy Tribe.

RALPH W. FARRIS
Attorney General

July 21, 1948

To Harrison C. Greenleaf, Commissioner of Institutional Service
Re: Bids—Augusta State Hospital

I have your memo of July 21st, relating to the bids for pointing and waterproofing walls at the Augusta State Hospital. You state that the bids were opened in the office of the Commissioner of Institutional Service at 10 A.M., July 19th. . . . You further state that because of the extreme lowness of the bid by St. Hilaire Waterproofing, Mr. St. Hilaire was called in to go over the proposal, and through error he had omitted from his estimates one whole side of the building, which amounted to $2,576. This he has corrected, and his corrected bid would be $6,436, which is the lowest bid.

If the St. Hilaire Waterproofing Company is financially responsible and will comply with all the other conditions in performing this contract, it is my opinion that you, as Commissioner, should accept same.

There is nothing in the law which prevents a bidder who has made an error from correcting same; and there is no reason why the Commissioner should not accept same, if it is the lowest bid made and the low bidder is in a position to do the work in an efficient manner, according to the specifications.

RALPH W. FARRIS
Attorney General

August 6, 1948

To: A. M. G. Soule, Chief, Division of Inspection,
Department of Agriculture

I have your letter of August 3rd relating to Section 184 of Chapter 27 of the Revised Statutes of 1944, which provides that the Commissioner shall

have all analyses of commodities except milk and cream examined under the inspection laws of which he is the executive made at the Maine Agricultural Experiment Station and that the director of the station shall analyze *or cause to be analyzed* all samples submitted to him by said Commissioner.

You further state that since 1914 it has been the regular program for the Commissioner to submit annually samples of agricultural seed in order to determine the quality and purity of the seed and its germinating qualities.

You further state in your letter that recently, owing to the resignation of the seed analyst and technician at the Experiment Station, the question has been considered by the Commissioner of sending samples of seed to some other laboratory for analysis, and you respectfully request an opinion as to the legality of this procedure.

In reply I will state that it is my opinion that the statute is mandatory and the analyses of agricultural seed must be made through the Maine Agricultural Experiment Station. However, the director of the station does not have to analyze the seed himself, as the statute permits him to cause it to be analyzed; but this must be done at his direction or at his behest.

RALPH W. FARRIS
Attorney General

August 16, 1948

To Dean Fisher, M. D., Secretary, Board of Barbers and Hairdressers

I have your memo of July 28th concerning the issuance of a license to a person practicing manicuring in a barber shop.

Section 206, paragraph III, of Chapter 22, R. S. 1944, defines the practice of hairdressing and beauty culture, which includes the manicuring of fingernails of any other person.

Section 209 provides that no person shall practice barbering, hairdressing or beauty culture unless first having obtained a license and a certificate of registration as provided in Sections 205-222.

You ask me to advise you if in my opinion a person who is a registered hairdresser may practice manicuring in a licensed barber shop without first securing a license, if said shop is not a beauty shop.

It seems to me that a registered manicurist, or a registered hairdresser under the definition as set forth in subsection III, could practice manicuring in a duly licensed barber shop without the barber's securing a license to run a beauty parlor, provided she is on her own; but that if the manicurist is engaged by the barber for hire or reward, he would be obliged to take out a certificate for conducting a hairdressing and beauty culture business, which includes manicuring.

RALPH W. FARRIS
Attorney General

August 26, 1948

To Paul L. Hanscom, Warden Supervisor, Inland Fisheries and Game

In answer to your inquiry of July 30, 1948, which contains questions on which you want to be advised, I hereby advise you as follows:

1. "An Indian born in Canada, who has no real estate, but has lived in Maine nearly all his life, wishes to buy a resident license. Is he entitled to this, if not how can he become a citizen?"

Answer. Under the provisions of the Inland Fish and Game Laws this person could procure only a non-resident license, not being a citizen of the United States, or being an alien and owning no real estate. An Indian born outside the United States may become a citizen by naturalization. He may apply for naturalization in either the Federal Courts or the Superior Court of the State at Bangor.

2. "A woman resident of Maine marries a man who is a Non-Res. and is in the Army, they move from place to place outside of Maine for several years. They come to Maine for a vacation and the woman wants to buy a resident license, claiming she has never become a resident of any other state. Is she entitled to a resident license?"

Answer. By our statutes, Chapter 3, Section 4, it is provided,

> "For purposes of voting, office holding, or serving on jury, husband and wife may be deemed each to have a separate residence; such residence to be determined as in the case of other persons."

If this woman satisfies the town clerk that she was domiciled in Maine before her marriage and never intended to abandon her domicile and he is satisfied that she retained her domicile in Maine, in my opinion she would be entitled to a resident license. The question is one of fact, to be determined from all the facts in the particular case.

3. "On a river such as the Penobscot, would the East and West Branches come under the same law as the river proper, that is would the law governing the river also govern the branches or would they come under tributaries?"

Answer. The East and West Branches of this river are not tributaries as defined by the Inland Fish and Game Laws.

ABRAHAM BREITBARD
Deputy Attorney General

August 31, 1948

To Ernest H. Johnson, State Tax Assessor
Re: Northeast Aviation Company

I have your memo of August 20th, stating that you are in receipt of a letter from the Northeast Aviation Company, which reads as follows:

"We are inclosing gasoline exemption form which we are not familiar with as to its disposition and feel that you may be of assistance to us in what method or procedure should be used by us to get this State Tax refund represented by the inclosed certificate."

You also enclose a certificate of exemption of foreign diplomatic and consular officers from motor fuel tax, which is a federal proposition and does not apply to the State of Maine.

You refer to a ruling by former Attorney General Franz U. Burkett, addressed under date of October 25, 1939, to Frank H. Holley, then State

Assessor, in which he states that he does not know of any grounds on which such exemption would be justified in this State.

I ruled on this matter of exemptions on May 14, 1945, in a letter to Governor Hildreth in which I stated:

"While this office is cognizant of the close coöperation of the Governments of the United States and Canada, yet it cannot render an opinion refunding money collected in excise taxes from the Canadian Government, in the absence of treaty or statutory provisions.

"In the case of *Madden v. Commonwealth of Kentucky*, 309 U. S. 83, which overruled the former decision in *Colgate v. Harvey*, 296 U. S. 404, the Court stated the following rule:

> " 'In the States there reposes a sovereignty to manage their own affairs except only as the requirements of the Constitution otherwise provide. Within these constitutional limits the power of the States over taxation is plenary.'

"And the Supreme Court held in the case of *United States Trust Company of New York v. Helvering*, 307 U. S. 57,

> " 'The right to exemption cannot be implied. Exemptions from taxation do not rest upon implication.' "

It is still my opinion that in the absence of treaty or statutory provisions, the right of exemption of foreign diplomatic and consular officers from payment of motor fuel tax to the State cannot rest on implication.

RALPH W. FARRIS
Attorney General

September 7, 1948

To Fred M. Berry, State Auditor
Re: Legislative Research Committee

I have your memo of September 2nd concerning the enactment of Chapter 392, P. L. 1947, re-creating a Legislative Research Committee with a Director, which Act provides that the President of the Senate shall appoint three Senators, and the Speaker of the House seven Representatives who shall constitute this Research Committee. You state that the legislature appropriated approximately $34,000 per year to operate this department, which is more or less under the supervision of said Director, and your question is whether or not the expenditures made in this department are subject to audit by the State Department of Audit.

It is my opinion that this is purely a legislative committee and is exempt from audit by your department, under the provisions of the Administrative Code Law.

RALPH W. FARRIS
Attorney General

September 20, 1948

To Fred W. Rowell, Director of Veterans' Affairs
Re: GI Training of Real Estate Salesmen

I received your memo of September 14th, calling my attention to paragraph II of Section 3 of Chapter 75, R. S., and also to Section 3 of the same law. You ask if a veteran taking a course of training which has been approved by the Veterans Administration under Public Law 346, being trained by a licensed broker, (1) would be considered a salesman, as defined in Paragraph III of Section 2, or (2) could legally perform such duties as his training would require without first obtaining a license, provided that in addition to his apprentice wage being paid to him by the broker he also received as added remuneration a certain commission on sales originated through his efforts.

Section 3 prohibits any partnership, association or corporation from having a license unless every employee who acts as a salesman for such partnership, association or corporation holds a license as a real estate salesman. Therefore, in my opinion, a veteran taking a course of training and selling real estate and receiving a commission would be considered as a salesman as defined by the statute, and (2) could not legally perform such duties as his training would require in selling real estate without first obtaining a license as provided by statute.

However, any veteran taking a course in training as a salesman and not receiving a commission would be allowed to act as a salesman under the direction of the licensed partnership, association or corporation.

Any veteran taking a course of training, however, can apply for a salesman's license and if he can fulfill the requirements of the statute, he can secure a license and then he would be in a position to receive an added remuneration in the nature of a commission on sales originated through his efforts.

The Real Estate Commission has no power to make rules and regulations contrary to this statute.

RALPH W. FARRIS
Attorney General

September 21, 1948

To Lucius D. Barrows, Chief Engineer, State Highway Commission
Re: Snow Removal

I have your letter of September 16th in connection with snow removal operations by the State Highway Commission, and I note that a substantial amount of work is carried on by the towns, either by contract approved by the State Highway Commission, or by the hour, or on a force account basis, in which case this method is approved by the Commission. You state that the work is under the general direction of the Commission, to the extent that it must be carried on in a satisfactory manner if state aid for snow removal is paid to the town. You further state that this work is carried on on state aid, third class and town roads, the State participating in the cost and reimbursing the towns for the amount of state aid due under the snow removal law. On this statement of fact you ask, "Are men engaged on this snow removal work entitled to payments by the State under the Workmen's Compensation Act in case of accidents."

