MAINE PUBLIC DOCUMENTS
1948-50

(In three volumes)

VOLUME I

3,

3

REPORT

OF THE

ATTORNEY GENERAL

STATE OF MAINE

1949 - 1950

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

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*Temporary Appointment.

*1Limited 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, 1950

Androscoggin	Edward J. Beauchamp	Lewiston
Assistant	Irving Isaacson	Lewiston
Aroostook	James P. Archibald	Houlton
Cumberland	Daniel C. McDonald	Portland
Assistant	Arthur Chapman, Jr.	Portland
Franklin	Gerard S. Williams	Farmington
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	South Paris
Penobscot	John T. Quinn	Bangor
Assistant	Oscar Fellows	Bangor
Piscataquis	Louis Villani	Milo
Sagadahoc	Ralph O. Dale*	
	Harold J. Rubin	Bath
Somerset	Lloyd H. Stitham	Pittsfield
Waldo	Hillard H. Buzzell	Belfast
Washington	Francis E. Day	Calais
York	Charles W. Smith	Saco

*Died in office

STATE OF MAINE

Department of the Attorney General

Augusta, December 1, 1950

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 1949 and 1950.

RALPH W. FARRIS

Attorney General

REPORT

1949 - 1950

I herewith submit my report, in more detail than is required by statute, of the official business transacted by this office during the calendar years of 1949 and 1950. The tables submitted herewith indicate the number of cases handled in which the Attorney General appeared in the various parts of the State in such legal matters as were handled for the State and its subdivisions and departments.

The statute requires that the Attorney General shall assist the County Attorneys by attending the Grand Jury in the examination of a case in which the accused is charged with treason or murder and appear for the State in the trial of indictments for treason or murder.

During the calendar year 1949 the Attorney General attended the Grand Jury in six murder cases. Charles R. Belyea shot and killed his father, Harvey Belyea on December 1, 1948. He was indicted for murder at the February 1949 term of the Knox County Superior Court and was found not guilty by reason of insanity and committed to the Bangor State Hospital.

On November 21, 1948, Carl Peterson of Fort Fairfield was arrested for the alleged poisoning of one Yvonne Poitras of Van Buren on Thanksgiving Eve. He was indicted at the April term 1949 of the Aroostook County Superior Court for the crime of murder and after a protracted trial, at which considerable expert testimony was introduced by the State, the jury found the respondent guilty of manslaughter. He was sentenced to a term of from five to ten years in the State Prison, but he appealed the case to the Law Court, and the Law Court reversed the verdict of guilty and sent the case back for a new trial. In view of the language of the rescript the Attorney General was of the opinion that there was insufficient evidence to try the respondent on the charge of murder which was contained in the original indictment, and the case against the respondent was nol prossed at the September term 1950 of the Superior Court in Aroostook County.

On October 8, 1949, three school boys by the names of Lawrence M. Piller, Charles Burgess, and Albert Parker ran away from home at Quincy, Massachusetts, and took a bus to Boston and thence to Auburn, Maine, where they camped in the woods near the bus stop

at Jimmy's filling station and pitched a tent. During the day of October 8th, which was a Saturday, they entered the house of one Herbert K. Hayes, who lived near the edge of the woods where the boys were camped. Mr. Hayes was out hunting at the time, but about dusk he returned to his home and found that some of his antique firearms, which he had collected, were missing. He secured a 45-calibre revolver and went out behind the house towards the woods where the boys were camped. He met them coming down towards his house. He grabbed hold of the Piller boy, covered the other two with his revolver, and threatened them, accusing them of breaking into his house. The boy Charles Burgess had a small calibre pistol which he had stolen from the house of the probation officer in Quincy the night before they left for Maine, and he passed this to Piller, who was being held by Mr. Hayes. Piller and Mr. Hayes fired at about the same time. The bullet fired by Hayes at Piller missed and went into a pile of lumber behind the boy. Piller's small calibre revolver was fired three times and Herbert Hayes died at the hospital the same evening as the shooting took place. It was some time before this office, the Sheriff's office of Androscoggin County, and the Chief of Police of Auburn could locate the boys who did the shooting. They were traced through the serial number of a revolver which was left outside the tent where they had camped in the woods. This revolver was traced to a dealer in New Hampshire, from New Hampshire to Boston, and from Boston to the Boston City Police, and from the Boston City Police to the probation officer who had signed a receipt for same and had it in his house when the three boys pillaged his house and stole it. Special Investigator Wheeler and Chief of Police Savage went to Boston and with the evidence they had they caused the arrest of Lawrence Piller, Charles Burgess, and Albert Parker. The boys secured counsel, waived extradition, and were brought back to Maine. At the November term of the Superior Court in Androscoggin County Piller and Burgess were indicted for murder. They were represented by counsel, Messrs. Kenney and Glynn of Boston and Harold Redding of Auburn. In view of the difficulty of securing an indictment for murder against these boys before the Grand Jury and in view also of the evidence that was disclosed at the Grand Jury investigation in regard to the commission of a felony by breaking and entering Mr. Hayes' house, namely that Mr. Hayes took the law into his own hands and had the boys covered with a gun instead of calling the police, and in view of the facts that the

boys were frightened, that they were juvenile delinquents, and that many letters were received from the school and church authorities in Quincy, that part of the indictment alleging malice aforethought was nol prossed by the County Attorney under my direction. Piller and Burgess were sentenced to two to four years in the State Prison and were placed on probation by the Presiding Justice. They were taken back to Massachusetts by the probation officer and arrested there for breaking and entering the probation officer's house in Quincy. They were placed on probation in the Boston Juvenile Court and returned to their homes. The last report indicated that the boys had not been in any trouble since they were sent back to Massachusetts in November, 1949. There was no alternative for Presiding Justice in sentencing the boys to Thomaston or to the State School for Boys, as the statute does not permit boys of the age of these respondents to be sent to the Men's Reformatory.

At the January term 1949, Alfred W. Selloy of Exeter, Maine, was indicted for manslaughter for the shooting of William W. Batchelder on September 16, 1948, while he was intoxicated. He was represented by Benjamin Blanchard and entered a plea of guilty of manslaughter. He was sentenced at the January term 1949 by Judge Nulty.

On September 2, 1949, the body of Miss Anna Dunlop of Houlton was found in her apartment. She had apparently been murdered. Investigation was made immediately by the County and State authorities, and the next day one Emile Joseph Turmel was apprehended in Van Buren, Maine, by the State Police. He was taken to Houlton and charged with the murder of Miss Dunlop. He was indicted at the November term 1949, pleaded not guilty, and was tried before a jury and found guilty of murder. He has filed a motion for a new trial which is now pending in the Law Court.

On October 19, 1949, one Mitchell Berube, an employee of a filling station in Portland, Maine, was found dead in the early morning by the Portland Police and taken to the morgue where an autopsy was performed by Dr. Porter. City, County and State authorities began an investigation at once, hundreds of witnesses were interviewed and statements taken; many arrests were made for lesser felonies and those persons charged with breaking and entering filling stations were interviewed. Up to the present time, no evidence has developed such that the arrest of any one person for the murder can be ordered. This office, the Police Department of the City of Portland, and the Sheriff's Department of Cumberland County are coöperating in investigating this case and following up new clues.

On December 27, 1949, one Audrey Wilson of Presque Isle was arrested for the murder of her husband, Guy Wilson. She was indicted for murder by the Grand Jury at the April term 1950 in Aroostook County and after three days of trial the evidence seemed to point to manslaughter rather than murder. The attorneys for the State were of the opinion that we could not prove malice aforethought; in view of the attitude of counsel for the respondent the charge of murder was nol prossed by the State and approved by the Presiding Justice. Mrs. Wilson pleaded guilty to the crime of manslaughter and was sentenced to the State Prison for from two to four years.

On March 3, 1950, one Alfred E. Williamson shot and killed his stepfather-in-law, Frank Varney. He was arrested for murder and indicted for same in the Superior Court of Cumberland County. At the completion of an investigation by the City, County and State authorities, we were of the opinion that the stepfather-in-law and the respondent were engaged in a fight at the time the shooting occurred. For this reason the case was reduced to manslaughter with the permission of the Court, and on May 16, 1950, Mr. Williamson entered a plea of guilty to manslaughter and was sentenced to from five to twenty years in the State Prison.

On May 14, 1950, one Ralph Tibbetts shot and killed Norma Harvey of South Waterboro, Maine, while she was seated in her kitchen, writing a letter. The shot was fired through a windowpane. Mrs. Harvey died instantly. The next day, May 15th, Ralph Tibbetts was arrested and taken before the Municipal Court at Sanford. The case was continued to May 23, 1950, when probable cause was found and he was bound over to the October term of the Superior Court of York County. He was indicted for murder at said term, entered a plea of not guilty, and the trial started, but during the second day, on October 18th, he entered a plea of guilty to the charge in the indictment and was sentenced by the Presiding Justice to life imprisonment in the State Prison at Thomaston.

On October 29, 1950, one Dennis Collins, thirteen years of age, shot and killed his father, Frank E. Collins, with a rifle. The boy was arrested and taken to the Knox County jail, where he was bound over to the Grand Jury at the November term and committed to the Bangor State Hospital for observation by Dr. Pooler. The Grand Jury found an indictment for murder and he was arraigned. However, the charge was nol prossed with the permission of the Presiding Justice and the boy pleaded guilty to the crime of

manslaughter and was sentenced to from five to ten years in the State Prison.

In the evening of July 11, 1950, around midnight of that date, Herman H. Joy was found murdered at his home in Sanford, Maine. Mr. Joy was a stockbroker who lived on East Street in Sanford with his son Leonard, twenty-two years of age. They conducted a small variety store at 138 Main Street, and on the evening of July 11th, when Leonard returned home after closing the store, he found his father's body slumped beside a studio couch in the office that he maintained in his home. The safe door was open and on the open cashbox hung the victim's keys. His trousers pockets had been turned inside out, but his watch and a diamond ring had not been taken. Papers including his will and scores of canceled checks were strewn about the room, according to the police officers who first arrived at the scene. A Medical Examiner was called and an autopsy held, the cause of death being given as skull fractures inflicted by a blunt instrument. The Sanford Police headed by Chief Ralph C. Rogers, the County authorities headed by Sheriff Everett S. Knight, my Special Investigator, whom I assigned to the case, and Trooper Ralph Price of the State Police at once began a thorough investigation of this homicide. Hundreds of witnesses were interviewed and a lie detector was brought into Maine and used on the suspects. While several felonies were disclosed and the persons held for questioning were indicted therefor at the November term of the Superior Court in Alfred, yet we have not secured sufficient evidence to cause an arrest for the murder of Mr. Joy and the matter is still under investigation by the State and County authorities, with several more clues and leads to be checked.

This office and the Kennebec County authorities are engaged in checking rumors about an old murder committed in Kennebec County in 1934. Several witnesses have been interviewed and the case is still in the stage of investigation in order to secure enough evidence to warrant an arrest.

As usual, this office has handled many writs of error and petitions of habeas corpus seeking to release prisoners serving sentences in the State Prison and Men's Reformatory. A case that received considerable publicity was that of Francis Carroll, a former deputy sheriff of Oxford County. The application for writ of habeas corpus and the writ were granted without notice to the Attorney General's office. On August 1st a copy of the application and the issuance of the writ were served on the Attorney General. On August 14th a hearing was held before Superior Court Justice Beliveau at Rum-

ford on the writ and the return thereon. On September 15th Judge Beliveau ordered the prisoner released on the writ of habeas corpus, which had been heard on August 14th. Mr. Carroll was accordingly released by the warden and went back to South Paris. This office protested the procedure used for Mr. Carroll's release, which amounted to a new trial of the case in which a single Justice overturned the verdict of the jury, on the ground that Mr. Carroll did not get a fair trial in 1938 when he was convicted of the crime of murder and sentenced to life imprisonment in Thomaston.

During the years 1949 and 1950, twenty-six homicides were reported to this office for the earlier year and thirty-eight in the latter, including highway and hunting deaths, some of which cases have been covered in the first part of this report. A summary will be found in the condensed tables at the end of this report.

PERSONNEL

There have been some changes in the personnel of the Attorney General's office since the last report. At the beginning of the biennium Abraham Breitbard of Portland was Deputy Attorney General, and Jean Lois Bangs, Boyd L. Bailey, Neal A. Donahue, L. Smith Dunnack, John S. S. Fessenden, Henry Heselton, Nunzi Napolitano, and George C. West were appointed Assistant Attorneys General. On May 10, 1949, this office was saddened by the sudden death of Abraham Breitbard, Deputy Attorney General. John S. S. Fessenden, the Assistant Attorney General assigned to the Maine Unemployment Compensation Commission, was appointed Deputy Attorney General to take Mr. Breitbard's place, and Stuart C. Burgess of Rockland was appointed an Assistant Attorney General to take Mr. Fessenden's place, advising the Unemployment Compensation Commission, now the Maine Employment Security Commission. As of the date of this report the other Assistant Attorneys General remain the same.

At this time I wish to express my appreciation of the untiring efforts of my Deputy and Assistants in the performance of their duties, and also those of the law clerks connected with the office, who have been very diligent in attending to their duties and accommodating to all who have occasion to visit the office.

I wish to express my appreciation also for the consideration and coöperation of the Governor and Council during the past biennium.