The question in your letter cannot be answered in the affirmative or the negative without some explanation. When contracts are let out by the town for snow removal, even though they are approved by the State Highway Commission, the employer would be the town or the particular individual who had taken the contract, and employees would not be entitled to payments by the State in case of accident within the meaning of the Workmen's Compensation Act. However, if the employees engaged in snow removal are on the State Highway Commission payroll and under the supervision of the State Highway Commission through its supervisors or foremen, then they would be entitled to the benefits of the Workmen's Compensation Act, as employees of the State.

One of these cases went to the Law Court in 1927. . . In that case the Commission awarded compensation to the widow of an employee who was killed in a gravel pit in the City of Belfast, while engaged in the construction of a third-class highway. The City of Belfast appealed, contending that the employee was working for the State Highway Commission rather than the City of Belfast. In this case, of course, the city was entitled to receive funds from the State for the purpose, and the location of the highway was approved by the Highway Commission, in conformity with the old statute of 1919, which has now been amended. The Court held that the employee was in fact hired and paid by the City of Belfast, and the work was being done by the City of Belfast, notwithstanding the fact that it received reimbursements from the State Highway Commission and the highway was subject to approval by the Commission.

I believe that this reasoning would apply to the snow removal operations, unless the State Highway Commission carried the employees on its payroll and had direct supervision of the work of snow removal, and not merely approval.

RALPH W. FARRIS
Attorney General

September 30, 1948

To Hon. Frank S. Carpenter, Treasurer of State
Re: Investment of Bridge Funds

I received your letter of September 29th, requesting a ruling on the following questions:

"1. Does the Treasurer of the State have control of investing the funds of the Waldo-Hancock Bridge, and if so, what board approves this action?

"2. Does the Treasurer of the State have control of investing the funds of the Kennebec Carlton Bridge, Bath, Maine, and if so, what board approves this action?

"3. Does the Treasurer of the State have control of investing the funds of the Deer Isle-Sedgwick Bridge, and if so, what board approves this action?

"4. If the Treasurer of the State does invest these funds, what are considered legal investments?"

In answer to Question #1, I will say that the Waldo-Hancock Bridge was incorporated under Chapter 126, P. & S. L. 1929. Section 6 of said chapter provides:

> "All moneys collected as tolls shall be regularly deposited by the directors in some bank or trust company designated therefor by the governor and council, and on the first secular day of each month the balance so on deposit shall be transmitted by them to the state treasurer. All rentals shall be paid direct to the state treasurer. From the funds so received the state treasurer on warrants signed by said directors and approved by the governor and council and by the state auditor shall pay all bills for the maintenance, upkeep, repairs and operation of said bridge and shall also pay the interest on the bonds as they come due, any balance shall be held by him as a separate fund for the retirement and payment of the bonds hereinafter provided for."

Section 11 of Chapter 15, R. S., as amended by Chapter 22 of the Public Laws of 1945, provides that when there is money in the treasury which in his judgment is not needed to meet current obligations, the Treasurer may with the advice and consent of the Governor and Council invest such amounts as he deems advisable in bonds, notes, certificates of indebtedness, or other obligations of the United States of America, which mature not more than 1 year from the date of investment.

In my opinion you can invest said funds of the Waldo-Hancock Bridge under the general statute.

In answer to Question #2 I will state that the Carlton Bridge was incorporated under Chapter 89, P. & S. L. 1925. Section 6 of said bridge charter contains the following:

> "From the funds so received the state treasurer on warrants signed by said directors and approved by the governor and council and by the state auditor shall pay all bills for the maintenance, upkeep, repairs and operation of said bridge and shall also pay the interest on the bonds as they come due, any balance shall be held by him as a separate fund for the retirement and payment of the bonds hereinafter provided for."

Therefore in my opinion you can invest said funds of the Carlton Bridge under the provisions of Section 11, Chapter 15, R. S.

In answer to Question #3, in re investing the funds of the Deer Isle-Sedgwick Bridge, I will say that said bridge was incorporated under Chapter 88, P. & S. L. 1935. Section 9 of said chapter provides:

> "The trustees shall regularly deposit all sums so collected, and shall, on the 1st secular day in each month give to the treasurer of state the monthly balance on deposit with an estimate of the charges for the upkeep, maintenance, repairs and operation of said bridge and shall, in each 6 month period, certify to the treasurer of the State of Maine such sum as they may have on hand beyond the charges necessary for maintenance, upkeep, repairs, and operation, to apply the same to the interest on the debt, and the payment of principal and the retirement of bonds, and any additional funds necessary for maintenance, interest and the retirement of bonds shall be furnished and paid by the state of Maine."

Section 10 of said Chapter 88 provides that when all the bonds are retired and bills paid, such bridge shall cease to be operated as a toll bridge and shall, thereupon, be a free bridge, the property of the State of Maine, to be maintained by the State, and the trustees shall be discharged and the Bridge District terminated. Therefore in my opinion you have no authority to invest the funds of the Deer Isle-Sedgwick Bridge, because they are technically in the hands of the trustees and not in the hands of the Treasurer of State for investment.

Finally you ask if the Treasurer of State does invest these funds, what investments are considered legal.

Bonds, notes, certificates of indebtedness, or other obligations of the United State of America, which mature not more than 1 year from the date of investment, as provided in Section 11, Chapter 15, R. S., above cited.

RALPH W. FARRIS
Attorney General

October 6, 1948

To Mrs. Marion B. Stubbs, Librarian, State Library

I have your two letters of September 30th, one of which relates to the provisions of Section 22 of Chapter 38 of the Revised Statutes, which provides for the distribution of records of vital statistics to certain institutions and officers and provides that the remainder shall be placed in the State Library "for exchange or library use." You inquire about the use of the words "exchange or library use," and state that after the distribution permitted by law there are a great many copies of these publications remaining for which you have no room and which you do not need for library use.

I would not throw them away without petitioning the Committee on the Destruction of Old Records for permission to do so.

In regard to your question relating to the interpretation of Section 29 of said chapter, which provides that the officers of each free public library shall send annually to the State Library a list of all books and documents received from the State Library and a list of all books and documents purchased from the State stipend, and further provides that the State stipend shall be withheld unless such report is rendered before May 1st, all that I can say in regard to this section is that it is on the statute books, has never been amended or repealed, nor has any decision been rendered by our courts interpreting its provisions. What I should do, if I were in your position, would be to have the libraries furnish you with the post card forms supplied by you at various times during the year and keep those on file. If you care to make a change in the procedure of your office and require the officers of every public library to submit a list of all books purchased with the State stipend during the preceding year and of all books and documents received from the State Library, of course you can do so, as that is what the law provides; and if they should refuse to render said report, the aid from the State to free public libraries could be withheld until they did file such report. It seems to me that this is a matter of administration, rather than one for interpretation. The statute is very plain and needs no interpretation.

The answer to your question in the last paragraph, "Is it the duty of the State Librarian to require such list under the present law?" is, Yes.

RALPH W. FARRIS
Attorney General

October 19, 1948

To State Park Commission
Re: Use of State Property

This department is informed by Mr. Bradford that the War Assets Administration desires a certificate relative to the non-discriminatory use of surplus property at Fort Popham which the Federal Government proposes to transfer to the State of Maine. I understand that this property is to be used in connection with the Memorial Park at Fort Popham.

All public parks, and for that matter all property of the State for public use, may be used by all persons in the State without regard to race, religion or creed and there is no discrimination on that account.

ABRAHAM BREITBARD
Deputy Attorney General

October 20, 1948

To W. O. Bailey, Education
Re: Sale of School Buses

You have submitted to this department a letter written by a superintendent of schools inquiring about the disposition of conveyances used to transport pupils to schools, where these have been replaced by the purchase of new school buses.

There is no reference in the statute to the purchase of these conveyances by municipalities. The only provision is that the superintending school committee may contract for the transportation of pupils. You advised me, however, that instead of contracting for such transportation, buses have been purchased by towns for that purpose. In some instances the buses were purchased by towns out of their general funds and in others by the school committee from the appropriated maintenance fund.

The question now arises whether the old vehicles shall be sold by the school committee or by the selectmen of the town.

These vehicles, like all other school property, belong to the town, whether purchased from the general fund of the town or from the maintenance account of the schools. The title of such property is in the town. The custody is under the control and supervision of the school committee.

It seems to me that the sale should be made by the officials of the town and the proceeds thereof return to the account from which the purchase was made. If from the maintenance account, the proceeds should be deposited to that account.

ABRAHAM BREITBARD
Deputy Attorney General

November 1, 1948

To H. B. Peirson, State Entomologist, Forest Service
Re: Tree Surgery

I received your letter of October 22nd, stating that you have been requested to obtain a ruling on the Tree Surgery Law, R. S. 1944, Chapter 32, Sections 51 and 52.

You state that the point in question is whether a telephone company has the right to prune trees for line clearance along highways and its own rights of way, having the work done without the supervision of a licensed man.

It is my opinion that the provisions of Sections 51 and 52 do not apply to telephone companies pruning trees for line clearance along highways and their own rights of way. The law is intended only for the improvement and protection of shade, ornamental and forest trees. Section 51 specifically provides that no person, firm or corporation shall advertise, solicit or contract to improve the condition of shade, forest or ornamental trees by pruning, trimming or filling cavities, or to protect such trees from damage by insects or disease, either by spraying or any other method, without securing a certificate under the provisions of Section 52.