Respectfully submitted,

RALPH W. FARRIS
Attorney General

OPINIONS

January 27, 1949

To the Honorable Governor and Council

The Secretary of State communicated to my office a copy of a vote of your body dated January 26th, in which you requested a written opinion as to how many state-owned cars must be marked with insignia showing ownership and how many more state-owned cars the Governor and Council may require to be marked.

In compliance with your request I advise that Section 29 of Chapter 14 of the Revised Statutes, which was amended by Chapter 390 of the Public Laws of 1947, provides that this section shall not apply to the Governor, State Police, Department of Inland Fisheries and Game, inspectors in the Motor Vehicle Division of the Secretary of State, supervisors in the Maine Forestry District, Highway Department, nor to such heads of departments or members of commissions as the Governor and Council may from time to time designate.

Therefore the last paragraph of this section, under the language of the statute, would not apply. This last paragraph of this section reads as follows:

> "All state owned cars under the control of the supervisor of travel shall display a marker or insignia, approved by the secretary of state, plainly designating them as state owned vehicles."

The reading of this section caused considerable doubt in the minds of law enforcement officials in several departments and it was taken up with me by the supervisor of travel. We agreed that those officers of the law who were engaged in the investigation of crime and the enforcement of the law should not all be required to display a marker or insignia which would give law violators notice that a State enforcement officer was in the vicinity. However, no binding ruling from this office was made in regard to this matter.

In reply to your request I will say that I feel that the Governor and Council may cause to be marked with insignia as many cars as they deem advisable.

In this connection I wish to state that yesterday I had a conference with Senators Greeley of Waldo County and Noyes of Hancock County and the Purchasing Agent, Mr. Orr, and they are going to introduce an amendment to this section separating the last paragraph of Section 29 as amended, so that there will be no question but that all state owned cars under the control of the supervisor of travel shall display a marker or insignia, with a few exceptions. However, Senator Greeley stated that he did not want too many exceptions; but that is a matter for the two senators to agree upon before they put in their amendment. I promised to prepare an amendment for them, clarifying the language of this statute, so that there will be no question in the future.

RALPH W. FARRIS
Attorney General

January 27, 1949

To the Honorable Governor and Council

Mr. Goss, the Secretary of State, gave me a copy of a vote of your body, which was passed yesterday, and also a letter from President Hauck of the University of Maine, relating to the Lamoine Naval Coaling Station. You request me to report to the Council what may legally be done with regard to this matter.

It is my opinion that this matter needs legislative attention and is not a proper matter for the Governor and Council at the present time. I believe that a resolve can be drafted and introduced that will take care of this situation. If an appropriation is necessary to salvage the steel in the pier at Lamoine, it can be taken care of in a resolve for the University of Maine, rather than from the contingent fund.

However, I want to give this matter further study with the Controller, and also to examine the deed in 1927, when this property was conveyed to the State of Maine, and also Chapter 81 of the Private and Special Laws of 1941, which provides that the board of trustees of the University of Maine shall have the use of the property for educational purposes, and any expense for reconstruction or maintenance shall be borne by the University of Maine.

RALPH W. FARRIS
Attorney General

January 28, 1949

To Hon. Frederick G. Payne
Re: Lamoine Naval Coaling Station

Supplementing my memo of January 27th to the Governor and Council relating to the Lamoine Naval Coaling Station, which is under the supervision of the Board of Trustees of the University of Maine:

I have given this matter further study and I find that the original deed from the United States of America to the State of Maine contains a consideration of $5750, which money was taken from the State Contingent Fund on November 29, 1927, during Governor Brewster's term of office. Said Council Order authorized the purchase from the United States of the Naval Coaling Station at Frenchman's Bay, which was contrary to the statutes; the Governor and Council have no authority to purchase land without legislative sanction; so that a validating act was passed by Chapter 81 of the Private and Special Laws of 1941, referred to in my memo of January 27, 1949, which approved the acts of the Governor and Council by virtue of said order passed November 29, 1927, and the acquisition of the land and buildings of the United States Naval Coal Depot. Section 2 of this Special Act is set forth in my memo of January 27th.

In 1943, Governor Sewall had considerable correspondence with Attorney General Cowan with relation to selling the scrap on this property, but the Attorney General was in doubt as to the authority of the Governor and Council to sell and convey to the Metals Reserve Company in Washington, D. C., the scrap metal in the coal bunker and wharf, which were then being used by the University of Maine as a Marine Biological Station. I can find no record of any bill of sale being passed by the State of Maine. However,

a Council Order was contemplated in October, 1943, authorizing Governor Sewall to sign a bill of sale for this scrap, which was mentioned in Dr. Hauck's letter to you relating to the salvage of the steel in the pier at Lamoine.

In checking with the Controller's office I find that the University of Maine Report of 1946 has a set-up of $3280 for buildings and $2500 for equipment on this Lamoine property.

I also find a letter in my Attorney General's file, dated March 10, 1931, from Acting Secretary of the Navy, Ernest Lee Jahncke, addressed to Congressman John E. Nelson, in which he states that the Navy Department would not regard the lease of the property in question by the State of Maine to the University of Maine for biological and scientific research purposes as coming within the provisions in the deed "that the said property herein conveyed shall be limited to its retention and use for public purposes and upon cessation of such retention and use shall revert to the United States of America without notice, demand or action brought." This limitation in the deed to the State prohibits the State from selling this property, and if it should attempt to part with this title, the property would revert to the Federal Government. Therefore the University of Maine Trustees should be careful in the use of this property not to violate the provisions of the reversion clause in the deed from the Federal Government to the State of Maine.

Senator Noyes of Hancock County has spoken to me about having this property used as a public park, and it is probable that he will contact you in regard to this matter, inasmuch as the contemplated Lamoine lobster rearing station is not feasible and I understand from the Controller that there is a bill in to lapse to the General Fund the balance of the appropriation which was made for the purpose of a lobster rearing station at Lamoine; it is in the budget of the Sea and Shore Fisheries Department.

It is still my opinion that while the legislature is in session the Board of Trustees of the University should seek authority to handle the situation of salvaging the steel in the old pier and building a new pier for small boats, although I feel that under the provisions of Chapter 81, P&SL 1941, which are still in effect, any expense for reconstruction or maintenance shall be borne by the University of Maine. Their problem is one of finance, and the question is whether this should be paid from the funds of the University of Maine or by Special Resolve.

RALPH W. FARRIS
Attorney General

January 29, 1949

To Col. Francis J. McCabe, Chief, Maine State Police
Re: Jails and local police lock-ups

Your memo of December 13th, upon which I called you on the telephone, relating to the use of jails by the State Police when arresting offenders accused of violations of law, without a warrant, is before me. You call my attention to the language of Section 26 of Chapter 122, R. S. This section is not applicable to this case, however, because it applies to a jailer accepting into his custody a prisoner committed to him on a lawful process.

When a prisoner is taken to the county jail at night without a lawful process, the jailer is not required by law to accept such prisoner; and if he does accept him, he lays himself liable for false imprisonment. Similarly, the sheriff or the turnkey at the county jail is not obliged to accept a prisoner unless a warrant or mittimus accompanies the incarceration, which warrant or mittimus he must hold in his office to show his legal authority for holding anyone a prisoner in the county jail. If he has no such authority, the remedy of a writ of habeas corpus would be available at once.

When a State trooper places a person under arrest for having committed a misdemeanor or even a felony, such person is in the arresting officer's custody until he has secured a warrant or mittimus to incarcerate the prisoner in one of the county jails.

In the case of a city lock-up, where a prisoner is arrested for intoxication, he must be held until the municipal court convenes the next morning, when a warrant can issue and a hearing be held. During the night, technically the prisoner is in the custody of the arresting officer and not in the custody of the city jailer or chief of police, whichever the case may be.

Of course if a person arrested for operating under the influence offers to give bond and calls a bail commissioner, he must be released after proper bail has been furnished to appear at a certain date to answer to a warrant.

RALPH W. FARRIS
Attorney General

January 29, 1949

To Carl L. Treworgy, Secretary, Racing Commission
Re: Section 9, Chapter 77, R. S. 1944

I have your memo of December 30, 1948, concerning the interpretation of Section 9 of Chapter 77, R. S., as amended by Chapter 358, P. L. 1947, which provides that no meeting shall be allowed for more than six days in any 28-day period, except that between the 1st day of July and the first Monday of August a meeting may be allowed not exceeding 18 days on mile tracks. I presume the Commission's request for an interpretation is in regard to what constitutes a 28-day period.

It is my opinion that meets can be held in periods of 28 days, the first day of the six days allowed beginning on the first day of the 28-day period. For example, if races were started on September 1st and ended on September 6th, you might start another period of 28 days on September 29th and allow six days in that period. In other words, the six days allowed begin on the first day, and in each succeeding period of 28 days you may allow six days of that period, either the first part of it or the last part of it.

My reason for construing the statute in this manner is that the statute does not state that racing periods shall be 28 days apart. It clearly states, "6 days in any 28-day period," so that the starting point must be at the beginning of the period and not at the end of it.

RALPH W. FARRIS
Attorney General

January 31, 1949

To A. K. Gardner, Commissioner of Agriculture

Your memo of January 28th received, asking an opinion as to the legality of the Potato Tax Committee's allotting the sum of $10,000 to the National Potato Growers Council for the purpose of promoting better public relations on the part of the potato industry and otherwise aiding and assisting the consumption of more potatoes.

You state that you believe it is my opinion that the Tax Committee has authority to allocate such funds under the provisions of Sections 206-217 inclusive of Chapter 14, R. S. of Maine, as amended by the Public Laws of 1945, but that Mr. Herbert Kitchin, chairman of the Tax Committee is desirous of having this oral opinion, which came to him at second hand, verified by a written opinion and is particularly anxious that such written opinion be forthcoming at the earliest possible moment because he wishes the committee to be brought together to pass on these funds.

Under the provisions of Section 215, subsection IV, which provides: "The funds remaining over and above the expenses of carrying out the provisions of Sections 206 to 217 inclusive, including expenditures authorized under the provisions of Subsections II and III of this section, may be expended by the commission to carry out the purposes outlined in said subsections *as it may determine;*" if the allotment of the $10,000 to the National Potato Growers Council is used for the purpose of investigating and determining better methods of production, shipment and merchandising of potatoes and for the manufacturing and merchandising of potato by-products by the Maine Agricultural Experiment Station under the supervision of the Maine Development Commission, and if the Maine Development Commission is willing to go along with you on this allotment, in my opinion the provisions of this statute are broad enough for you to make this allocation.

RALPH W. FARRIS
Attorney General

January 31, 1949

To Honorable Frederick G. Payne, Governor of Maine
Dear Fred:

Jack wanted me to write you this afternoon concerning the law relating to probation officers in Washington County.

Under Section 28 of Chapter 136 of the Revised Statutes, as amended by Chapter 139 of the Public Laws of 1945 and Chapter 317 of the Public Laws of 1947, the County of Washington at the present time is allotted only one probation officer, who is to be a citizen of the county and of good moral character, to hold office during the pleasure of the Governor and Council.

Jack told me that Ray Foster, Sheriff of Washington County, feels that each Municipal Court should have a probation officer. Jack inquired about an assistant probation officer for Washington County. The section which I cited provides that the County of Androscoggin shall have two probation officers, one to be designated probation officer and one to be designated

assistant probation officer, and the county commissioners for that county shall pay the probation officer a salary of $2400 and the assistant probation officer $1800 annually; and in that county they are entitled to select a clerk for the probation office and the county commissioners of Androscoggin must appropriate $1456 annually for such clerk hire and provide suitable quarters in the county building for this office.

I advised Jack that the statute would have to be amended before the Governor and Council could appoint an assistant probation officer in Washington County, as the present statute does not authorize any county to have more than one probation officer except Cumberland and Androscoggin; Cumberland is expressly exempted from the provisions of this statute. That county has probation and assistant probation officers appointed by the Judge of the Municipal Court in Portland and approved by a Justice of the Superior Court residing in Cumberland County or by the Chief Justice of the Supreme Judicial Court. Probation officers must give bond to the county to the satisfaction of the county commissioners.

I trust that this will answer the questions propounded by Sheriff Foster of Washington County. If you need further legal information on this matter, do not hesitate to give me a ring.

Sincerely yours,

RALPH W. FARRIS
Attorney General

January 31, 1949

To J. Wallace Lovell, Warden, Maine State Prison

Jack Welch, Administrative Assistant to the Governor, talked with me this morning in regard to who has authority to return a prisoner who has violated his parole.

Under Sections 19 and 20 of Chapter 136 a prisoner on parole is deemed to be still serving his sentence and is in the legal custody of the Warden and shall be subject at any time to be taken back within the enclosure of the prison for any reason that may be satisfactory to the Warden, and full power to retake and return any such paroled prisoner to the prison from which he was allowed to go at large is expressly conferred upon the Warden of the prison, whose written order will be a sufficient warrant authorizing all officers named therein to return such paroled prisoner to actual custody in the prison from which he was permitted to go at large. When he has returned the parolee to prison, the Warden shall at once report the fact and his reasons therefor to the Parole Board and his action shall stand approved unless reversed by a majority vote of said Board; but no prisoner shall be returned twice for the same offense. . . .

RALPH W. FARRIS
Attorney General

February 9, 1949

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

I have your letter of February 3rd, stating that you are confronted with a problem concerning blood transfusions for children developing certain diseases. On several occasions some of your patients have volunteered to donate blood, but so far you have refused on the ground that you did not know how much authority you had to permit it.

Before taking blood from a patient I would have written permission from the legal guardian or close relatives. I would not permit taking blood from patients who have no relative or guardian in a position to give you written permission, so that in case anything should happen to cause the death of a patient, you would be legally protected. Otherwise you might be exposed to criticism.

There is no statute referring to this problem.

RALPH W. FARRIS
Attorney General

February 9, 1949

To Russell W. Carter, Chief Accountant
Re: Richmond-Dresden Bridge

You state that the cash position of this bridge, as of January 31st, was $380 in the red, due to the fact that last summer the bridge was painted at a cost in excess of $7000. You ask me whether you can use funds from your maintenance of bridges account.

This bridge is a part of the State highway system, and funds from your maintenance of bridges account can be used to take care of this deficit.

I understand that there is a bill pending in the legislature abolishing tolls on this bridge. If that goes through, the maintenance and operation of the bridge will be paid from the General Highway Fund, according to the language of said bill.

RALPH W. FARRIS
Attorney General

February 23, 1949

To General George M. Carter, The Adjutant General
Re: Land in Caribou

This department acknowledges receipt of your memo of February 10, 1949, relating to proposed lease of land to the State of Maine by the Town of Caribou for an armory.

You say that the municipal officers doubt their authority to deed this land, but are willing to give a lease, which you suggest should be for fifty years at least.

I find no authority which would allow the municipal officers to lease land of the town for any such term.

I therefore suggest that the matter be submitted to the inhabitants at the next town meeting by proper articles in the warrant or at a special town meeting, to authorize the conveyance of land to the State, which I understand they are willing to do, if the authority existed.

I would also suggest that the article contain a description sufficient to identify the land to be conveyed.

ABRAHAM BREITBARD
Deputy Attorney General

February 23, 1949

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

I have your memo of February 18th relating to the damage to the New England Telephone & Telegraph Company's cable on the grounds of the Pownal State School, which cable was damaged when one of the boys was digging to take care of leakage in the steam pipe that extends from one of the dormitories to the temporary schoolhouse. This was repaired by the company, which has presented a bill of $38.31.

The State is not responsible for this bill. The Telephone Company should mark where its cable is laid if it expects to prevent it from being damaged by excavations on State property. In other words, the property belongs to the State of Maine, and the company laid its cable under same at its own peril.

It is my opinion that the legislature does not want to be bothered with any trivial matter of this nature.

RALPH W. FARRIS
Attorney General

February 24, 1949

To H. A. Ladd, Secretary, Maine Maritime Academy
Re: Legal Services

Your memo of February 22nd received, stating that the Trustees of the Academy voted on February 18th to ask the Attorney General of Maine the following questions:

"1. The legality of expending state funds for the legal counsel which would be necessary to press the interests of the Maine Maritime Academy."

Answer. Under the provisions of Section 1 of Chapter 17, R. S. 1944, all legal services required by officers, boards and commissions in matters relating to their official duties shall be rendered by the Attorney General or under his direction.

> "Said officers, boards, and commissions shall not act at the expense of the state as counsel in any suit or proceedings in which the state is interested."

Therefore under the direction of the Attorney General you may expend the funds of the Maine Maritime Academy for protecting the interests of the State.

"2. The possibility of the Attorney General's office representing the Board in so far as what state legal services might be necessary."

Answer. In reply I will again refer you to Section 1 of Chapter 17, which provides:

> "The attorney-general shall appear for the state, the secretary of state, the treasurer of state, the bank commissioner, the insurance commissioner, the head of any other state department, and the state boards and commissions, in all suits and other civil proceedings in which the state is a party or interested, or in which the official acts and doings of said officers are called in question; . . All such suits and proceedings shall be prosecuted or defended by him or under his direction."

"3. The Attorney General's opinion as to the eligibility of the Maine Maritime Academy to share in the distribution" under the terms of the bequest in the will of the late John McKee.

Answer. It is the opinion of the Attorney General that the Academy is eligible to share in the distribution under the terms of the will and may take such steps as are necessary to protect the interests of the State in any property which may come to the State through this State agency.

RALPH W. FARRIS
Attorney General

February 25, 1949

To Gen. George M. Carter, the Adjutant General
Re: Use of Armories for the Purpose of Procuring Recruits and General Morale Building for the National Guard

I acknowledge receipt of your memo of January 21st, which reached this office on January 24th and which presents a peculiar situation upon which your office must pass, as it does not seem to me that this matter is one for the Attorney General's office to decide, but rather one for the Adjutant General's office, as it appears to be an administrative matter relating to the activities of the National Guard in carrying on social functions for its own benefit as against operators of private dance pavilions who complain that the social activities of the National Guard are cutting into the attendance at the private dance halls from which the State of Maine derives no financial, military or social benefits.

In my opinion the courts would not restrain the activities of the National Guard in its own armory in its own locality, regardless of how the operators of private dance pavilions may feel about the matter. However, if the Guard officers desired to help any proprietor of a local dance pavilion in his business, they could change the night of their social dances; but in my opinion there is no legal necessity for so doing unless they deem it advisable as a matter of coöperation with the owners of dance halls. . .

RALPH W. FARRIS
Attorney General

February 25, 1949

To John C. Burnham, Administrative Assistant, State Highway Commission

Referring to your memo of January 4th, about which I talked with you on the telephone, relating to whether or not the State Highway Commission has authority to grant permits for moving vehicles over the highway when the vehicles are made up of a tractor and semi-trailer and a vehicle towed behind the semi-trailer, when these vehicles exceed the legal weight, height, width or length:

I wish to state that under the provisions of Section 89 of Chapter 19, as re-enacted by Chapter 348, Section 5, of the Public Laws of 1947, the State Highway Commission is authorized to issue permits in emergency matters whenever these vehicles exceed the legal weight, height, width or length. However, the permit issued by the Highway Department should designate the equipment which the permit covers, so that in case they are stopped by the State Police they will have in their possession permits to cover these vehicles. Therefore the applicant for an emergency permit from the State Highway Commission should be careful to include just what equipment is being moved under the provisions of the permit.

RALPH W. FARRIS
Attorney General

February 25, 1949

To William P. Hinckley, Acting Technical Secretary, Sanitary Water Board

On January 14th you requested this office to interpret the provisions of Chapter 72 of the Revised Statutes of 1944 as amended by Chapter 345 of the Public Laws of 1945. You state that:

"1. A starch factory became established in 1947 at a location where the public sewer is used as a means of discharging its waste material to the St. John River."

Answer. It is my opinion that the starch factory should obtain a license, even though the public sewer is an old source of pollution; the industry is a new source of pollution and adds to the old source. The two combined may create an objectionable odor.

"2. A textile industry was, previous to 1946, located where waste was discharged by public sewer to the tidal waters of the Penobscot River. The industry has relocated in old mill property formerly used and operated for the manufacture of pulp and paper but unoccupied for some years. This new industry is located about eight miles upstream from its old location and about six miles above the head of tide at Bangor and above the source of the public water supply of that city. Textile wastes are to be discharged from the plant to the Penobscot River."

Answer. My interpretation of the statute as it relates to the statement of facts in Question 2 is that they should first obtain a license under the provisions of the statute, as their output constitutes a new source of pollution to the waters of the Penobscot.

"3. An industrial plant is located in Bangor where for several years the public sewer provided the means of waste disposal eventually discharging into Kenduskeag Stream. This company built a new plant in 1947 and now discharges waste by public sewer but by a different sewer, the waste now entering a river. Would the following conditions have any special bearing upon the situation:

"A. The old plant discharged directly to the river with no use of the public sewer.
B. The new sewer discharge enters the river further upstream.
C. The new sewer discharge is to the Penobscot River rather than to Kenduskeag Stream."

Answer. It is my opinion that the statement of facts constitutes a new source of pollution under the 1945 statute. Of course the industries will question the authority of the Board at all times if they can get by with it; but in case their sources of pollution constitute a nuisance and complaint is made, the Attorney General can bring action to abate same under the common law powers. I understand that you have legislation pending to take care of some of these technicalities.

RALPH W. FARRIS
Attorney General

March 1, 1949

To Hon. Frederick G. Payne, Governor of Maine
Re: Letter of Major D. J. Smart

The writer of this letter says: "In 1946, I sold my property in Maine, and bought a place in Newburgh, N. Y., but, I went right back in the Army as soon as my terminal leave was up. What I want to know is this, how can I re-establish residence in Maine, which I really want to do, now that I intend to stay in the Army for the next several years."

This statement is not sufficient upon which to base an opinion as to whether a change of domicile was ever effected, as there is nothing in the statement to indicate that he actually established himself in Newburgh, N. Y., after purchasing property there, or whether it was from that place the he re-entered the Army when his terminal leave was up."

Domicile is a question of intent. To acquire a new domicile two things must concur: actual residence in a particular locality and intent to remain there permanently or indefinitely. Thus, if the writer sold his property in Maine and moved from Maine to Newburgh, N. Y., and there established an actual residence with the intent to remain there permanently or indefinitely, Newburgh became the domicile of his choice. As he re-entered the Army and is in service now on foreign soil, Newburgh would still be his domicile until he established a new one; but in order to do that, actual presence in the locality would be required, with an intention to remain permanently or indefinitely. Consequently, he cannot re-establish a domicile in Maine while he is out of the country or out of the State, which I assume he may be for some time, in view of his statement that he intends to stay

in the Army for the next several years. In order to establish a domicile in Maine, he would have to be present here, as actual residence in a particular locality and intent to remain must concur.

I am sorry that I have to go at length into a question which a layman may consider simple, and not be able to answer it in a simple way; but this is because the facts given do not contain the elements necessary to give a direct answer. The best that I can do is to give you the rules by which one may abandon his former domicile and create a new one and again effect a change back to the old domicile.

ABRAHAM BREITBARD
Deputy Attorney General

March 2, 1949

To Honorable Frederick G. Payne, Governor of Maine
Re: Liquor Licenses

This memo is relative to your recent inquiry as to the powers and duties of the Liquor Commission to revoke or suspend licenses for infractions of the liquor laws:

Section 60 of Chapter 57, as amended by P. L. 1947, Chapter 163 and P. L. 1947, Chapter 164, provides:

> "The commission may revoke or suspend for a definite period licenses in accordance with the following provisions after notice and hearing. . ."

Subsection II of that section then enumerates the causes for which licenses may be revoked or suspended in the discretion of the Commission and which are as follows:

> "A. Violation of any law relating to alcoholic beverages or substantial infraction of any rule or regulation issued by the commission;
> "B. Knowingly making a false material statement of fact in the application for the license;
> "C. Knowingly making inaccurate and misleading statements as to brands or labels; giving of rebates to a customer for the purpose of influencing a sale;
> "D. Making sales to persons under age as prohibited by law;
> "E. Making sales after the permitted hours of sale;
> "F. Making sales on Sunday;
> "G. The making of sales by hotels, clubs and restaurants for off the premises consumption;
> "H. Making sales of spirituous or vinous liquor on the day of the holding of a general election or state-wide primary;
> "I. Conviction of violation of any law relating to sale of intoxicating liquor to minors."

Subsection III provides for mandatory revocation in certain enumerated cases. This section begins with the following statement:

> "It shall be the duty of the commission to revoke licenses for the following causes:

"A. Conviction of violation of any law of this state or of the United States relating to the manufacture, possession, transportation, or sale of intoxicating liquor, except sales to minors;

"B. Conviction of violation of any law of the United States relating to carrying on the business of a wholesale or retail dealer without a federal tax stamp;

"C. Conviction of the violation or the provisions of section 32 of the United States liquor taxing act of 1934 relating to having in possession distilled spirits in unstamped containers.

"D. Transferring, assigning, or hypothecating a license."

Prior to the amendment in 1947, revocation of licenses was mandatory in the causes marked E, F, G, and H, but that has been relaxed, and these causes were removed from the mandatory revocation provisions and incorporated in subsection II, which leaves it to the discretion of the Commission to suspend or revoke.

It would also seem to me that where the duty to revoke is mandatory, the Commission may not go behind the conviction. Upon proof of the conviction, they cannot inquire into the circumstances, but are bound by the record of the conviction. This would appear to be the intent of the legislature when it enumerated the causes for which the licenses may be suspended or revoked in the discretion of the Commission, and then enumerated the causes for which it said that it shall be the duty of the Commission to revoke.

ABRAHAM BREITBARD
Deputy Attorney General

P. S. There is a bill now in the legislature, L. D. 1042, which would amend the law by putting those causes under Subsection III into Subsection II, thus making all infractions subject to discretionary suspension or revocation.

Another bill, L. D 1134, would provide an appeal to the courts in all cases.

L. D. 1193 also deals with the right of appeal.

March 2, 1949

To Honorable Frederick G. Payne, Governor of Maine
Re: Your Inquiry concerning Probation Officers

The statute, Chapter 136, Section 28, provides for the appointment of one probation officer in any county of the State where in the judgment of the Governor, by and with the consent of the Council, such appointment is desirable. Then in the same section provision is made as follows:

"If in any county it seems to the governor and council necessary to have more than 1 probation officer, the governor, with the consent of the council, may appoint one or more associates, who shall have all the authority under the direction of the probation officer which such probation officer has, and who shall receive for compensation and expenses such sum as the county commissioners of such counties shall deem just and proper."