It seems to me that it was not the intent of the legislature that the law should apply to trimming trees for necessary purposes such as the running of lines by companies doing a public utility business. Of course, on their own rights of way there is no question; but on the rights of way along highways it is my belief that if they get permission from the owners to trim these trees, they would not be violating this license law.

RALPH W. FARRIS
Attorney General

November 4, 1948

To Edward L. McMonagle, Department of Education
Re: Unused School Buildings in Unorganized Territory

I have your memo of November 3rd, calling my attention to Section 153 of Chapter 37, R. S., and stating that the Commissioner of Education is in possession of several school buildings in deorganized places in which schools are not being currently operated because of sparse population or lack of teachers. You state that the Commissioner feels that these buildings, with changing conditions, may at some future date be needed for schoolhouses, and you submit the following questions:

"1. May the Commissioner of Education rent any building to a state department, a local association or an individual on such terms as seem advisable to him with the provision that the property be made available for school purposes on demand by him."

My answer to Question 1 is in the affirmative, as Section 153 provides that upon the deorganization of a town or plantation school property becomes the property of the State and under the charge of the Commissioner, the same as other school property in unorganized territory.

"2. What legal steps are necessary for such rentals?"

Answer. Proper steps would be to secure Council Order authorizing the Commissioner to enter into a lease, which lease would be subject to approval by the Attorney General's Department as to form.

RALPH W. FARRIS
Attorney General

November 4, 1948

To Ernest H. Johnson, State Assessor

I have your memo of November 2nd, stating that the Commissioner of Education is in possession of several school buildings in deorganized places which, because of the fact that there is no apparent present or future need for them, he proposes to turn over to the State Tax Assessor under the provisions of Section 13 of Chapter 90, R. S., as amended by Chapter 182 of the Public Laws of 1945. You submit the following questions:

"1. Is the State Tax Assessor obliged to make immediate disposal of these buildings?"

Answer. There is no provision of law which obligates you to make immediate disposal of these school buildings. You may use your own discretion in disposing of same.

"2. May the State Tax Assessor rent, grant or otherwise transfer use or ownership, for a limited time or permanently, to any department of state, local association or individual through private sale or agreement?"

Answer. I have just answered a similar memo for the Commissioner of Education, in which I have ruled that he has authority under Section 153 of Chapter 37, R. S., to rent certain schoolhouses which may again be used for school purposes, with authority from the Governor and Council; and in answer to your question 2 I will state that you should secure authority by Council Order to rent any of the school buildings which are released to you by the Commissioner of Education to any department of the State, local association, or individual through private sale or agreement, provided said agreement or lease is approved as to form by this office.

RALPH W. FARRIS
Attorney General

November 5, 1948

To Col. Francis J. McCabe, Chief, Maine State Police
Re: Spotlights

I have your memo of November 3rd calling my attention to Section 116 of Chapter 19, R. S., as amended by Chapter 320 of the Public Laws of 1947.

You will note by the amendment of 1947 that fog or auxiliary lights shall emit a white or amber beam of light.

You state that some automobiles are delivered to the owner equipped with two spot lights, one on each side of the car. You have been asked if, after the bulb and wire are removed from one of these spot lights, it would be considered a spot light.

In reply I will say that it would not be a spot light, if it was not equipped with bulb and wire connecting same; it would be an ornament. Therefore it would not be a violation of the law to have an extra spot light on the car, if it was disconnected and the bulb taken out.

The question of whether it is a spot light should be determined by the inspectors or members of your department.

It would not be fair to construe the law so as to require the owner of a car delivered equipped with two spot lights to dismantle one entirely. I think your men should be advised to check on cars that are equipped with two spot lights and see that only one is in operation and connected by wire and bulb.

RALPH W. FARRIS
Attorney General

November 5, 1948

To A. D. Nutting, Forest Commissioner

I have your letter of November 4th, relating to land owners in the Maine Forestry District who wish advice on legal procedure in adjusting the Forestry District tax. You raise the two following questions:

"1. Is it possible to set the tax on a supposed permanent basis, plus a sum of money for equipment for the next two years?"

"2. How should the tax be set up to take care of the present deficit?"

Following out the suggestions which we made yesterday during our conference, I will say in answer to Question 1 that it would not be possible to set the tax on a supposed permanent basis plus a sum of money for equipment for the next two years. The tax should be definite in your bill.

In answer to Question 2 I suggest that Section 74, which provides for an annual tax of 2¼ mills, be amended with an increase for a period of, say, two years, to take care of the equipment and deficit, and then have the tax fall back to, say, 5 mills on a permanent basis after January 1, 1951, or June 30, 1951, whichever would be more convenient. This would give the District sufficient tax for the next two years to take care of the deficit and the equipment, and then it would fall back upon a permanent basis after a certain date, either 4¼ mills or 5 mills, whichever can be agreed upon when the bill is drafted.

RALPH W. FARRIS
Attorney General

November 22, 1948

To A. D. Nutting, Forest Commissioner

I have your letter of November 18th, enclosing a copy of a letter which you received from Frederick D. Farnsworth, City Manager of Rockland. The question is,

"Can municipalities qualify for reimbursement of one-half their forest fire suppression costs up to 1% of their tax valuation which went to the aid of others, but which were not paid by the towns they aided?"

Answer given Mr. Wilkins last year: "Bills for suppression costs must be submitted to the town for which the services were rendered and the equipment furnished, and each town is only liable up to one per cent of its valuation as of April first for the purposes of taxation within the town's own boundaries."

This is in conformity with the present statute. I am sorry that I cannot make any other ruling, as Mr. Farnsworth is right in equity; but the language of our statute does not permit me to give any other answer to the question.

You may call Mr. Farnsworth's attention to Chapter 362 of the Public Laws of 1945, which provide as follows:

"In carrying out the provisions of this section, the state shall reimburse the towns and cities 1/2 of the suppression costs incurred by the forest fire wardens therein, upon approval of the forest commissioner."

This statute is not broad enough to take care of the suppression costs of fires in other towns. However, this can be amended by the legislature and it probably will be, as this law did not take care of the emergency last year and is not satisfactory to anyone concerned.

RALPH W. FARRIS
Attorney General

November 23, 1948

To Marion E. Martin, Commissioner of Labor and Industry

In your memorandum of November 16th you request an interpretation of Section 38 of Chapter 25, R. S. 1944, in particular that part which provides that an employee leaving his or her employment shall be paid in full on demand. In your inquiry, speaking of the employment, you say, "Their employees work on a piece-work basis, frequently more than one employee working on each piece. It takes time to compute what each worker has earned because the workers' production varies from day to day." Your question is, "May they (employers) wait until the pay day following the employee's separation from his employment, or must they pay immediately upon demand?"

The statute under consideration is a criminal statute and under settled rules of law must be strictly construed. As I read it, the purpose of the act primarily was to provide that employees in the industries enumerated, both private and public, shall be paid weekly the wages earned" . . to within 8 days of the date of such payment." This is followed by the clause reading, ". . but any employee, leaving his or her employment, shall be paid in full on demand at the office of the employer where payrolls are kept and wages are paid."

I think that the last clause quoted qualifies the right of the employer to hold back the wages for the 8 days preceding the date of payment. An employee upon leaving such employment, if he demands it, shall be paid in full the wages earned up to the time of his leaving. In other words, the employer may not hold back the wages earned within 8 days of such payment, which he could do if the employment continued. It is that failure to pay the employee in full that is made an offense punishable by the prescribed fine.

I also think that a reasonable interpretation would be that the employer or his agent charged with the duty of computing the wages, at least where the person is a piece worker, should know in advance of the employee's leaving his employment. I do not think it would apply in the case of an employee leaving his employment abruptly and without notice and demanding his pay, or that failure on the part of the employer to meet such demand immediately would subject him to the criminal punishment of the statute. I cannot conceive that the legislature would say that the employer commits a crime in not paying wages on demand where the employee leaves his employment without notice and from the circumstances it would require a reasonable length of time, which may be hours or days, to have the earnings up to that time computed. I think that in such a case a reasonable time must elapse before it can be said that the statute has been violated. What is a reasonable time would depend on the circumstances existing in each case. As I said before, a reasonable time may be hours, it may be days. I cannot say that the pay day following would be a reasonable time, although it may be; but the employer would have a reasonable time to respond to the demand.

ABRAHAM BREITBARD
Deputy Attorney General

November 23, 1948

To Charles P. Bradford, Director, Park Commission
Re: Fort Knox

This department acknowledges receipt of your memo of November 10th with regard to the conveyance of Fort Knox to the State of Maine by the United States of America. You quote from a part of the deed, which is a condition annexed to the grant by the Government, providing that the conveyed premises shall be used for public purposes only, and upon cessation of such use the title and right of possession of the premises shall revert to the United States.

This land constitutes one of the State Parks and is open to the general public, and this use of it by the State would satisfy the conditions of the deed that the premises were to be used for public purposes only. The fact that the State charges a fee for the use of certain facilities, or plans to erect a building which it will let out as a concession to some person ". . to sell sandwiches, tonics, ice cream, souvenirs, etc. . . ." would not in any way detract from its being used for public purposes, since the general public without discrimination may have the use of any of the facilities erected to add to their comfort and enjoyment; nor does the fact that food and refreshments are there sold by a concessionnaire to the general public visiting said park violate the conditions in the deed. In fact, the condition is observed by the furnishing of these facilities.

ABRAHAM BREITBARD
Deputy Attorney General

December 15, 1948

Gen. George M. Carter, The Adjutant General
Re: Bath Water District Easement

Referring to your memo of November 23rd, which came during my absence, with attached communication from the Attorney for the Bath Water District, John P. Carey, and diagram covering the matter of a request for an easement from the State relating to the location of a new water line:—

I note that you feel that this request is reasonable, but prefer to have an opinion from this office before answering this communication.