Under this latter provision the Governor with the advice of the Council may appoint one or more associates who act under the direction of the probation officer with the same authority, if the Governor thinks such additional probation officers are necessary.

The same section expressly exempts Cumberland County, which is governed by a special act so far as that county is concerned. Then also in the County of Androscoggin provision is made by the legislature for two probation officers, one to be designated as the probation officer and one as the assistant probation officer; and this provision also fixes their salaries and that of a clerk or stenographer, and directs the county commissioners to pay it.

I thus feel that in the County of Androscoggin, where the legislature has fixed the number and salaries of probation officers, the provisions of the sections which I have above quoted, would not apply to Androscoggin County.

All other counties would be governed by that provision.

ABRAHAM BREITBARD
Deputy Attorney General

March 3, 1949

To Fred M. Berry, State Auditor
Re: Sheriffs' Fees

I received your memo of March 2nd, relating to the provisions of Chapter 313, P. L. 1947, which has to do with the compensation of sheriffs and their deputies for their services.

Deputy sheriffs are entitled to $7 a day while performing duties in attendance and services at court, and to incidental expenses, under Sections 1 and 2 of Chapter 313; and to civil fees for serving civil writs, even though they are receiving $7 a day as deputy sheriffs performing civil duties under this act.

Under Section 3, as you state, all fees chargeable under the statute by a deputy sheriff for the performance of criminal duties with the exception of actual expenses incurred, when charged by deputies receiving $7, shall be charged, collected and paid over to the county treasurer.

RALPH W. FARRIS
Attorney General

March 7, 1949

To Ernest H. Johnson, State Assessor
Re: Stover Airport

Referring to your memo of February 18th, relating to the above subject matter, where John G. Stover operates a business under the name of Stover Airport, which is unincorporated, and purchases gasoline under the name of Stover Airport and sells to operators of airplanes:

He owns a plane registered in his own name, which is fueled at the Stover Airport. Sales slips are made out when gasoline is placed in his plane. Upon this statement of facts you ask the following question:

"In applying for a gasoline tax refund under Section 166-A, Chapter 14 (P. L. 1947, Chapter 349, Section 4-A) are receipted invoices rendered by Stover Airport to John G. Stover acceptable? i. e., can an individual 'purchase' gasoline from an unincorporated business of which he is proprietor?"

Answer. After my conversation with you this morning and with Mr. Berry, the State Auditor, on the telephone in which he assured me that he would be willing to accept these invoices receipted by Stover Airport to John G. Stover, and inasmuch as you can go back of the record and check on the number of gallons which he used, it is my opinion that these receipted invoices rendered by Stover Airport to John G. Stover might be acceptable by the State Tax Assessor for the purpose of reimbursing Mr. Stover for such tax paid by him, as shown by the original invoices, if the other provisions of Section 166-A are complied with.

RALPH W. FARRIS
Attorney General

March 7, 1949

To Honorable Sanford J. Prince, House of Representatives

I have your message asking if there is any law or decision on riparian rights which would affect the clam bills coming up for hearing. . .

The State holds the rights of common fishery in trust for the public, and as to them, it exercises not only the rights of sovereignty, but also the rights of property. The legislature has full power to regulate and control such fisheries, and may grant exclusive rights therein, when the interest of the public will thereby be promoted. *State v. Leavitt*, 105 Maine, page 76. This right being general and not modified by colonial ordinances extends to shellfish on flats.

Though by the colonial ordinance of 1641, the riparian proprietor acquired title to the flats adjoining, not exceeding 100 rods, between high and low water mark, yet he can acquire no *exclusive* right to the fisheries upon them by such ownership. The general term of fisheries includes all fisheries without regard to their distinctive character, such as shellfish, including the digging of clams, which is embraced in the common right of the people to fish in the sea, creeks and arms thereof. The State, as respecting the people, has the right to regulate the common rights and privileges of fishing. This was laid down in *Moulton v. Libby*, 37 Maine 472, *Matthews v. Treat*, 75 Maine 597, and *State v. Leavitt*, 105 Maine at page 79.

I will say in passing that in non-navigable water, under the common law, fish belonged to the riparian proprietor; but in Massachusetts from the earliest settlement the principle was modified by legislation and general acquiescence, and public rights were recognized as paramount in the case of shad and salmon. *Cottrill v. Myrick*, 12 Maine 229. In the early history of our State it was deemed conducive to the public good to subject salmon, shad and alewives to public control, whenever the legislature thought proper to interpose, and the rights of riparian owners yielded to the paramount claims of the public. The right of the public to regulate the interior fisheries is proved both by legislative acts and by judicial construction.

In *State v. Wallace*, 102 Maine 229, the court referred to the Revised Statutes of 1903, Chapter 41, whereby the power of regulating clam digging within their respective limits was remitted to the towns. Towns were to vote, and the municipal officers were to grant permits; but a preference for the use of the inhabitants of the town is still shown, except when the town fails to take action, in which case there is free fishing for everyone, unless there is another State statute regulating same, or the Commissioner of Sea and Shore Fisheries has been authorized by statute to promulgate a rule and regulation respecting the digging of clams in the flats of navigable waters.

Our courts have held that . . legislation carrying out a public purpose, though limited in its application, if within the sphere of its operations it affects alike all persons similarly situated, is not within the Fourteenth Amendment of the Constitution, which declares that no State shall deny to any person within its jurisdiction the equal protection of its laws.

RALPH W. FARRIS
Attorney General

March 11, 1949

To Edward L. McMonagle, Director, Schools in Unorganized Territory
Re: School Residence

I have your memo of February 10th which I acknowledged on February 25th. Supplementing said February 25th memo, I will say that I have received a statement of facts from the attorney of the Town of Stockholm on the question of whether Albert L. Anderson is a resident of Township 16, Range 4, or a resident of Stockholm. You stated in your memo that Mr. Anderson moved his family to a farm which he owned in Township 16, Range, 4, W.E.L.S., intending to rebuild his home in Stockholm as soon as possible. However, the facts which the Town of Stockholm submits indicate that he did not own the farm in T. 16, R. 4, at the time of the fire which destroyed his home in Stockholm in 1947. On October 10, 1947, Albert L. Anderson and his wife, Elsie Anderson, purchased the farm in T. 16, (R.) 4, and they are making that their permanent home, regardless of what he intends to do in the future. Having lived there long enough to establish a residence, and inasmuch as that is his domicile and the domicile of his wife and family, and his family consists of children of school age, I am constrained to rule that he is now a resident of T. 16, R. 4, where he resides and owns his home.

The facts relating to his paying a property tax and purchasing hunting and fishing licenses and being a member of the superintending school committee have no bearing upon his residence. A man's residence is based upon what he does and not upon what he intends to do.

Upon this basis I must answer your questions as follows: Albert Anderson cannot claim a residence in Stockholm for school purposes while he and his wife and children are not residing in that town; and, based upon the facts and circumstances that he and his wife are residents of T. 16, R. 4, your department through the Division of Unorganized Territory, is responsible for the schooling of the Anderson children.

If Mr. Albert Anderson wishes to re-establish his residence in Stockholm, he must rebuild there and move his family, personal effects and furniture to the new home in Stockholm and live there the required number of months to obtain a new residence in Stockholm. He forfeited his residence in Stockholm when he purchased property and settled in T. 16, R. 4, even though sometime in the future he may intend to rebuild. As pointed out in the statement of the attorney for the Town of Stockholm, he may never rebuild on his lot in Stockholm. In other words, residence must be determined upon acts rather than upon intentions.

RALPH W. FARRIS
Attorney General

March 15, 1949

To Frank S. Carpenter, Treasurer of State
Re: Chapman Town Orders to School Teachers

Your memo of March 14th received, stating that some time between 1933 and 1938 the Town of Chapman issued its town orders to certain teachers in payment for their services. The teachers in turn gave the town orders to the Presque Isle Normal School for the payment of their tuition and other expenses while attending the summer session of the school. You further state in your memo that these town orders were held by the school officials and as nearly as can be learned, are still being held by them.

You further state that in August, 1941, the buildings constituting the home of Harley D. Welch, first selectman of Chapman, were destroyed by fire with all the records of the town contained therein. However, the town continued to honor all town orders presented to it for payment, although it had no record of same, until January, 1945, when the town officials issued a statement which was advertised in the local papers, whereby the selectmen notified all holders of town orders issued by the Town of Chapman to present them to the town for payment before February 25, 1945; any town orders presented after that date would not be honored.

You further state that the town orders held by the Presque Isle Normal School were not presented for payment at that time and are still held by the school.

You further state that it appears that some time ago Mr. Kenney of the Department of Education made a record of all receivables due the Department of Education and its associated schools, and he found that these town accounts, amounting to $233.83, of the Presque Isle Normal School were set up on the school's books as an account receivable from the Town of Chapman. There followed some correspondence between the Treasurer's Office and the Department of Education, but the orders were never presented to the Town of Chapman and were never presented to the State Treasurer for collection. On December 7, 1948, the amount of $233.83, representing the town orders aforesaid, was deducted from certain school funds being credited to the Town of Chapman against their account for State tax for the year 1948; and you attached to your memo of the 14th a letter received in the office of the State Treasurer signed by Harley D. Welch, first selectman of Chapman, who objects in behalf of the town to this deduction of $233.83, claiming that this is no longer an obligation of the town of Chapman.

Based upon the foregoing statement of fact you ask the following question: "Are these town orders an obligation of the town of Chapman at this time and is the account represented by them collectible by the state?"

It is well settled law that an order against a town is not due until it is presented for payment, unless it is otherwise agreed. This rule is independent of any statutory requirement, and it is based on the consideration that it would be inconvenient and burdensome for the officials of a town to seek its creditors and tender payment of their claims, and also that it would be oppressive and unjust to permit creditors of a municipality to turn claims into investments through omitting to present them to the town for payment.

This is a claim of several teachers in their private capacity as employees of the town, who have attempted to negotiate town orders given them in payment for their services. The town orders, according to your memorandum, were never legally presented to the town for payment by the holder of same, which was the Presque Isle Normal School, within the time prescribed by the Inhabitants of the Town of Chapman through their municipal officers. Towns in Aroostook County are generally small in territory and the inhabitants comparatively few in number, and their municipal officers are elected annually. In 1945 the Inhabitants of the Town of Chapman apparently made provision for payment of all outstanding town orders and so notified all the inhabitants of Chapman and surrounding towns by publication in the Presque Isle Star Herald. The Presque Isle Normal School is located in Presque Isle, where this publication is printed and issued. There is no reason why the officers of an educational State agency should not be held to the same degree of diligence in presenting claims which they hold against a town, especially old claims of this nature, as the teachers themselves.

It is my opinion that these town orders held by the Presque Isle Normal School were not presented for payment within six years after they were negotiated and were therefore not deductible from the school fund being credited to the Town of Chapman against their account for State tax for 1948, and the Town of Chapman should be reimbursed for the amount deducted; and that the town orders should be put back on the accounts receivable of the Presque Isle Normal School and charged off by the school officials.

RALPH W. FARRIS
Attorney General

March 18, 1949

To Francis G. Buzzell, Chief, Division of Animal Industry
Re: Bang's Disease

Your inquiry in regard to Bang's disease received in which you ask if the head of the Division of Animal Industry has the authority to take and dispose of positive animals reacting to the Bang's test, and whether the rules and regulations set up by the department in this regard can be enforced in court.

Section 52 of Chapter 27 of the Revised Statutes, as amended by Chapter 275 of the Public Laws of 1945, provides: "The commissioner shall cause investigation to be made as to the existence of tuberculosis, Bang's disease. . .

within any county or part of the state, in or at which he has reason to believe there exists any such disease, and make search, investigation, and inquiry in regard to the existence thereof."

Following this subject through, I now refer to Section 73 of Chapter 27, R. S., as amended by Section 2 of Chapter 275, P. L. 1945: "For the eradication of Bang's disease, the commissioner or his agent in charge of live stock sanitary work shall have blood from the animals over 6 months of age in all herds in the state drawn by a regularly employed federal or state veterinarian or an authorized, accredited veterinarian and tested at the state laboratory by what is known as the blood agglutination test, and all animals showing a positive reaction to this test shall be identified by a 'reactor' eartag or brand, or by both eartag and brand, and shall be slaughtered, or quarantined and handled under direct supervision of the commissioner or his agent. Animals showing a suspicious reaction to the blood agglutination test may be held for 60 days and retested."

Sections 75 and 76 of Chapter 27 of the Revised Statutes were also amended by Chapter 275, P. L. 1945. Section 76 provides: "If it is shown by recognized tests that Bang's disease exists in a herd, the commissioner, or his duly appointed agent . . may place such premises under quarantine by written notice, and no cattle shall be allowed to be removed from the herd while it is under such quarantine, except in accordance with the quarantine terms."

Section 74 of Chapter 27, R. S., provides indemnities for slaughtered animals and the disposition of the salvage.

Under the present law I do not believe the Commissioner has the right to slaughter a herd without the owner's having a hearing and his day in court, as the statute provides that the cattle shall be slaughtered or quarantined. Quarantine seems to be about the only thing that the Commissioners can enforce under these statutes which I have cited.

RALPH W. FARRIS
Attorney General

March 18, 1949

To Richard E. Reed, Commissioner of Sea and Shore Fisheries
Re: Importation and Processing of Lobster Meat

I have your memo of March 14th, asking for an opinion in regard to domestic and Canadian lobster meat. Your first question is:

"Is it legal to sell at retail or wholesale in this State canned Canadian lobster meat if the meat does not conform with our size limits?"

Answer. If the size limits conform to Canadian law and the cans are hermetically sealed in Canada and shipped here, and the meat is sold to the customer in the original can, the sale of it is legal.

"2. Can a person buy legal Maine lobster meat and cut it up for processing in canned stews, newburgs, etc.?"

Answer. Paragraph four of Section 120, Chapter 34, R. S., as revised in 1947, provides:

"It shall be unlawful to sell, offer for sale, deliver, ship or transport any

tail section of lobster meat that is not whole and intact as removed from the shell."

The next paragraph reads:

"All barrels, boxes or other containers containing lobster meat that has been removed from the shell, before being transported or offered for transportation, shall be plainly labeled with the name of the permittee, together with the words, 'Lobster Meat Removed Under Permit Number , ' followed by the number of the permit under which such lobster meat was removed."

This provision does not apply to lobster meat passing through the State under the authority of the laws of the United States; nor does it apply to lobster meat for serving in hotels and restaurants, provided such meat is removed on the premises where it is served.

Question 3 is as follows: "Do paragraphs 3 and 4, Section 120, cover meat taken from the claws and body as well as the tail section?"

Answer. Paragraphs 3 and 4 apply to all lobster meat, with the proviso that the tail section shall be removed from the shell whole and intact and cannot be mutilated in the removing. It shall not be less than $4\frac{1}{4}$ nor more than $6\frac{1}{2}$ inches in length when laid out straight, etc. . . .

RALPH W. FARRIS
Attorney General

March 22, 1949

To the Honorable Committee on Judiciary:

I have examined Legislative Document No. 900 entitled "An Act Relating to Unsatisfied Judgments Resulting from Motor Vehicle Accidents."

1) I am of the opinion that the fee exacted in order to create the fund is a revenue measure, for it is generally said that if the fee exacted exceeds the amount necessary for the administration of the law, it is an exercise of the power of taxation and thus a revenue measure.

By the 62nd Article of the Constitution all revenues derived from fees, excises and license taxes relating to registration, operation and use of vehicles on public highways are to be used solely for the enumerated purposes and for no other purposes. The fee here provided is an excise tax for the privilege of using the highways of the State. The fund here is not to be used for highway purposes but to satisfy unpaid judgments arising from injuries to persons and property on the highway. This is not one of the enumerated purposes in the article of the Constitution referred to, and hence this legislation would contravene that article.

2) It is also doubtful whether legislation of this nature can be sustained, assuming that the money was raised by an ad valorem tax, since the tax would be imposed to redress private wrongs, and tax money can be raised only to be expended for a public use.

3) Section 71-F of this legislation provides, where an action is brought against the Secretary of State by permission of the court in a case where the identity of the owner or driver of the vehicle causing the accident is unknown or cannot be ascertained and a judgment is recovered, that the owner of the

judgment or the treasurer of the State, if the judgment has been paid, may on application to a Justice of the Superior Court in term time or vacation have an order directing that the amount of damages awarded in that action shall be made a judgment against the owner or driver or both of the identified vehicle. Subsection IV than provides that it shall be no defense in that action that the accident was not caused by reason of any negligence or improper conduct on the part of the owner or driver of that vehicle.

It would seem to me that this provision is obnoxious to the due process clause of the Fourteenth Amendment to the Federal Constitution and to our own Constitution which guarantees to every person the right to a trial by jury in any civil suit.

Respectfully submitted,

ABRAHAM BREITBARD
Deputy Attorney General

March 22, 1949

To the Honorable Committee on Judiciary:

With regard to Legislative Document No. 685, entitled "Resolve Authorizing Donald S. Porter of Lowell to Sue the State of Maine."

It seems to me that the Resolve, as written, creates a new remedy, in that it provides that the liabilities of the parties shall be the same as the liabilities between individuals. The rights of the parties therefore under this Resolve would be governed by common law principles. This differs from the remedies provided by statute.

I am informed by the Highway Department that Route 16 is a state-aid highway. By Chapter 20, Section 16, the State is made liable to towns and counties for any judgments recovered in any actions against such towns and counties, including reasonable attorney fees and expenses and costs incurred in defending it, when such actions pertain to those state and state-aid highways to the improvement of which the State has contributed, provided, however, that within 24 hours after the "various" officials, namely the county commissioners or the municipal officers or road commissioners of the town receive notice of a defect or want of repair or sufficient railing, such officials shall give written notice thereof to some member of the Highway Commission; provided also that within ten days after any of the various officials mentioned has had notice of any injury to any person, such official shall have given notice thereof to some member of the Highway Commission. This is then followed by a limitation of liability not in excess of $4000.

The Resolve here presented contains no limitation on the amount of liability, nor would it be essential that the various written notices of the defect in the highway or of the injury be given to the Highway Commission as a condition precedent to the maintenance of the action.

I have obtained a report from the State Police which I submit herewith and which was apparently made on the scene after the accident. The facts set up in the Resolve are not in accordance with the facts as they appear from the officer's return. In the facts contained in the Resolve it is stated that this pipe railing was on the ground and at the time of the injury the

car was traveling parallel to the guard rail and about two feet away from it. Mr. Curtis, the operator of the car, says that he stopped his automobile immediately following the impact and it was brought to rest at a point in the main highway parallel with the iron fence and approximately two feet distant therefrom. His statement to the officers was that he pulled out to the right so far he went into an old iron fence and the front of the car broke through and went over the bank. It is not conceivable that the pipe rail, if it was on the ground lying by the side of the road, could have broken through the windshield of the car and injured the passenger. It is more consistent with the statement in the police report that he broke through the guard rail and went over the bank. It also appears that Curtis's breath smelled of alcohol.

If the observation of the officer is correct, there would seem to be no merit in this claim and no reason why the State should submit itself to a suit based on common law principles.

It also seems to me that if this Honorable Committee should feel inclined to report favorably on the Resolve, there ought to be a limitation of liability as to amount; and I think further that the tribunal to be set up should be a Justice or three Justices, in the latter case, two Supreme Court Justices and one Superior Court, to be assigned by the Chief Justice of the Supreme Judicial Court.

Respectfully submitted,

ABRAHAM BREITBARD
Deputy Attorney General

March 22, 1949

To Ernest H. Johnson, State Tax Assessor
Re: Taxation of Unorganized Territory

I have your memo of March 18th, requesting an opinion on the following question:

"If the state tax on cities and towns is not levied by the legislature, can the legislature nevertheless levy a state tax upon the unorganized areas of the state?"

In my opinion the legislature is so prohibited under the provisions of the Constitution, which provides that all taxes upon real and personal estate, assessed by authority of this state, shall be apportioned and assessed equally, according to the just value thereof.

Under this provision no exception is allowed, whether the land is found within or without any particular subdivision of the State's territory. It is my opinion that the legislature cannot discriminate by not taxing the cities and towns and taxing the unorganized territories. This question was touched upon in Opinion of the Justices, 97 Maine 595, where it related to a difference in the rate of taxation between incorporated and unincorporated territory. The same principle applies in this case.

RALPH W. FARRIS
Attorney General

March 23, 1949

To Fred M. Berry, State Auditor
Re: L.D. 340, A Resolve Transferring moneys from the Employees' Retirement Fund to the General Fund ($108,000).

I received your memo of March 18th, soliciting my opinion relating to the legal rights of the Employees' Retirement System board to correct errors within the Employees' Retirement Fund, under the provisions of Subsection VIII of Section 12 of Chapter 384, P. L. 1947, from which you quote in part:

> "The board of trustees, upon discovery of any error in any record of the system, shall, as far as practicable, correct such record."

Then you cite the errors requiring correction, which are as follows:

> "1. The $108,229.65 which represents overpayments made by the State prior to 1947, and which became a part of the Employees' Retirement Fund by enactment of Chapter 384, Public Laws of 1947.
>
> "2. An amount of $139,792.07 which represents a deficiency in the 'Teachers' Savings Fund' caused for the most part by lapsing balances and making transfers from the 'Pensions of Retired Teachers' account prior to its merger with the Employees' Retirement System in 1947."

You state that if the board is empowered to make corrections within the fund, a simple journal entry can be made by charging the Pension Accumulation Fund with $108,000 and crediting the Teachers' Savings Fund with $108,000. This procedure would eliminate the necessity of enacting L. D. No. 340.

In reply I wish to state that it is my opinion that the provisions of Subsection VIII of Section 12 of Chapter 384, P. L. 1947, are not broad enough for the transfer of funds by the board of trustees. This statute was intended to correct errors in any record of the System, so far as practicable, when an injustice or inequity would result, so that any employee under the Retirement System would not get full credit, or would get no credit at all, because of a defect or error in the record of the System.

In my opinion the board is not empowered under the present statute to make such corrections. To accomplish what you request in your memo you should seek legislation authorizing the board of trustees to make transfers of funds from one fund to the other as suggested in your said memo.

RALPH W. FARRIS
Attorney General

March 24, 1949

To Russell W. Carter, Supervising Accountant-Auditor, Highway Department

Relative to your memo of March 24th concerning the check heretofore drawn by the State, dated May 16, 1930, on the Augusta Trust Company in favor of Clifford E. Herrick and reputedly cashed by him with Alfred M. Joyce who now claims to be the holder thereof:

You had this check in your possession this morning and I am informed by you that the check was mislaid either by the holder or by the payee thereof, and hence was not presented within a reasonable time after its date. We have no explanation from the holder or the payee why the loss of the check was not made known to the Controller's office, so that payment thereof could have been stopped and a new one issued.

Under the law a check must be presented within a reasonable time after the date of its issue, and the failure to do so, resulting in loss to the drawer of the check, would discharge the drawer from any further liability. In this case the Augusta Trust Company in 1933 closed because of the bank holiday and thereafterward never re-opened, but its affairs were liquidated, resulting in a substantial loss to the State. Under these circumstances the failure of the holder to present his check for a period of nearly three years after the date of its issuance would make him chargeable with its loss, because it was not presented within a reasonable time.

I therefore advise you that the Highway Commission may not request the Controller to issue a warrant in place of this one, and the only recourse that the holder now has is to request the legislature to reimburse him by legislative Resolve.

ABRAHAM BREITBARD
Deputy Attorney General

March 25, 1949

To A. K. Gardner, Commissioner of Agriculture
Re: Milk Prices

I have your memo of March 24th, stating that milk received from local farmers in Maine country plants of Boston milk dealers is frequently sold as Class I milk to local milk dealers, but under the present set-up these producers do not receive the benefit of the local Class I price established by the Milk Control Board. They are paid the uniform blend price established by the Milk Market Administration for the Boston market. The Boston dealer selling the milk from his Maine country plant to the local dealer is charged for this milk at the Boston Class I zone price rate, which is usually about 20c a hundredweight lower than the Class I price established by the Milk Control Board. On these facts you ask whether the Board has authority to enforce its prices for milk sold in local markets when such milk is received at a country plant and subject to the Boston pool under the authority of the Federal Milk Order No. 4, issued under the Agricultural Marketing Agreement Act of 1937. Section 904.4 provides for the determination of pool plant status in the Greater Boston area of holders of certificates of registration issued under the provisions of Chapter 94, Section 16 of the Massachusetts General Laws.

It is my opinion that the State Milk Control Board has authority to enforce its prices for milk sold in open markets when such milk is received at a country plant in intrastate commerce, even though it is subject to the Boston pool which is under the Massachusetts Administrator. This does not affect the authority of the Maine State Milk Control Board, if the Board sees fit to enforce its rights, unless it has entered into an agreement with the

Boston pool and has adopted the minimum class prices set up under Section 904.7 of the federal Milk Order No. 4 for the Greater Boston Marketing Area. . . The Milk Control Board should know about the administration of this Act. They must have studied it, as it has been in effect since August 1, 1947.

The Greater Boston Marketing Area is defined in Section 904.1 of Milk Order No. 4, and it includes only those areas within the boundary lines of certain Massachusetts cities and towns, which are set forth in the definition. It does not seem to me that it has anything to do with towns and cities in the State of Maine where producers and dealers are under the supervision of the State Milk Control Board.

. . I shall be glad to sit down with some member of the Milk Board with some information on the administration of this Greater Boston Marketing Area agreement. I could then advise you more accurately as to how far it affects the State of Maine in enforcing the prices of milk sold in local markets.

RALPH W. FARRIS
Attorney General

March 25, 1949

To Harry E. Henderson, Deputy Treasurer of State
Re: Hutchinson Hardware Co., Inc.

I have your memo of March 24th relating to the above matter, together with a card to the Maine Fish & Game Dept. from the Referee in Bankruptcy, stating that there will be a meeting of the creditors on the 5th day of April in Boston.