It is my opinion that under Section 24 of Chapter 12 you have authority to grant this easement.

Please have Mr. Carey, attorney for the Bath Water District, draw up the easement which he expects the State to sign, according to the plan enclosed and submit it to this office for approval as to form.

Of course, the grant must be in the name of the State of Maine by the State Military Defense Commission, which is headed by the Governor. . . .

RALPH W. FARRIS
Attorney General

December 15, 1948

To Ernest H. Johnson, State Tax Assessor
Re: Gasoline Tax Refunds

Referring to your memo of November 29th, calling my attention to Section 160 of Chapter 14, R. S. 1944, as amended, which provides that in certain cases 5c of the 6c gasoline tax shall be refunded as thereinafter provided:—

Section 166 provides for a refund for vehicles that do not operate on the public highways of this State. It is my opinion that gasoline used in off-highway operation of unregistered farm trucks is subject to the refund provisions of Section 166 of Chapter 14 as referred to in Section 160 of the same chapter. . .

RALPH W. FARRIS
Attorney General

December 22, 1948

To A. K. Gardner, Commissioner of Agriculture
Re: Apportionment of State Stipend

Your memo of December 21st received, calling my attention to Section 16 of Chapter 27, R. S., as amended by Chapter 366, P. L. 1947, which provides for the apportionment of the stipend among legally incorporated agricultural clubs, societies and fair associations of the State, and requesting me to render a definition of the terms "agricultural clubs, societies, and fair associations," within the meaning of this section.

In my opinion it means those clubs, societies and associations which have become legally incorporated under Chapter 50 of the Revised Statutes and the purposes of which are for the promotion of agriculture and the dissemination of information relative thereto, the awarding of premiums, gratuities

and prizes upon agricultural and domestic products. I feel that the words "legally incorporated" are important, because if the club does not have any legal entity, it appears from the reading of the statute, that it could not participate in the stipend. The language is "Said stipend shall be divided pro rata among the legally incorporated" societies. This includes clubs, societies and fair associations of the State.

RALPH W. FARRIS
Attorney General

December 22, 1948

To Lester E. Brown, Chief Warden
Re: Fees

I have your memo of December 21st, calling my attention to the apparent inconsistency between part of Section 18 and Section 110 of Chapter 33 of the Revised Statutes, the Inland Fish and Game Law.

Section 18 states that all such fees are to be paid to the Commissioner of Inland Fisheries and Game. That refers, I presume, to fees of the wardens for serving criminal processes on offenders against the law relating to camp trespassers or persons committing larcenies from any camp, cottage or other building. That means that the wardens cannot keep the fees, but said fees must be paid to the Commissioner of Inland Fisheries and Game.

Section 110 provides that all fines, penalties, officers' costs and other moneys recovered by the court under any of the provisions of this chapter shall accrue to the Treasurer of State and shall be paid into the treasury of the county where the offense is prosecuted; and it further provides that if the fees are not recovered from the respondent, they shall not be assumed or paid by the county where the offense was committed.

Therefore in my opinion the county should not pay these fees in case they are not paid by the offenders or recovered from the respondents.

Of course that part of Section 18 relating to the payment of fees to the Commissioner ties in with Section 110, where they are paid to the treasurer of the county and accrue to the Treasurer of State and are credited to the Department of Inland Fisheries and Game for certain purposes provided for in Section 110.

RALPH W. FARRIS
Attorney General

December 23, 1948

To Ernest H. Johnson, State Tax Assessor
Re: Dividends Paid by Mutual Life Insurance Companies

I have your memo of December 6th relating to the provisions of Section 135 of Chapter 14, R. S., as amended. You state in regard to this section that a question has arisen relating to the deduction of dividends from the life insurance premiums collected before computing the tax on life insurance companies and that you desire a ruling as to whether or not the amount of the mortuary dividends and the amount of the maturity dividends are deductible from the premiums collected in any year before computing the tax.

In answer I will say that it is my opinion that they are deductible except by companies in States that have a retaliatory law. It is my understanding from your memo that the mortuary dividends and the maturity dividends are in reality an excess premium or over-charge for the purpose of building up a reserve beyond the reserve called for by the tables. The tax is paid once on the premium, and for that reason the so-called mortuary and maturity dividends, in my opinion, should be deductible under Section 135.

RALPH W. FARRIS
Attorney General

December 29, 1948

To E. L. Newdick, Secretary, Seed Potato Board
Re: Payment in Lieu of Taxes

In reply to your letter of December 29th, inquiring whether the State Seed Potato Board would be justified in paying to the Town of Masardis some amount in lieu of taxes, which would compensate the town for its loss when the State acquired the land in question to grow seed potatoes, I would advise that the title to this property is in the State of Maine, and the State would not be subject to the tax by the town, and unless legislation specifically authorizing the State Seed Potato Board to pay a sum in lieu of taxes were enacted, it would have no authority to do so.

The problem is one that should be presented to the legislature.

ABRAHAM BREITBARD
Deputy Attorney General

December 29, 1948

To Corporation Division, Secretary of State

A question has arisen as to the organization fee to be paid for the use of the State on a corporation organized under Chapter 294 of the Public Laws of 1945, "An Act concerning Agricultural Coöperative Associations," which repealed and replaced R. S. Chapter 31 of 1944.

I understand from Miss Tibbetts that you had an oral ruling that the organization fee under the former act was governed by Chapter 49.

Under the terms of the present act, Section 6 provides that a fee of $5 shall be paid to the Attorney General and the Secretary of State respectively, and the Register of Deeds shall receive for recording such certificate a fee of $5.

Then under Section 26 it is provided that domestic associations and foreign associations permitted to do business in this State shall pay an annual license fee of $10, which shall be in lieu of all other corporation and franchise taxes.

No other provision for the payment of fees is found in this act. On the other hand provision is made for the recording and filing of the certificate, what the certificate shall contain, by whom it shall be signed, the requirement that it be examined by the Attorney General and certified by him as

properly drawn, and the requirement that it be recorded in the Registry of Deeds in the county where the corporation is located and that within 60 days after the organization meeting a copy certified by the Register of Deeds shall be filed in the office of the Secretary of State. Then comes the provision for the payment of specific fees above quoted.

In view of these express provisions, which make no reference to any other provision in law, I am of the opinion that the fees prescribed by Chapter 49 are not applicable, since that refers to the certificates required to be filed under that section.

It is also to be noted that a corporation formed under this act may be organized with or without capital stock. If Section 10 of Chapter 49 were applicable, there would be no way of computing the fees to be paid where the corporation was organized without capital stock and on a membership basis.

The immediate question involved is a check for $210 which is being held, computed on an increase of the capital stock of a coöperative association, pending the determination whether the organization fees of Chapter 49 are applicable. I therefore advise you that under the present act the only fees payable would be $5 to the Secretary of State under Section 6, the $5 for filing and recording an amendment to this certificate under Section 7, subdivision II, and in addition corporations of this type are required to pay an annual license fee of $10. Check you now hold should be returned to the sender.

ABRAHAM BREITBARD
Deputy Attorney General

Statistics for the Years 1947-1948

MAINE CRIMINAL STATISTICS FOR THE YEARS BEGINNING NOVEMBER 1, 1946 AND ENDING NOVEMBER 1, 1948

The following pages contain the criminal statistics for the years beginning November 1, 1946 and ending November 1, 1948.

I am following a system for making up tables of criminal statistics adapted from the plan set up by the Honorable Clement F. Robinson in his Report for the years 1931-1932.

I quote from the explanation which appears on page 35 of the 1941-1942 Report:

"*Cases included*

"The table deals with completed cases only, except that the last column, which is not included in the total, shows the number of cases pending at the end of the year. If a case has not been completely disposed of during the year, it is omitted from all columns of the table except that for cases pending at the end of the year, and 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 defendants whose cases are disposed of during the year.

"(b) Dismissed includes all forms of dismissal without trial such as nol-prossed, dismissed, quashed, continued, placed on file, etc.

"(c) Includes convicted on plea of nolo contendere.

"(d) Here are placed cases of all convicted defendants which are continued for sentence, placed on special docket, given suspended sentence without probation, etc.

"(e) Includes cases of defendants who in addition to being placed on probation are sentenced to fine, costs, restitution or support.

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

"(g) Includes cases of fine and imprisonment. In the liquor offenses particularly, sentences to imprisonment usually carry fines with them as well.

"(h) Not included in any other column."