I wish to state that this matter has never been referred to this office by the Commissioner of Inland Fisheries and Game, nor by the Treasurer's office; and we have never filed any claim in this office and know nothing about the matter. . . This matter was certified to your department on April 1, 1948 for collection, but was never turned over to this office for action.

It has been my policy not to consider moneys due the State of Maine for licenses as dischargeable in bankruptcy. For that reason we have never filed claims with referees in bankruptcy for a percentage settlement. These license fees collected by anyone as an agent for the State of Maine belong to the State of Maine and are not dischargeable in bankruptcy. Whoever filed this claim had never consulted this office and did not know the policy of this office in regard to moneys obtained for license fees, etc.

In this case the agent of the State is a corporation, and we probably have lost our rights by filing a claim with the referee in bankruptcy.

In the future, all legal matters should be referred to this department and not handled by the departments concerned, in cases where fees have been collected for the State and not turned over to the State Treasurer.

RALPH W. FARRIS
Attorney General

March 25, 1949

To Col. Francis J. McCabe, Chief, Maine State Police
Re: Stopping Truck Drivers and checking on their union cards

I have your memo of March 24th, enclosing a pamphlet from the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, affiliated with the American Federation of Labor.

Our law enforcement agencies of Maine cannot be used to enforce and check on labor union activities, and no one but accredited law enforcement officers can stop motor vehicles on the highways of our State. If members of a union stop motor vehicles on our highways, they do so at their own peril. That is a matter that the members of the union should take up with the employers of truck drivers before they are on the road.

However, if a truck driver is off the highway at a filling station or in the yards of the trucking concern, it would be proper for the union checkers to confer with the members of their union to see if their dues are paid. Do not permit them to direct truck drivers to drive off the highways while they are in the operation of motor vehicles.

I think you should advise the union representatives just how far they can go under our law in checking members of their union who are operating motor vehicles under licenses from the State of Maine.

RALPH W. FARRIS
Attorney General

March 25, 1949

To David B. Soule, Insurance Commissioner
Re: Journal Transfer #1394, $652, Health & Welfare to Insurance, Appropriation #7230.

It has been called to my attention by the State Department of Audit that your department has been charging the Health and Welfare Department for expenses for investigations and inspections by your department, which is provided for under Section 29 of Chapter 85, R. S., as amended by Section 8 of Chapter 188, P. L. 1947, which provides that every fire insurance company which does business or collects premiums or assessments in this State shall pay to the State tax assessor on the first day of May annually, in addition to the taxes now imposed by law to be paid by such companies or associations one-half of one per cent of the gross direct premiums for fire risks written in the State during the preceding calendar year, etc. The State tax assessor shall pay over all such receipts from such tax to the Treasurer of State daily. Such funds shall be used solely to defray the expenses of such investigations and inspections by the Insurance Department and are appropriated for such purposes.

This section further provides that whenever there shall accumulate in this special fund created by this section a surplus sufficient to defray the expenses of such investigations and inspections for an ensuing period of 1 year, then in the discretion of the Insurance Commissioner the special tax for that year may be omitted, and the Insurance Commissioner shall certify to the State tax assessor that the special tax is to be omitted. Said certification is to be made not later than the 31st day of January of the year for which the tax would otherwise be assessed, etc.

Inasmuch as the legislature has appropriated these funds for the purposes of investigating and causing to be investigated the origin of fires and inspecting buildings and property, it is improper for the Department of Health and Welfare to transfer from its appropriation 7230, which is for the administration of that department, to the Insurance Department the amount of $652; and I am advising the State Controller to take care of this by reversing this transfer, so that the records will disclose that this money was paid from the tax on gross premiums on fire insurance companies doing business in Maine.

In the future, while this statute is in effect, do not charge departments for expenses incurred for investigations and inspections by your department.

RALPH W. FARRIS
Attorney General

March 25, 1949

To H. H. Harris, State Controller

I hereby authorize you to make a journal transfer from the Insurance Department to the Health and Welfare appropriation No. 7230 for the sum of $652, which was transferred by the Health and Welfare Department to the Insurance Department in December, 1948, for expenses incurred in investigation and inspection by the Insurance Department, as per copy of a memo to the Insurance Commissioner which I attach hereto.

RALPH W. FARRIS
Attorney General

March 28, 1949

To David H. Stevens, Commissioner of Health and Welfare

I acknowledge receipt of your memo dated March 16, 1949, addressed to Members of the Sanitary Water Board, indicating that you have caused to be withdrawn Legislative Document No. 807, and that the Department of Health and Welfare, upon the recommendation of the Surgeon General, is designated as the State water pollution agency for the purpose of receiving federal funds.

I also acknowledge receipt of a copy of a letter written to you on March 14th by the Federal Security Agency and signed by Leonard W. Trager, Regional Drainage Basin Engineer, Public Health Service.

I agree with the U. S. Public Health Service that the Sanitary Water Board, because of the provisions of statute exempting certain rivers, is not in a position to enforce a state-wide pollution program and therefore would not be in a position to accept federal funds for this purpose.

RALPH W. FARRIS
Attorney General

March 30, 1949

To Harrison C. Greenleaf, Commissioner of Institutional Service

I have your memo referring to a conversation we had in the middle of March concerning transfers from the State Hospitals to the Pownal State School and from Pownal to a State Hospital under the provisions of Section 13 of Chapter 23, R. S. 1944.

I feel that the phrase, "Any person who is committed to a state charitable or correctional institution, and is under the control of the department," should be interpreted broadly to include State Hospitals and the Pownal State School, as that is what the legislature was dealing with when this law was enacted and it had nothing to do with private charitable hospitals.

RALPH W. FARRIS
Attorney General

March 30, 1949

To Col. Francis J. McCabe, Chief, Maine State Police

I have your memo of March 21st, asking for a ruling on the following questions which were based on an attached hypothetical case presented in a memorandum from Lt. Earle S. Chase, Commanding Officer of the Scarboro Barracks.

"1. Is a member of the Maine State Police expected to enforce the Game Laws in extenuated (sic) circumstances?"

My answer to Question 1 is in the negative, except in cases where he personally observed the game laws of the State being violated.

"2. Does the 'any officer' in the section of the Game Laws relative to shooting dogs chasing deer apply to State Troopers?"

My answer to Question 2 is in the affirmative; but the State trooper has no legal authority to delegate the killing of any dog to a private person when he finds the dog in the act of hunting, chasing or killing deer.

"3. Has a member of the State Police the legal right to act under the Game Laws?"

My answer to Question 3 is in the affirmative. Section 19 of Chapter 33, the Inland Fish and Game Laws, Revision of 1947, provides:

> "Sheriffs, deputy sheriffs, police officers and constables are vested with the powers of inland fish and game wardens, . . ."

"4. May a State Trooper or a Game Warden command aid in the performance of his duties to protect the life and property of the State, especially deer?"

In answer to Question 4 I will state that there is no statutory authority for a State Trooper or game warden to command aid in enforcing the fish and game laws of the State; nor can an officer delegate his authority to a private person, the reason being that the game laws are *mala prohibita*, and the persons violating the game laws are not in the commission of a felony. It is a very serious responsibility for an officer to delegate his constituted authority to a private individual.

In the case of dogs chasing and killing deer, Section 86 of Chapter 33 of the Revision of 1947 provides that any person having evidence of any such hunting, chasing or killing of deer by dogs must present that evidence to the Commissioner, who shall give notice in writing to the owner or keeper of said dog, stating the acts committed by the dog. The owner of the dog so notified shall not permit any dog mentioned in said notice to leave the immediate control of said owner or keeper under the penalty provided in Section 119. After the owner of the dog has received written notice that his dog has committed any act prohibited by Section 86, it shall be lawful for anyone to kill the dog when found committing any of the acts prohibited. Therefore it has been the practice of all game wardens to give notice to the owner or keeper of the dog before authorizing any person not an officer of the law to kill the dog found committing the act.

"5. Is a citizen justified in carrying out the instructions of such an officer under these circumstances?"

My answer to Question 5 is in the negative. If a citizen carries out the instruction of an officer which that officer has no statutory authority to give, he lays himself liable to a civil action for damages.

"6. What legal action, if any, should the officer carry out against the owners of dogs chasing deer?"

In answering this question I refer you again to Section 86 of Chapter 33, Revision of 1947, which provides for notice to the owner or keeper of the dog before the act of killing the dog.

I trust that these answers to your six questions give you the desired information relating to the handling of cases where dogs are chasing, hunting and killing deer.

RALPH W. FARRIS
Attorney General

March 31, 1949

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

I have your memo of March 18th, stating that the Park Commission has had a request from the Central Maine Power Company to grant a right of way for a power line to serve a cabin constructed and used by the Department of Inland Fisheries and Game in Sebago Lake Park. You further state that it is your interpretation of Chapter 32, Section 23, that the Commission cannot enter into an agreement with the Central Maine Power Company for a right of way for a period of more than one year.

I wish to confirm your interpretation of this statute.

You further state that the interest of the Department of Inland Fisheries and Game indicates the need of 1273 feet of right of way.

It seems to me that I advised you on this matter on May 12, 1948, and I offer the same suggestion as I did on that particular matter, that the privilege be limited to one year, to be extended at the end of each year, with the consent of the Governor and Council, by the Commission for a period of five years.

RALPH W. FARRIS
Attorney General

March 31, 1949

To A. M. G. Soule, Chief, Division of Inspection, Agriculture

I have your letter of March 29th, asking for an opinion concerning packers of cat food. You state that you have interpreted the law to mean that a license was required only if herring was employed for packing sardines; but inasmuch as the same type of fish, namely clupea harengus, is used in packing cat food, you ask whether license provisions should apply in that case.

It seems to me that the licensing provisions would apply to sardines packed for human consumption and not to anything packed for animal food.

RALPH W. FARRIS
Attorney General

April 5, 1949

To David H. Stevens, Commissioner of Health and Welfare

Your memo of March 22nd, addressed to my Assistant, Jean L. Bangs, has been referred to me for attention. You state that a representative of the Veterans Administration has stated that the policy of the Veterans Administration in respect to awards made to the Department of Health and Welfare as guardian of committed children is to safeguard all monies. They intend that all such monies shall be turned over to the child at maturity or when dismissed from custody.

In reply I wish to state that this is not the policy of the State concerning wards of the State who have been committed by the court under the provisions of the statute committing such children to the custody of the State. If the child's parent is able to contribute to the support of his minor child or children, the department can request the court to order the parent to contribute to the support. If the parents of the child hold property of the child which is available in the hands of the parents or guardians, there is a liability against the child's property for the payment for care, education and maintenance furnished during the existence of the custody by the State, and an execution may issue for any sums when payable as in actions of tort.

It has been the policy of the State to consider that payments made to the State by the Veterans Administration were for the purpose of aiding in the care, education and support of the child in the custody of the State. The monies paid by the Veterans Administration to the Department of Health and Welfare as guardian of the minor child of a veteran are not payments to the veteran, but to the guardian of the child, because the child is the son or daughter of a veteran. The idea is not to have the child fully dependent upon the State for its care and support, because of the fact that the child's father was in the military service in time of war. It is the policy of the State to consider that monies paid by the Veterans Administration are for the benefit of the child during its minority and not for its benefit after it attains its majority.

The accounts of the department as guardian should be kept the same as any guardian's under the Uniform Veterans' Guardianship Act. All monies on hand in the department must be turned over to the child at majority or when discharged from the custody of the State.

In handling monies received from the Veterans Administration in this manner, it is considered that the child of a veteran will not be designated as a State ward in the full sense of the word because the child whose father has been a veteran receives the benefit for its care, education and maintenance during minority, and not as accumulation payments to be set aside by the State while the State assumes the entire burden of the child during minority.

RALPH W. FARRIS
Attorney General

April 14, 1949

Hon. Frederick G. Payne, Governor of Maine

I have your memo of April 13th attaching a letter of April 11th received from Mr. Caleb Kimball of Winterport, Maine, relating to the State's right to build a dam on Marsh Stream at West Winterport, to replace an old dam which was destroyed in the flood of 1936.

In reply I wish to advise that under Chapter 115 of the Resolves of 1945, page 976, under sums "To Be Paid From the General Highway Fund," there is this item:

"Marsh River Dam. To aid the town of Winterport and the town of Frankfort in paying a part of the cost of constructing piers or a dam at West Winterport on the Marsh river to protect 3 bridges on said river from damage by ice jams, namely: Tibbetts bridge at West Winterport (a 75-ft. steel bridge on a state aid highway), a 200-ft. cement bridge in Frankfort on Highway #1 and a steel bridge in Frankfort near the mouth of the river; said sum to be expended under the inspection and supervision of the state highway commission."

The sum of $2500 was appropriated for the fiscal year 1945-46.

Under Section 11 of Chapter 40 of the Revised Statutes every person, firm or corporation before commencing the erection of a dam for the purpose of developing any water power or the creation or improvement of a water storage basin or reservoir must file with the Public Utilities Commission plans of the proposed dam. However, it is my opinion that this provision does not apply to the State Highway Commission in building piers or dams for the protection of the highways and bridges of the State.

I would write Mr. Kimball and tell him that the legislature authorized the building of this dam on Marsh River in 1945 for the protection of these three bridges and that any damage which may accrue to his property therefrom should be taken up with the State Highway Commission, and the Commission will in turn take it up with the two towns. It is my understanding that the Towns of Winterport and Frankfort contributed a part of the cost of construction of this dam for the protection of these bridges.

I wish to call your attention to the location of this dam. When traveling from Belfast to Bangor on Route 1, when you arrive at the town of Frankfort, you make a sharp turn to your right and cross Marsh River bridge. This dam is built near this bridge.

It was called to my attention at the 1945 session of the legislature by the State Highway Commission that when the spring floods came and ice piled up at the site of the old dam and below that site, it overflowed No. 1 highway and washed out considerable of the hard surface and endangered the three bridges mentioned in Chapter 115 of the Resolves of 1945; and that was the reason that the towns of Winterport and Frankfort and the State Highway Commission sought authority from the legislature to construct this dam.

RALPH W. FARRIS
Attorney General

April 14, 1949

To Hon. Frederick G. Payne, Governor of Maine

I have your memo of April 13th, enclosing a letter which you received from Capt. S. E. Peabody of Beals Island, Maine, dated April 11th. You ask me to advise you what should be done about his matter.

He states that transportation between Beals and Jonesport is serviced by a small boat for passengers which will accommodate only fifteen or twenty people at a time and at low tide many times women and children have to climb down over wharves, up over high ladders, or out of the ferry boat into a skiff and walk up through mud to the bank.

Until 1925 Beals was a part of the town of Jonesport. In that year it was set off and incorporated and has since had local government. . .

By way of comment I will say that it has not been the policy of the State to provide ferries for the counties and towns. I remember when the Town of Islesboro was contemplating providing transportation facilities by ferry for passengers and freight they came to the legislature, and the town was authorized and empowered to raise money to provide and maintain such transportation facilities for passengers and freight by boat as may, in the judgment of the municipal authorities, be found necessary for the welfare of the inhabitants of said town.

In view of the fact that the Maine Register of 1948-9 gives the population of Beals as 524 and the estates as $142,363, it seems to me that the selectmen of Beals and Jonesport should get together and provide transportation facilities for the inhabitants of both towns who commute between said towns.

In order for the towns to raise money for this purpose, they would have to be specially authorized by the legislature. If a bill could be introduced by unanimous consent, the two towns could put in a Private & Special Act authorizing and empowering them to raise money to provide for this transportation across the narrow strip of tide water which lies between them.

I would advise Captain Peabody as to the procedure he might pursue in this regard.

RALPH W. FARRIS
Attorney General

April 15, 1949

To Marion E. Martin, Commissioner of Labor and Industry
Re: Section 17, Chapter 25

I have your memo requesting a ruling whether Section 17 of Chapter 25, R. S. 1944, would allow youths of fifteen years or under to pile peat moss on drying racks. You state that this is merely a process of placing moss blocks from the ground on to wooden drying racks.

You further state that the Federal Wage and Hour Division has ruled that the drying of sea moss is part of processing and is prohibited work for minors under 16, but call my attention to the fact that your department is, of course, not governed by the Federal Wage and Hour Division for interpretation of the Federal Law as it applies to sea moss drying.

You further state that the process of cutting peat and the conveying of same to the loading places is a mechanical one, but that in view of the weight of the peat moss blocks this does not seem to you to be desirable work for minors under fifteen.

Section 17 as amended by P. L. 1945 and P. L. 1947 provides that no child under fifteen years of age shall be suffered to work in, about, or in connection with any manufacturing or mechanical establishment, laundry, bakery, bowling alley, or pool room, provided that this section shall not apply to minors in public and approved private schools wherein mechanical equipment is installed and operated primarily for purposes of instruction. This section also provides that no minor under 16 shall be employed in any theatre or moving picture house as usher or attendant or in or about a projection booth.

I wrote you on April 30, 1948, on the subject of minors raking and harvesting sea moss, which letter was based on data which you furnished to my office, including a copy of the federal regulations in regard to the employment of minors.

It is my opinion that the provisions of Section 17 of Chapter 25, R. S., with amendments thereto, do not contain any prohibition relating to the employment of children of fifteen years of age or under to pile peat moss on drying racks.

RALPH W. FARRIS
Attorney General

April 15, 1949

To H. A. Ladd, Commissioner of Education

Referring to your memo of March 15th about which I talked with you some time ago, concerning the interpretation of Chapter 37, Section 201, as amended:

You state that a teacher with more than two years of training, but less than three years, is under contract for a salary at the legal minimum of $1500. In February of the contract year she completes the requirements for three years of training. Under the provisions of Section 201 of Chapter 37 as amended by the Public Laws of 1947, you ask whether the contractual salary remains in force for the life of the agreement, or whether the employing agency is required to increase her salary to the legal minimum, $1600, as of the date of qualification for the three-year classification.

In my opinion, if there is no provision in the contract for a change thereof, the contract will hold for its term, even though the teacher has, through additional work, fulfilled the requirements for three years of training and will be in the $1600 legal minimum classification.

However, by mutual agreement between the teacher and the superintending school committee, under these circumstances, an amendment to the contract may be made, to be executed with the same formalities as the original contract, to be effective for the remainder of the term of the contract. There is no provision of statute which requires the superintending school committee, or entitles the teacher, to change the consideration in a contract that has been made for a definite period.

RALPH W. FARRIS
Attorney General

April 19, 1949

To John H. Welch, Administrative Assistant, for Institutional Service
Re: Transfer of Patient

I have your memo of April 18th with abstract of the history at the Augusta State Hospital and correspondence appertaining to this case between the U. S. Public Health Service and the Superintendent of the Augusta State Hospital, relating to the transfer of a patient from the U. S. Marine Hospital on Ellis Island, New York, to the Augusta State Hospital, where he was a former patient, having been finally discharged from said hospital on March 3, 1946.

You call my attention to Section 117 of Chapter 23 of the Revised Statutes of 1944, which provides that the Commissioner of Institutional Service may, upon the request of a competent authority of a State other than Maine, or of the District of Columbia, grant authorization for the transfer of an insane patient directly to a Maine State Hospital, etc.

It is needless to recite this section further, as the authority can come only from a State other than Maine or from the District of Columbia. There is no provision for the request to come from a federal agency, under this section.

Section 118 relates to accepting members of the armed forces of the United States who are residents of this State into either of the Maine State Hospitals.

It is my opinion that under this statute the Commissioner would not be permitted to authorize the transfer of this patient from the U. S. Marine Hospital to the Augusta State Hospital.

RALPH W. FARRIS
Attorney General

April 19, 1949

To Honorable Frederick G. Payne, Governor of Maine

I return herewith letter of April 12th addressed to you by Harold R. Bulger, Jr., with my comments.

The statute in question is not so broad as Mr. Bulger states. A person riding or driving a horse has not the right of way over other vehicles on the

highway. The use of reasonable caution, however, is the provision in the statute, which is no more than the general rule: namely, the exercise of due care under the circumstances of the particular situation with which one is confronted. The section of the statute is Chapter 19, Section 111, which is as follows:

> "Sec. 111. When approaching frightened animal, vehicles to be stopped if signal is made; passing animal or vehicle from rear. Whoever, driving or operating a motor vehicle upon any way, when approaching from the opposite direction a person riding, driving, or leading a horse or other animal which appears to be frightened, is signalled by putting up of the hand or by other visible sign by such person, shall cause such motor vehicle to come to a stop as soon as possible and remain stationary as long as it may be necessary and reasonable to allow such horse or animal to pass. Whenever traveling in the same direction, the person operating a motor vehicle shall use reasonable caution in passing horses or other animals and vehicles."

You will notice that when a motor vehicle is approaching from the opposite direction, the person riding, driving or leading a horse or other animal which appears to be frightened, may signal to the motorist, which signal imposes the duty upon the operator of the motor vehicle to stop as soon as possible and remain stationary, giving the horse or other animal reasonable time to pass. When traveling in the same direction, however, the person operating the automobile is required to use reasonable caution in passing the horse or other animal. The first part of this section is quite clear. It requires some signal by the person driving or leading the animals to give warning that the animals may become frightened or are unaccustomed to motor vehicles. The driver of the car must then bring his car to a stop and wait till the animals pass. On the other hand, when the vehicle is traveling in the same direction as the horse, the exercise of reasonable caution is required, and this is governed by the specific situation that arises. For example, a motorist following a horse, when another car is approaching from the opposite direction and the width of the traveled part of the highway is not sufficient for him to pass at a reasonably safe distance from the horse, should slow down and wait until the car coming from the opposite direction has passed, thus giving him a wide sweep around the horse for the purpose of passing. It all boils down to the exercise of due care, considering the circumstances and the many factors which enter into the situation, as do the rules for passing another vehicle or a pedestrian walking along the highway in the same direction.

ABRAHAM BREITBARD
Deputy Attorney General

April 27, 1949

To Raymond A. Derbyshire, D.M.D.

. . . The statute, Chapter 139, Section 2, of the Public Laws of 1947, clearly prescribes in detail what a dental hygienist may do. Furthermore, under Section 21 of Chapter 66 of the Revised Statutes of 1944, no person may practice as a dental hygienist unless she has passed an examination before the Dental Board and possesses a certificate of her ability to practice.

My suggestion would be that if a registered nurse wants to practice as a dental hygienist, she be licensed as such by the Board. That would be the easiest way of handling the situation. . .

You will note that sodium fluoride treatments are specifically provided for in the amendment of 1947 which appears in black-faced type, "make local applications of medicants to the surfaces of the teeth and gums." I do not know why a registered nurse does not qualify for a certificate as a dental hygienist.

ABRAHAM BREITBARD
Deputy Attorney General

April 28, 1949

To Honorable Harry M. Brown
House of Representatives

You have requested a letter from this department regarding the imposition of additional taxes by another and additional assessment in any one taxable year.

Under our statutes and the interpretation placed thereon by the court, assessments are made as of April 1st, based upon the amount of money which the voters at annual meeting vote to raise. When this assessment is made in accordance with statute, there can be no further assessment.

While there is provision for a supplemental assessment, this additional assessment relates solely to property that has been omitted or a tax is invalid or void by reason of illegality. Where all the property of the taxpayer has been assessed without any omission of property therefrom, he cannot be again taxed to raise revenue during the taxable year.

ABRAHAM BREITBARD
Deputy Attorney General

May 5, 1949

To Richard E. Reed, Commissioner of Sea and Shore Fisheries
Re: Refund of License Fees

I have your memo of April 22nd relating to the emergency acts approved by the Governor on March 25th and April 14th, repealing the license requirements on shellfish shucking and special Atlantic salmon fishing.

You state that to date forty-eight $3 shucking licenses and several $3 and $5 special Atlantic salmon fishing licenses have been issued for the year 1949, and you request me to inform your department whether or not refunds are in order.

In my opinion, the money paid by licensees for fishing licenses for certain purposes, those purposes having been revoked by the legislature, should be refunded to said licensees by your department.

RALPH W. FARRIS
Attorney General

May 16, 1949

To Norman U. Greenlaw, Commissioner of Institutional Service

I have your memo of May 13th, attaching your file in the case of a parolee from the State School for Girls who is at present receiving care and treatment in the New Hampshire State (Mental) Hospital. I note that the New Hampshire State Hospital in a letter to the Commissioner's office dated March 31st, requested authorization for the transfer of this patient to one of our State institutions, if it is found that she is a resident of this State.

Of course she is a resident of this State, and the provisions of Section 117 of Chapter 23 of the Revised Statutes, to which you refer, apply only to patients who have been committed in another State and have never been inmates, or in the custody, of a Maine institution. This girl is a parolee and is an inmate of the State School for Girls, according to the certificate of Miss Stevens, the Superintendent; therefore she should be transferred back to the State School for Girls, and if she is incorrigible, as has been stated in the history of her case attached to her papers, a transfer to the Reformatory for Women can be made under the statute. Section 117 would apply where no commitment had ever been made in the State of Maine; but the State of Maine certainly has jurisdiction over this girl who has violated her parole, and she should be returned to the custody of the institution where she was committed in the State of Maine, regardless of whether or not she has a settlement in a Maine municipality acknowledged by the municipal officers thereof. The girl's parents have always been residents of the State of Maine; she was born in Maine, has always lived in Maine, and was committed to the State School for Girls in Maine by Maine authorities, regardless of whether or not her father has established a pauper residence in any municipality since he left Columbia Falls eight years ago.

RALPH W. FARRIS
Attorney General

May 17, 1949

To C. L. Treworgy, Secretary, Racing Commission
Re: L.D. 1388, as passed by the 94th Legislature, Chapter 388, P.L. 1949

I have your memo of May 16th, stating that the Racing Commission would like a ruling on Sections 9 and 12 of Chapter 77 of the Revised Statutes as amended by Chapter 388 of the Public Laws of 1949, which became effective when approved by the Governor on May 7th, by reason of the emergency clause attached thereto. I note that the Commission meets on May 18, 1949, at 10 A.M. and would like to have a ruling from this office on the following points:

Question 1. "Section 9 states that no meeting shall be allowed for more than 6 days in any 28-day period, except night harness racing as hereinafter defined and except day racing as provided in the last paragraph of section 12, etc. The last paragraph of section 12 states that during the remaining time, if any, between the 15th of June and Oct. 15th, the commission may grant to a track or tracks a license to operate day or night harness racing for no more than 2 weeks in any 4-week period without necessarily meeting the specifications set forth in the preceding paragraph."