1947

1947 ALL COUNTIES—TOTAL INDICTMENTS AND APPEALS

Dispositions	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Continued for sentence (d)	Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)					
Totals	2149	770	60	1028	58	22	215	454	395	233
Murder	4	1	2	1	—	—	—	—	1	—
Manslaughter	26	13	2	8	2	—	—	2	8	1
Rape	31	3	6	16	—	—	—	4	12	6
Arson	8	2	2	2	—	—	1	—	1	2
Robbery	34	5	2	23	3	—	3	3	20	1
Felonious Assault	28	5	1	16	1	—	3	2	12	5
Assault and Battery	150	56	3	66	2	—	10	36	22	23
Breaking, Entering and Larceny	296	77	2	172	2	11	68	5	90	43
Forgery	102	45	—	43	—	2	20	—	21	14
Larceny	349	114	3	174	8	6	64	23	89	50
Sex	166	68	6	70	6	1	21	10	44	16
Non-Support	27	13	—	4	1	—	2	2	1	9
Liquor	59	25	—	33	—	—	5	19	9	1
Drunken Driving	326	87	17	172	21	—	4	178	11	29
Intoxication	161	64	—	89	2	2	5	60	24	6
Motor Vehicle	132	70	1	49	1	—	1	46	3	11
Juvenile Delinquency	4	4	—	—	—	—	—	—	—	—
Miscellaneous	246	118	13	90	9	—	8	64	27	16

1947 MURDER — INDICTMENTS AND APPEALS

Totals	4	1	2	1	—	—	—	—	1	—
Androscoggin	1	—	—	1	—	—	—	—	1	—
Aroostook	2	1	1	—	—	—	—	—	—	—
Somerset	1	—	1	—	—	—	—	—	—	—

1947 MANSLAUGHTER — INDICTMENTS AND APPEALS

Totals	26	13	2	8	2	—	—	2	8	1
Androscoggin	1	—	—	1	—	—	—	—	1	—
Aroostook	2	1	—	1	—	—	—	—	1	—
Cumberland	5	2	—	3	—	—	—	—	3	—
Hancock	2	1	—	1	—	—	—	—	1	—
Kennebec	1	—	—	—	1	—	—	1	—	—
Knox	1	—	—	—	1	—	—	—	1	—
Oxford	2	2	—	—	—	—	—	—	—	—
Penobscot	6	4	—	1	—	—	—	1	—	1
Sagadahoc	2	1	1	—	—	—	—	—	—	—
Somerset	2	—	1	1	—	—	—	—	1	—
York	2	2	—	—	—	—	—	—	—	—

1947 RAPE — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Continued for sentence (d)	Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)					
Totals	31	3	6	16	—	—	—	4	12	6
Androscoggin	2	—	—	1	—	—	—	—	1	1
Aroostook	4	1	1	2	—	—	—	—	2	—
Franklin	1	—	—	1	—	—	—	—	1	—
Hancock	2	—	—	1	—	—	—	—	1	1
Kennebec	2	—	—	2	—	—	—	—	2	—
Knox	3	1	—	2	—	—	—	2	—	—
Lincoln	1	—	—	1	—	—	—	—	1	—
Penobscot	3	—	2	—	—	—	—	—	—	1
Sagadahoc	1	—	1	—	—	—	—	—	—	—
Waldo	1	—	—	1	—	—	—	—	1	—
Washington	4	—	—	4	—	—	—	2	2	—
York	7	1	2	1	—	—	—	—	1	3

1947 ARSON — INDICTMENTS AND APPEALS

Totals	8	2	2	2	—	—	1	—	1	2
Androscoggin	1	—	—	—	—	—	—	—	—	1
Franklin	1	—	1	—	—	—	—	—	—	—
Hancock	2	1	—	1	—	—	1	—	—	—
Penobscot	2	1	—	1	—	—	—	—	1	—
Sagadahoc	1	—	—	—	—	—	—	—	—	1
Washington	1	—	1	—	—	—	—	—	—	—

1947 ROBBERY — INDICTMENTS AND APPEALS

Totals	34	5	2	23	3	—	3	3	20	1
Androscoggin	3	—	—	2	—	—	—	—	2	1
Aroostook	2	—	1	1	—	—	—	1	—	—
Cumberland	3	—	—	3	—	—	—	—	3	—
Knox	1	—	—	1	—	—	—	—	1	—
Lincoln	2	—	—	2	—	—	—	—	2	—
Penobscot	11	3	1	6	1	—	1	—	6	—
Somerset	3	1	—	2	—	—	2	—	—	—
Waldo	4	1	—	2	1	—	—	—	3	—
York	5	—	—	4	1	—	—	2	3	—

1947 FELONIOUS ASSAULT — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Continued for sentence (d)	Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)					
Totals	28	5	1	16	1	—	3	2	12	5
Androscoggin	2	—	—	2	—	—	—	—	2	—
Aroostook	3	1	1	1	—	—	1	—	—	—
Cumberland	3	2	—	1	—	—	—	—	1	—
Lincoln	7	1	—	5	—	—	—	2	3	1
Oxford	3	1	—	2	—	—	2	—	—	—
Piscataquis	2	—	—	2	—	—	—	—	2	—
Sagadahoc	1	—	—	1	—	—	—	—	1	—
Somerset	1	—	—	—	1	—	—	—	1	—
Waldo	2	—	—	—	—	—	—	—	—	2
Washington	1	—	—	—	—	—	—	—	—	1
York	3	—	—	2	—	—	—	—	2	1

1947 ASSAULT AND BATTERY — INDICTMENTS AND APPEALS

Totals	150	56	3	66	2	—	10	36	22	23
Androscoggin	22	7	—	8	—	—	—	5	3	7
Aroostook	18	3	1	13	—	—	3	7	3	1
Cumberland	18	10	—	8	—	—	3	3	2	—
Franklin	4	2	—	2	—	—	—	2	—	—
Hancock	9	6	—	3	—	—	—	—	3	—
Kennebec	10	4	—	4	1	—	1	1	3	1
Knox	10	5	—	5	—	—	3	1	1	—
Lincoln	3	3	—	—	—	—	—	—	—	—
Oxford	6	2	1	2	—	—	—	2	—	1
Penobscot	14	4	1	5	1	—	—	4	2	3
Sagadahoc	5	1	—	4	—	—	—	4	—	—
Somerset	1	—	—	1	—	—	—	1	—	—
Waldo	5	—	—	5	—	—	—	3	2	—
Washington	8	4	—	4	—	—	—	3	1	—
York	17	5	—	2	—	—	—	—	2	10

1947 BREAKING ENTERING AND LARCENY — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Continued for sentence (d)	Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)					
Totals	296	77	2	172	2	11	68	5	90	43
Androscoggin	35	9	—	22	—	7	—	—	15	4
Aroostook	18	4	—	14	—	—	7	—	7	—
Cumberland	46	11	1	33	1	3	10	—	21	—
Franklin	1	—	—	1	—	—	—	—	1	—
Hancock	4	—	—	1	—	—	1	—	—	3
Kennebec	18	—	—	17	—	—	11	—	6	1
Knox	6	2	1	2	—	—	2	—	—	1
Lincoln	10	—	—	7	—	—	—	—	7	3
Oxford	40	11	—	24	—	—	14	4	6	5
Penobscot	34	14	—	12	—	—	9	—	3	8
Piscataquis	9	—	—	2	—	—	2	—	—	7
Sagadahoc	10	3	—	6	—	1	1	—	4	1
Somerset	12	3	—	9	—	—	2	1	6	—
Waldo	18	4	—	11	1	—	8	—	4	2
Washington	2	—	—	2	—	—	1	—	1	—
York	33	16	—	9	—	—	—	—	9	8

1947 FORGERY — INDICTMENTS AND APPEALS

Totals	102	45	—	43	—	2	20	—	21	14
Androscoggin	25	19	—	2	—	—	—	—	2	4
Aroostook	9	2	—	7	—	—	4	—	3	—
Cumberland	5	2	—	3	—	2	—	—	1	—
Franklin	1	—	—	1	—	—	—	—	1	—
Kennebec	6	—	—	5	—	—	3	—	2	1
Knox	3	—	—	3	—	—	1	—	2	—
Oxford	17	7	—	6	—	—	1	—	5	4
Penobscot	18	11	—	7	—	—	6	—	1	—
Sagadahoc	6	1	—	5	—	—	5	—	—	—
Somerset	5	3	—	2	—	—	—	—	2	—
Washington	1	—	—	1	—	—	—	—	1	—
York	6	—	—	1	—	—	—	—	1	5

1947 LARCENY — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Continued for sentence (d)	Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)					
Totals	349	114	3	174	8	6	64	23	89	50
Androscoggin	31	20	—	4	1	—	—	—	5	6
Aroostook	32	7	1	23	1	—	14	2	8	—
Cumberland	55	12	—	40	2	4	5	3	30	1
Franklin	4	1	—	3	—	—	3	—	—	—
Hancock	6	1	—	2	—	—	1	—	1	3
Kennebec	28	7	—	18	1	—	9	—	10	2
Knox	4	2	—	2	—	—	1	—	1	—
Lincoln	5	1	—	3	—	—	2	—	1	1
Oxford	33	18	—	6	—	—	1	2	3	9
Penobscot	58	21	—	23	1	—	11	3	10	13
Piscataquis	7	1	—	—	2	1	—	—	1	4
Sagadahoc	14	5	—	9	—	1	4	—	4	—
Somerset	24	9	2	12	—	—	7	—	5	1
Waldo	7	2	—	5	—	—	3	—	2	—
Washington	21	—	—	20	—	—	3	12	5	1
York	20	7	—	4	—	—	—	1	3	9

1947 SEX OFFENSES — INDICTMENTS AND APPEALS

Totals	166	68	6	70	6	1	21	10	44	16
Androscoggin	34	22	1	6	1	—	1	—	6	4
Aroostook	22	11	1	7	3	—	4	2	4	—
Cumberland	12	3	—	9	—	—	—	3	6	—
Franklin	6	1	—	5	—	—	1	—	4	—
Hancock	6	5	—	—	1	—	—	—	1	—
Kennebec	9	2	1	6	—	—	4	—	2	—
Lincoln	2	—	—	2	—	—	—	1	1	—
Oxford	8	2	—	4	—	—	1	—	3	2
Penobscot	37	18	—	15	1	—	10	1	5	3
Sagadahoc	1	—	—	1	—	1	—	—	—	—
Somerset	7	—	1	4	—	—	—	—	4	2
Waldo	8	1	1	4	—	—	—	—	4	2
Washington	2	—	—	2	—	—	—	1	1	—
York	12	3	1	5	—	—	—	2	3	3

1947 NON-SUPPORT — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Continued for sentence (d)	Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)					
Totals	27	13	—	4	1	—	2	2	1	9
Androscoggin	7	5	—	—	—	—	—	—	—	2
Aroostook	2	1	—	1	—	—	1	—	—	—
Cumberland	1	1	—	—	—	—	—	—	—	—
Kennebec	1	—	—	1	—	—	—	—	1	—
Knox	1	—	—	—	—	—	—	—	—	1
Penobscot	7	4	—	1	—	—	—	1	—	2
Somerset	2	1	—	1	—	—	1	—	—	—
York	6	1	—	—	1	—	—	1	—	4

1947 LIQUOR OFFENSES — INDICTMENTS AND APPEALS

Totals	59	25	—	33	—	—	5	19	9	1
Androscoggin	11	3	—	7	—	—	—	1	6	1
Aroostook	19	4	—	15	—	—	5	10	—	—
Cumberland	1	1	—	—	—	—	—	—	—	—
Hancock	4	4	—	—	—	—	—	—	—	—
Kennebec	2	—	—	2	—	—	—	2	—	—
Knox	1	—	—	1	—	—	—	1	—	—
Oxford	3	—	—	3	—	—	—	—	3	—
Penobscot	3	2	—	1	—	—	—	1	—	—
Sagadahoc	1	1	—	—	—	—	—	—	—	—
Somerset	5	4	—	1	—	—	—	1	—	—
Washington	6	5	—	1	—	—	—	1	—	—
York	3	1	—	2	—	—	—	2	—	—

1947 DRUNKEN DRIVING — INDICTMENTS AND APPEALS

Totals	326	87	17	172	21	—	4	178	11	29
Androscoggin	50	21	2	18	2	—	—	19	1	7
Aroostook	82	25	3	45	5	—	2	46	2	4
Cumberland	58	16	3	34	5	—	1	37	1	—
Franklin	2	1	—	1	—	—	—	1	—	—
Hancock	5	2	1	1	—	—	—	1	—	1
Kennebec	17	3	—	10	3	—	1	10	2	1
Knox	8	1	3	2	1	—	—	3	—	1
Lincoln	2	1	—	—	—	—	—	—	—	1
Oxford	6	3	—	3	—	—	—	3	—	—
Penobscot	45	7	—	33	—	—	—	32	1	5
Piscataquis	1	1	—	—	—	—	—	—	—	—
Sagadahoc	7	1	—	3	2	—	—	4	1	1
Somerset	3	—	—	3	—	—	—	3	—	—
Waldo	10	—	2	8	—	—	—	5	3	—
Washington	13	4	2	4	2	—	—	6	—	1
York	17	1	1	7	1	—	—	8	—	7

1947 INTOXICATION — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Continued for sentence (d)	Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)					
Totals	161	64	—	89	2	2	5	60	24	6
Androscoggin	10	7	—	3	—	—	—	1	2	—
Aroostook	61	37	—	22	2	—	—	21	3	—
Cumberland	25	7	—	18	—	2	1	11	4	—
Franklin	1	1	—	—	—	—	—	—	—	—
Hancock	1	—	—	1	—	—	—	1	—	—
Kennebec	4	1	—	3	—	—	2	—	1	—
Knox	4	2	—	1	—	—	—	1	—	—
Oxford	2	2	—	—	—	—	—	—	—	—
Penobscot	24	4	—	20	—	—	—	15	5	—
Sagadahoc	4	1	—	3	—	—	—	—	3	—
Somerset	5	—	—	5	—	—	2	2	1	—
Waldo	4	—	—	4	—	—	—	—	4	—
Washington	10	1	—	9	—	—	—	8	1	—
York	6	1	—	—	—	—	—	—	—	5

1947 MOTOR VEHICLE — INDICTMENTS AND APPEALS

Totals	132	70	1	49	1	—	1	46	3	11
Androscoggin	17	14	—	3	—	—	—	3	—	—
Aroostook	25	18	—	7	—	—	—	6	1	—
Cumberland	24	14	—	10	—	—	—	10	—	—
Franklin	3	2	—	—	—	—	—	—	—	1
Hancock	5	2	—	3	—	—	—	3	—	—
Kennebec	4	2	1	1	—	—	—	1	—	—
Knox	4	3	—	1	—	—	—	1	—	—
Lincoln	1	1	—	—	—	—	—	—	—	—
Oxford	4	1	—	3	—	—	—	2	1	—
Penobscot	20	7	—	9	—	—	—	9	—	4
Sagadahoc	5	2	—	3	—	—	—	3	—	—
Somerset	4	2	—	2	—	—	—	2	—	—
Waldo	4	1	—	3	—	—	—	3	—	—
Washington	3	—	—	2	1	—	1	1	1	—
York	9	1	—	2	—	—	—	2	—	6

1947 JUVENILE DELINQUENCY — INDICTMENTS AND APPEALS

Totals	4	4	—	—	—	—	—	—	—	—
Androscoggin	2	2	—	—	—	—	—	—	—	—
Penobscot	1	1	—	—	—	—	—	—	—	—
Washington	1	1	—	—	—	—	—	—	—	—

1947 MISCELLANEOUS — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Continued for sentence (d)	Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)					
Totals	246	118	13	90	9	—	8	64	27	16
Androscoggin	9	5	—	1	—	—	—	—	1	3
Aroostook	28	15	8	5	—	—	—	5	—	—
Cumberland	41	24	—	16	1	—	1	13	3	—
Franklin	6	5	—	1	—	—	1	—	—	—
Hancock	3	2	—	1	—	—	—	1	—	—
Kennebec	11	3	—	6	—	—	4	2	—	2
Knox	8	2	—	4	2	—	—	2	4	—
Lincoln	5	1	2	—	2	—	—	2	—	—
Oxford	15	4	—	9	—	—	—	2	7	2
Penobscot	37	16	—	20	—	—	—	18	2	1
Piscataquis	5	2	—	1	—	—	—	1	—	2
Sagadahoc	14	12	—	1	—	—	—	—	1	1
Somerset	26	8	3	10	4	—	1	6	7	1
Waldo	6	1	—	5	—	—	1	2	2	—
Washington	19	15	—	3	—	—	—	3	—	1
York	13	3	—	7	—	—	—	7	—	3

1947 BAIL

Counties	Bail Called, Cases and Amounts		Scire Facias Begun		Scire Facias Continued for Judgment		Scire Facias Cases Closed		Scire Facias Pending at End of Year		Cash Bail Collected
Androscoggin	37	$21,500.00	–	——	–	——	–	——	–	——	——
Aroostook	2	1,000.00	2	$1,000.00	–	——	2	$ 42.88	–	——	——
Oxford	2	1,300.00	1	300.00	–	——	–	——	1	300.00	$1,000.00
Penobscot	12	2,600.00	4	1,100.00	6	$900.00	2	2,200.00	4	1,100.00	——
Somerset	3	3,000.00	2	2,000.00	–	——	2	2,000.00	–	——	——
Washington	–	——	–	——	–	——	–	——	–	——	3,300.00
York	–	——	–	——	–	——	–	——	–	——	19,500.00
Totals	56	$29,400.00	9	$4,400.00	6	$900.00	6	$4,242.88	5	$1,400.00	$23,800.00

1947 LAW COURT CASES

County	Name of Case	Outcome
Androscoggin.....	Bertrand Jalbert	Judgment for State
Cumberland.....	Hudon	" " "
Cumberland.....	Osborne	" " "
Knox.....	Herman Hoffses	Report discharged
Oxford.....	Frank Morton	Judgment for Respondent
Penobscot.....	Donald G. Harnum	Pending

FINANCIAL STATISTICS, YEAR ENDING NOVEMBER 1, 1947

COUNTIES	Cost of Prosecution Sup. and S.J.C.	Paid for Prisoners in Jail	Paid Grand Jurors	Paid Traverse Jurors	Fines, etc. Imposed Sup. and S.J.C.	Fines, etc. Collected Sup. and S.J.C.
Androscoggin	$16,412.54	$25,658.99	$1,847.28	$5,288.52	$3,138.96	$30,037.06
Aroostook	3,163.71	22,385.13	1,174.04	3,457.44	11,656.71	11,176.48
Cumberland	8,550.80	65,684.46	1,629.24	2,823.96	7,781.11	7,781.11
Franklin	1,718.28	4,731.46	452.57	1,170.42	285.30	285.30
Hancock	538.36	4,664.50	695.92	1,285.24	343.86	343.86
Kennebec	2,072.35	16,800.46	889.76	1,383.84	1,267.43	1,267.43
Knox	965.75	3,810.00	552.48	1,036.08	1,568.87	1,568.87
Lincoln	45.00	.....	438.56	294.00	501.26	301.26
Oxford	2,262.21	4,274.29	1,223.88	1,564.38	2,988.18	2,988.18
Penobscot	6,631.43	14,666.06	1,488.08	4,084.72	7,925.13	8,022.09
Piscataquis	1,529.95	3,138.61	591.60	216.00	70.57	70.57
Sagadahoc	1,278.79	4,922.25	394.80	1,300.44	933.85	933.85
Somerset	1,871.13	7,814.56	1,174.92	3,372.24	1,983.53	1,511.71
Waldo	838.08	12,602.88	506.22	1,305.91	1,099.28	778.26
Washington	5,569.95	5,692.00	1,102,32	2,249.88	4,735.92	4,735.92
York	1,395.00	12,482.78	1,955.00	3,806.40	372.35	372.35
Totals	$54,843.33	$209,328.43	$16,116.67	$34,639.47	$46,652.31	$72,174.30

1948

1948 ALL COUNTIES — TOTAL INDICTMENTS AND APPEALS

Dispositions	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Continued for sentence (d)	Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)					
Totals	1839	699	44	841	67	36	241	323	308	188
Murder	2	1	—	1	—	—	—	—	1	—
Manslaughter	18	5	1	9	1	—	1	5	4	2
Rape	24	8	6	7	1	1	1	—	6	2
Arson	13	6	—	4	1	—	—	—	5	2
Robbery	23	7	—	15	1	2	6	—	8	—
Felonious Assault	21	9	2	7	—	—	1	—	6	3
Assault and Battery	139	62	1	50	7	2	17	13	25	19
Breaking, Entering and Larceny	301	123	4	131	1	12	63	1	56	42
Forgery	93	32	2	54	—	3	25	—	26	5
Larceny	278	105	2	137	10	12	63	12	60	24
Sex	126	41	3	69	4	—	23	8	42	9
Non-Support	19	10	1	3	1	—	1	1	2	4
Liquor	29	17	1	8	2	—	—	8	2	1
Drunken Driving	259	60	13	137	15	1	7	128	16	34
Intoxication	135	51	—	73	8	1	12	44	24	3
Motor Vehicle	146	59	1	53	8	—	—	56	5	25
Juvenile Delinquency	4	3	—	1	—	—	—	—	1	—
Miscellaneous	209	100	7	82	7	2	21	47	19	13

1948 MURDER — INDICTMENTS AND APPEALS

Lincoln	2	1	—	—	1	—	—	—	1	—

1948 MANSLAUGHTER — INDICTMENTS AND APPEALS

Totals	18	5	1	9	1	—	1	5	4	2
Aroostook	5	2	—	2	1	—	—	1	2	—
Cumberland	2	—	—	2	—	—	—	2	—	—
Hancock	1	1	—	—	—	—	—	—	—	—
Kennebec	2	1	—	1	—	—	—	—	1	—
Penobscot	4	1	—	3	—	—	—	2	1	—
Sagadahoc	3	—	1	—	—	—	—	—	—	2
Waldo	1	—	—	1	—	—	1	—	—	—

1948 RAPE — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Continued for sentence (d)	Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)					
Totals	24	8	6	7	1	1	1	—	6	2
Aroostook	2	1	—	—	—	—	—	—	—	1
Cumberland	7	3	3	1	—	—	—	—	1	—
Kennebec	1	—	—	—	—	—	—	—	—	1
Knox	4	2	2	—	—	—	—	—	—	—
Penobscot	5	2	1	1	1	1	—	—	1	—
Sagadahoc	1	—	—	1	—	—	—	—	1	—
Somerset	1	—	—	1	—	—	—	—	1	—
Waldo	1	—	—	1	—	—	1	—	—	—
Washington	1	—	—	1	—	—	—	—	1	—
York	1	—	—	1	—	—	—	—	1	—

1948 ARSON — INDICTMENTS AND APPEALS

Totals	13	6	—	4	1	—	—	—	5	2
Androscoggin	1	—	—	—	1	—	—	—	1	—
Cumberland	1	1	—	—	—	—	—	—	—	—
Kennebec	1	—	—	1	—	—	—	—	1	—
Sagadahoc	5	4	—	1	—	—	—	—	1	—
Waldo	3	1	—	—	—	—	—	—	—	2
York	2	—	—	2	—	—	—	—	2	—

1948 ROBBERY — INDICTMENTS AND APPEALS

Totals	23	7	—	15	1	—	2	6	8	—
Aroostook	1	—	—	1	—	—	—	1	—	—
Cumberland	2	—	—	2	—	—	—	—	2	—
Kennebec	1	—	—	1	—	—	1	—	—	—
Lincoln	2	1	—	—	1	—	—	—	1	—
Penobscot	15	6	—	9	—	2	2	—	5	—
Washington	2	—	—	2	—	—	2	—	—	—

1948 FELONIOUS ASSAULT — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Continued for sentence (d)	Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)					
Totals	21	9	2	7	—	—	1	—	6	3
Cumberland	1	—	—	1	—	—	—	—	1	—
Hancock	1	—	—	1	—	—	—	—	1	—
Knox	2	—	—	1	—	—	—	—	1	1
Lincoln	6	4	—	2	—	—	1	—	1	—
Penobscot	1	—	1*	—	—	—	—	—	—	—
Somerset	1	—	—	1	—	—	—	—	1	—
Waldo	2	2	—	—	—	—	—	—	—	—
Washington	5	3	1*	1	—	—	—	—	1	—
York	2	—	—	—	—	—	—	—	—	2

*By reason of insanity

1948 ASSAULT AND BATTERY — INDICTMENTS AND APPEALS

Totals	139	62	1	50	7	2	17	13	25	19
Androscoggin	8	5	—	—	—	—	—	—	—	3
Aroostook	6	2	—	4	—	2	2	—	—	—
Cumberland	26	16	—	7	1	—	1	2	5	2
Franklin	2	—	—	1	—	—	—	—	1	1
Hancock	2	—	—	2	—	—	1	—	1	—
Kennebec	12	4	—	5	1	—	3	—	3	2
Knox	11	4	—	5	—	—	2	—	3	2
Lincoln	3	2	—	1	—	—	1	—	—	—
Oxford	8	3	1	3	—	—	2	1	—	1
Penobscot	28	10	—	13	3	—	4	6	6	2
Piscataquis	1	—	—	1	—	—	—	—	1	—
Sagadahoc	3	2	—	—	1	—	—	1	—	—
Somerset	5	2	—	2	—	—	—	1	1	1
Waldo	5	2	—	3	—	—	—	1	2	—
Washington	7	6	—	1	—	—	1	—	—	—
York	12	4	—	2	1	—	—	1	2	5

1948 BREAKING ENTERING AND LARCENY — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Continued for sentence (d)	Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)					
Totals	301	123	4	131	1	12	63	1	56	42
Androscoggin	17	12	—	3	—	—	—	—	3	2
Aroostook	13	3	—	10	—	—	7	1	2	—
Cumberland	36	10	2	21	—	—	11	—	10	3
Franklin	1	—	—	1	—	—	—	—	1	—
Hancock	10	7	—	3	—	—	1	—	2	—
Kennebec	29	13	1	12	—	—	10	—	2	3
Knox	22	12	—	9	—	—	3	—	6	1
Lincoln	11	5	—	4	—	—	4	—	—	2
Oxford	34	22	—	12	—	—	3	—	9	—
Penobscot	60	30	1*	28	1	4	15	—	10	—
Piscataquis	8	1	—	1	—	—	1	—	—	6
Sagadahoc	24	3	—	4	—	1	3	—	—	17
Somerset	7	1	—	5	—	—	3	—	2	1
Waldo	7	—	—	5	—	—	1	—	4	2
Washington	9	4	—	5	—	—	1	—	4	—
York	13	—	—	8	—	7	—	—	1	5

*By reason of insanity

1948 FORGERY — INDICTMENTS AND APPEALS

Totals	93	32	2	54	—	3	25	—	26	5
Androscoggin	3	1	—	1	—	—	—	—	1	1
Aroostook	14	4	—	10	—	2	5	—	3	—
Cumberland	29	11	—	18	—	—	6	—	12	—
Franklin	1	—	—	1	—	—	1	—	—	—
Hancock	2	—	—	1	—	—	1	—	—	1
Kennebec	5	1	—	3	—	—	2	—	1	1
Knox	10	5	—	5	—	—	4	—	1	—
Oxford	4	1	—	3	—	—	2	—	1	—
Penobscot	7	—	—	7	—	1	1	—	5	—
Sagadahoc	3	2	—	1	—	—	1	—	—	—
Somerset	13	7	2	4	—	—	2	—	2	—
Waldo	2	—	—	—	—	—	—	—	—	2

1948 LARCENY — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Continued for sentence (d)	Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)					
Totals	278	105	2	137	10	12	63	12	60	24
Androscoggin	21	14	—	7	—	1	2	—	4	—
Aroostook	28	12	—	16	—	6	5	4	1	—
Cumberland	41	13	—	26	—	—	9	2	15	2
Franklin	3	2	—	1	—	—	1	—	—	—
Hancock	15	4	—	6	1	—	4	—	3	4
Kennebec	20	4	—	15	—	—	10	—	5	1
Knox	6	—	—	2	3	—	1	—	4	1
Lincoln	4	2	—	1	—	—	—	—	1	1
Oxford	27	9	—	9	—	—	6	—	3	9
Penobscot	62	36	1	21	1	1	9	6	6	3
Piscataquis	6	1	—	5	—	—	5	—	—	—
Sagadahoc	9	1	—	5	3	2	6	—	—	—
Somerset	13	2	1	8	2	—	5	—	5	—
Waldo	1	—	—	1	—	1	—	—	—	—
Washington	11	4	—	6	—	—	—	—	6	1
York	11	1	—	8	—	1	—	—	7	2

1948 SEX OFFENSES — INDICTMENTS AND APPEALS

Totals	126	41	3	69	4	—	23	8	42	9
Androscoggin	10	5	—	4	—	—	—	—	4	1
Aroostook	9	3	—	6	—	—	—	3	3	—
Cumberland	14	3	1	8	—	—	—	—	8	2
Franklin	1	—	—	—	—	—	—	—	—	1
Hancock	1	—	—	1	—	—	—	—	1	—
Kennebec	14	3	—	9	2	—	4	—	7	—
Lincoln	1	—	—	1	—	—	—	1	—	—
Oxford	14	6	—	5	2	—	3	2	2	1
Penobscot	33	16	1*	16	—	—	7	2	7	—
Sagadahoc	3	—	—	3	—	—	2	—	1	—
Somerset	14	4	1	7	—	—	5	—	2	2
Washington	6	1	—	5	—	—	2	—	3	—
York	6	—	—	4	—	—	—	—	4	2

1948 NON-SUPPORT — INDICTMENTS AND APPEALS

Totals	19	10	1	3	1	—	1	1	2	4
Androscoggin	3	2	—	—	—	—	—	—	—	1
Cumberland	7	5	1	—	1	—	—	—	1	—
Kennebec	1	—	—	1	—	—	1	—	—	—
Knox	2	—	—	—	—	—	—	—	—	2
Penobscot	2	1	—	1	—	—	—	1	—	—
Somerset	1	—	—	—	—	—	—	—	—	1
Waldo	1	—	—	1	—	—	—	—	1	—
York	2	2	—	—	—	—	—	—	—	—

1948 LIQUOR OFFENSES — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Continued for sentence (d)	Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)					
Totals	29	17	1	8	2	—	—	8	2	1
Aroostook	9	4	—	3	2	—	—	4	1	—
Cumberland	8	6	1	1	—	—	—	—	1	—
Knox	2	1	—	1	—	—	—	1	—	—
Oxford	3	—	—	2	—	—	—	2	—	1
Somerset	6	6	—	—	—	—	—	—	—	—
Washington	1	—	—	1	—	—	—	1	—	—

1948 DRUNKEN DRIVING — INDICTMENTS AND APPEALS

Totals	259	60	13	137	15	1	7	128	16	34
Androscoggin	31	14	—	7	1	—	2	6	—	9
Aroostook	40	12	—	22	—	—	—	17	5	6
Cumberland	53	11	2	32	4	—	1	35	—	4
Franklin	3	2	—	1	—	—	—	1	—	—
Hancock	5	1	—	4	—	—	—	2	2	—
Kennebec	16	1	—	11	1	—	—	9	3	3
Knox	5	1	1	2	1	—	—	3	—	—
Lincoln	2	2	—	—	—	—	—	—	—	—
Oxford	11	3	2	4	1	—	—	4	1	1
Penobscot	55	7	5	32	5	—	—	33	4	6
Piscataquis	1	—	—	—	1	—	—	1	—	—
Sagadahoc	4	—	—	2	—	—	2	—	—	2
Somerset	11	3	1	7	—	1	—	5	1	—
Waldo	6	1	—	5	—	—	2	3	—	—
Washington	9	2	2	4	1	—	—	5	—	—
York	7	—	—	4	—	—	—	4	—	3

1948 INTOXICATION — INDICTMENTS AND APPEALS

Totals	135	51	—	73	8	1	12	44	24	3
Androscoggin	11	7	—	3	—	—	—	3	—	1
Aroostook	32	12	—	20	—	1	3	12	4	—
Cumberland	14	4	—	9	1	—	1	4	5	—
Franklin	1	—	—	1	—	—	1	—	—	—
Hancock	2	1	—	1	—	—	—	1	—	—
Kennebec	9	2	—	7	—	—	5	—	2	—
Knox	5	2	—	2	—	—	—	2	—	1
Oxford	1	1	—	—	—	—	—	—	—	—
Penobscot	39	14	—	18	7	—	2	15	8	—
Piscataquis	1	1	—	—	—	—	—	—	—	—
Sagadahoc	2	1	—	1	—	—	—	1	—	—
Somerset	4	1	—	3	—	—	—	2	1	—
Waldo	3	—	—	3	—	—	—	—	3	—
Washington	8	4	—	4	—	—	—	3	1	—
York	3	1	—	1	—	—	—	1	—	1

1948 MOTOR VEHICLE — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Continued for sentence (d)	Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)					
Totals	146	59	1	53	8	—	—	56	5	25
Androscoggin	23	9	—	3	—	—	—	3	—	11
Aroostook	17	11	—	6	—	—	—	6	—	—
Cumberland	22	8	—	7	4	—	—	10	1	3
Franklin	4	—	—	4	—	—	—	3	1	—
Hancock	3	—	—	3	—	—	—	3	—	—
Kennebec	5	2	1	2	—	—	—	2	—	—
Knox	10	7	—	3	—	—	—	3	—	—
Oxford	1	—	—	—	1	—	—	1	—	—
Penobscot	37	14	—	15	2	—	—	17	—	6
Piscataquis	1	—	—	1	—	—	—	1	—	—
Sagadahoc	5	2	—	1	—	—	—	1	—	2
Somerset	5	1	—	3	1	—	—	4	—	—
Waldo	1	—	—	1	—	—	—	1	—	—
Washington	5	3	—	2	—	—	—	1	1	—
York	7	2	—	2	—	—	—	—	2	3

1948 JUVENILE DELINQUENCY — INDICTMENTS AND APPEALS

Androscoggin	4	3	—	1	—	—	—	—	1	—

1948 MISCELLANEOUS — INDICTMENTS AND APPEALS

Totals	209	100	7	82	7	2	21	47	19	13
Androscoggin	5	2	—	2	1	—	—	1	2	—
Aroostook	20	12	—	8	—	—	—	6	2	—
Cumberland	25	11	—	13	1	—	7	3	4	—
Franklin	9	6	—	3	—	—	—	3	—	—
Hancock	4	2	—	2	—	—	1	1	—	—
Kennebec	25	10	1	14	—	—	2	10	2	—
Knox	19	9	—	4	2	—	1	3	2	4
Lincoln	13	9	1	2	1	—	—	1	2	—
Oxford	6	2	—	3	—	—	2	1	—	1
Penobscot	28	11	2	13	2	—	2	10	3	—
Piscataquis	7	4	—	3	—	—	2	1	—	—
Sagadahoc	10	2	2	3	—	—	3	—	—	3
Somerset	8	2	—	6	—	1	1	4	—	—
Waldo	1	—	1	—	—	—	—	—	—	—
Washington	20	17	—	3	—	—	—	2	1	—
York	9	1	—	3	—	1	—	1	1	5

1948 BAIL

Counties	Bail Called, Cases and Amounts		Scire Facias Begun		Scire Facias Continued for Judgment		Scire Facias Cases Closed		Scire Facias Pending at End of Year		Cash Bail Collected
Androscoggin	16	$11,200.00	–	——	–	——	–	——	–	——	——
Hancock	1	100.00	–	——	–	——	–	——	–	——	——
Kennebec	–	——	1	$2,000.00	–	——	1	$2,000.00	–	——	——
Oxford	1	500.00	–	500.00	–	——	–	——	1	$ 500.00	——
Penobscot	12	2,800.00	–	——	2	$150.00	4	Dismissed	4	1,100.00	——
Washington	1	1,295.00	–	——	–	——	–	——	–	——	$1,295.00
York	5	325.00	6	800.00	–	——	4	Dismissed	4	200.00	——
Totals	36	$16,220.00	7	$3,300.00	2	$150.00	5	$2,000.00	9	$1,800.00	$7,670.00

1948 LAW COURT CASES

County	Name of Case	Outcome
Aroostook	Donald M. Stairs	Conviction sustained
Kennebec	Peter B. Jenness	Pending
Oxford	William W. Mann	Judgment for State
	Anthony Jannace et al.	" " "
	Anthony Koliche	" " "
Penobscot	Donald G. Harnum	Quashed
	Frank A. Boynton	Judgment for State
	Charles P. Thompson	" " "
Piscataquis	Murphy v. Sheridan	Dismissed
	Sheridan v. Murphy	"
Waldo	Kenneth W. Frazier, Jr.	Pending
	Edwin Johnson	"

FINANCIAL STATISTICS, YEAR ENDING NOVEMBER 1, 1948

COUNTIES	Cost of Prosecution Sup. and S.J.C.	Paid for Prisoners in Jail	Paid Grand Jurors	Paid Traverse Jurors	Fines, etc. Imposed Sup. and S.J.C.	Fines, etc. Collected Sup. and S.J.C.
Androscoggin	$12,564.17	$28,709.83	$1,213.29	$4,451.28	$1,895.24	$21,285.45
Aroostook	2,891.70	13,680.92	911.92	3,400.68	8,043.60	86,161.43
Cumberland	30,449.09	65,256.78	1,469.96	3,257.10	7,716.60	67,604.30
Franklin	1,077.17	5,568.77	366.16	566.94	724.72	11,264.57
Hancock	638.90	6,397.62	580.20	1,701.18	536.18	12,685.59
Kennebec	5,287.92	20,277.80	2,517.66	7,041.82	5,944.79	31,251.98
Knox	513.84	4,919.79	560.16	1,317.00	1,488.08	10,675.97
Oxford	1,383.27	2,068.20	1,020.99	2,061.84	480.50	19,300.93
Penobscot	7,346.50	22,651.56	1,317.12	6,267.98	8,638.95	57,385.73
Piscataquis	1,395.91	2,907.85	396.52	489.30	378.90	6,849.25
Sagadahoc	1,299.01	7,576.58	406.60	1,777.80	438.12	9,949.41
Somerset	801.58	9,112.67	951.84	2,644.20	1,312.14	26,957.54
Waldo	560.45	9,101.70	542.86	1,339.68	1,103.89	9,155.12
Washington	5,513.61	10,824.17	815.40	1,295.36	2,026.70	12,811.16
York	795.24	17,044.19	1,190.40	3,312.60	2,554.44	28,702.77
Totals	$72,518.36	$226,098.43	$14,261.08	$40,924.76	$43,282.85	$412,041.20

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