In answer to Question 1 I will state that the wording of Section 9 was changed by a late amendment presented in the legislature, which inserted the following language, "except night harness racing as hereinafter defined and except day harness racing as provided in the last paragraph of section 12" and wrote in the word "day" in two places in said section 9.

Night harness racing as defined in Section 12 provides that "notwithstanding anything in this chapter to the contrary, the Commission shall issue a license, where pari mutuel betting is permitted, to hold night harness races or meets for a period of 8 weeks and no more between June 15th and October 15th of each year, daily except Sundays, between the hours of 6 P.M. and midnight. The commission *shall* grant such *licenses* for night harness racing to such *applicants* only, who shall have and maintain adequate pari mutuel facilities, which facilities shall include a totalizator or its equivalent where odds will change at least once every 2 minutes, adequate stable facilities for not less than 400 horses, and shall have and maintain a track adequate in width to start 8 horses abreast. Said licensees shall also pay purses at least equal to minimum purses paid at any other New England harness racing track." That is the legislative definition of night harness racing, notwithstanding anything to the contrary in the Racing Act; and you will note that the words "The commission shall grant such licenses" are mandatory and are in the plural number—"to such applicants only" who shall have qualified under the definition above quoted. That is, they must maintain adequate pari mutuel facilities, a totalizator or its equivalent where odds will change at least once every two minutes, stable facilities for not less than 400 horses, and a track wide enough to start 8 horses abreast, and pay purses at least equal to minimum purses paid at any other New England harness racing track.

Therefore it is my opinion that the Commission should grant licenses to all applicants who can qualify under this definition of night harness racing to hold night harness races or meets for a period of 8 weeks between June 15th and October 15th of each year.

The last paragraph of Section 5 provides for the remaining time of the 8-week period of night harness racing between June 15th and October 15th, except that the legislature has inserted the words "day or" before the words "night harness racing for no more than 2 weeks in any 4-week period without necessarily meeting the specifications set forth in the preceding paragraph," which specifications I have just outlined to you.

Question 2. "The next to the last paragraph of section 12, which is the new paragraph dealing with the 8-week night harness racing meets, is not clear as to whether there can be two or more 8-week meets, at the same track providing the applicant lives up to the specifications of the law. Also what would be the equivalent to a totalizator?"

In answer to Question 2 I will state that my answer to Question 1 partly takes care of the answer to Question 2, except that it is my opinion that the statute does not provide that the 8-week meets shall be limited to one track, provided the applicant meets the specifications laid down in Section 5 of the 1949 act. I again call your special attention to the language which provides that those applicants who meet the specifications *shall be granted* licenses, that is, if they have met the definition of the night harness racing section.

It is my opinion that any board which is so operated that odds will change at least once every two minutes would be equivalent to a totalizator.

Question 3. "The first sentence of section 12 states in part that between the dates of the 1st Monday in August and October 20, no license shall be issued to anyone but an agricultural fair association, except night harness racing as hereinafter defined. The last paragraph of Section 12 now states that the commission may grant a license to operate day or night harness racing between June 15th and October 15th."

In order to interpret the meaning of Section 12 as amended by Sections 4 and 5 of Chapter 388 of the Public Laws of 1949, we must read the two amendments together. It is my opinion that the legislature intended that the second paragraph of Section 5 should apply to the agricultural fairs in so far as day racing is concerned, and a license can be issued under this section for racing only to agricultural fair associations between the first Monday of August and October 20th. It is my opinion that the legislature did not intend that night harness racing should in any way interfere with the licenses granted to agricultural fair associations under Section 12 of Chapter 77, R. S. It did not intend agricultural fair associations to meet the specifications set forth in the night harness racing definition.

The new draft of the bill, which was L.D. 1388, did not include day harness racing in the second paragraph of Section 5 of the bill and by amendment "day or" was added after the word "operate" and before the word "night," so as to take care of the agricultural fairs.

It is quite apparent from reading Chapter 388 and the questions and answers here outlined that there will be no remaining period of the time for night harness racing if licenses are granted to two or more applicants under the first paragraph of Section 5 authorizing and defining night harness racing. However, the granting of licenses in my opinion is an administrative function of the Racing Commission, because there is nothing in the statute which limits the number of applicants for licenses for night harness racing or the number of tracks, provided the applicants can qualify under the definition; and the section specifically provides that the commission *shall* grant such licenses to those who apply and have met all the specifications in the definition of night harness racing.

RALPH W. FARRIS
Attorney General

May 18, 1949

To Marion E. Martin, Commissioner of Labor and Industry
Re: Section 24 of Chapter 25

I acknowledge your memo of May 12th requesting an interpretation of Section 24 of Chapter 25 and asking specifically if the term "transportation company" as used in the first sentence of said section includes taxi companies.

I find an Oklahoma case, which is *Clark vs. Walworth*, 176 Okla. 349, which held that a private citizen operating as a public service entity, seeking to render a public service and for hire absolves himself from the distinct rights of a private citizen as regards his business, with respect to which he becomes a "transportation company" within the meaning of the statute providing that action may be commenced against a transportation company in any county in which a cause of action or some part thereof accrued.

There would be no question about a taxi's being a transportation company, if it was incorporated as a company doing business under the laws of Maine.

It is my opinion that under this decision, with which I am in accord, a taxi driver would be included who holds himself out for hire seeking to render a public service by transporting passengers.

RALPH W. FARRIS
Attorney General

May 26, 1949

To Earle R. Hayes, Secretary, Employees' Retirement System
Re: Military Leave

While I was attending court in Houlton you sent to my department a memo relating to military leave cases. . .

You call my attention to the cases of three persons, all of which are more or less similar. One of these persons taught in Maine for a short time, later going to Massachusetts where he taught for a period of years and from that teaching in Massachusetts was inducted into the armed forces of the United States. Upon his release from the armed forces he returned to Maine and resumed his service here as a teacher. The question involved is whether or not the Board should give him credit for his period in the armed forces of the United States in spite of the fact that he entered the armed forces from teaching in Massachusetts rather than in Maine.

It seems to me that he should be given credit for his full period in the armed forces under the full faith and credit clause of the Constitution of the United States. You should not show any discrimination against any citizen of the United States who has served in the armed forces during the war.

The next case about which there seems to be a question is that of Gerald Murch who was employed by the State on July 1, 1933 and entered the armed forces of the United States in December, 1942, at which time he was a member of the Retirement System and was granted military leave in accordance with the provisions of law. He was released to inactive duty on February 8, 1946, but entered private business and did not return to State service until February 1, 1949. You call my attention to the provisions of the Military Leave Law to the effect that a person must return or report for duty within 90 days from his discharge from the armed forces in order to protect his military leave credits.

In my opinion Mr. Murch did not comply with the provisions of the statute just quoted; but in view of the fact that he was an officer and was not discharged in the true sense of the word, but released as a Reserve officer to inactive duty, he would still be eligible to receive the benefits under the provisions of our Military Leave Law, and this in my opinion would protect his military service credit towards retirement.

The third case is that of Mr. George Davala of the Bureau of Accounts and Control who was employed by the State in February, 1942, made his application for membership in the System in July, 1942, and was inducted into the armed forces on August 12, 1942. Technically, you say, he was not entitled to military leave, due to the fact that he was exactly twelve days

short of the required six months set forth in the military section of the law as a prerequisite to the granting of military leave. However, Mr. Davala served in the armed forces until November, 1945, and immediately returned to State employ, in the early part of December, 1945. Your question is whether the Board has any discretion with reference to the determination of granting military leave in a case such as Mr. Davala's, where the statutory limitation of six months was not completed by such a close margin.

In my opinion the Board of Trustees may use its discretion and grant Mr. Davala military leave, as the statute in cases of veterans in regard to administrative procedure should not be strictly construed, but should be given a very liberal construction in favor of the veterans.

RALPH W. FARRIS
Attorney General

May 26, 1949

To H. S. Weymouth, Engineer, Secondary Highways
Re: Special Resolves

I have your memo of May 16th, in which you state that a discrepancy has shown up involving Chapter 208, P&SL 1949, the so-called highway allocation bill, and Chapter 183 of the Resolves, the blanket road resolve. You state that under Chapter 208, P&SL, Item C-9, the legislature set up $175,000 for the fiscal year 1949-50 and $150,000 for the fiscal year 1950-51 and that this is intended to include the regular resolves of $150,000 each year plus $25,000 additional for what are called "General Highway" Resolves. In other words, the money to pay these latter resolves becomes available on July 1, 1949, but the resolves are listed for expenditure in the year beginning July 1, 1950.

In order to interpret the intention of the legislature we must start with the proposition that the appropriation is for the fiscal periods ending June 30, 1950 and June 30, 1951, and that there is a further appropriation of $25,000 from the General Highway Fund "to pay the towns as specified below," set up for the fiscal year 1949-50 with the figures "1949-50" left out in the appropriation. It is my opinion that it was the intent of the legislature to make this appropriation available for each fiscal period, that is, 1949-50 and 1950-51. The omission was called to my attention by some members of the Committee on Ways and Bridges during the closing hours of the session, when the bill had already been engrossed, and the committee did not want to recall the bill for an amendment of this nature.

In regard to Chapter 208, P&SL 1949, Item C-9, which provides for special Resolves of the legislature to repair and construct highways and bridges, in the amount of $175,000 for the fiscal year 1949-50 and $150,000 for 1950-51, in interpreting the provisions of Chapter 183 of the Resolves of 1949 I am keeping in mind the provisions of Chapter 208, P&SL 1949, which further indicates that the dates in the Resolves were an error and that the funds appropriated should be made available for expenditure during the first year of the biennium and the towns can be reimbursed by the State after July 1, 1949.

RALPH W. FARRIS
Attorney General

May 27, 1949

To Ernest H. Johnson, State Tax Assessor
Re: Section 139 of Chapter 14, R. S., as amended

Your memo received, with attached correspondence indicating that the State of Michigan taxes insurance premiums at the rate of 3% and Maine taxes such premiums at 2%, but that Maine imposes a fire investigation tax at one-half of 1%. Your question is:

"In view of the language of Section 139 of Chapter 14 (containing the retaliatory provision), in the case of a Michigan insurance company doing business in Maine, is the Michigan rate of 3% to be compared to the Maine base rate of 2%; or, as contended by the insurance company, should the Michigan rate be compared to the combined Maine base rate of 2% and the fire investigation tax rate of ½%?"

You also refer to an unpublished opinion of mine dated February 2, 1945, in which I held that in the case of a Delaware company, in which State the rate is 1½% for the general premium tax and 2% for a fire department tax, the Delaware company was subject to a 3½% total tax in this State under the retaliatory provision.

After my opinion of February 2, 1945, Section 139 of Chapter 14 was repealed by Chapter 118, Section 3, P. L. 1945, and restored under Chapter 15, Section 3, P. L. 1947.

The original Section 139 of Chapter 14 in the fourth line had this provision: "in place of the tax provided in section 137," which now reads: 'in place of the tax provided in any other section of this chapter," which means Chapter 14 as amended.

It is my opinion that the Michigan rate should not be compared with the combined Maine base rate of 2% and the fire investigation tax of ½%. In the Delaware case on which my opinion in 1945 was based, the State of Delaware taxed Maine companies 3½%, including a general premium tax of 1½% and a fire department tax of 2%. Of course, if Delaware was taxing Maine companies for a fire department tax, we should retaliate in the State of Maine; but if the other States do not charge us for a fire investigation or fire department tax, so-called, we should not charge the out-of-state companies our ½% investigation and prevention tax.

Michigan has a base rate of 3%, while Maine has a base rate of 2%. It is my opinion that the retaliatory provision, which was re-enacted in 1947, applies only to the tax levied under the provisions of Chapter 14, as stated in the Act, and does not apply to the service tax levied under the provisions of Section 29 of Chapter 85, as amended, as that tax can be suspended at the discretion of the Insurance Commissioner, when he certifies to your office that the special tax is to be omitted because an accumulation in the special fund has created a surplus sufficient to defray the expenses of such investigations and inspections for a period of one year. However, the premium tax returns must be made at the same time and in the same manner as provided in Section 136 of Chapter 14.

Therefore Michigan should be assessed only the 3% tax under our retaliatory law.

RALPH W. FARRIS
Attorney General

May 27, 1949

To Fred M. Berry, State Auditor
Re: Highway Funds

In your memo of May 12th, with regard to the audit of the State Highway Department accounts, you refer to Chapter 190, Section 1, Art. H, P&SL 1947, which reads in part as follows:

> "An amount not to exceed $5,300,000.00 may be apportioned by the state highway commission from the unappropriated general highway fund surplus during the biennium ending June 30, 1949, to match federal funds apportioned to the state of Maine under the federal act of 1944."

And to Subsection I, Part II, which reads:

> "The unappropriated general highway fund surplus may be apportioned at the discretion of the state highway commission for the following purposes: . . .
>
> 2. For matching federal funds."

You state that your analysis of the highway unappropriated surplus account shows transfers of money per Federal Act of 1944 to be $6,342,699 for the biennium, which exceeds the amount of $5,300,000 provided in Section H by $1,042,690.

You state that the interpretation of Mr. Barrows, Chief Engineer of the State Highway Commission, is that it was the intent of the act that such transfers as the Highway Commission deems expedient for matching federal funds may be made. You further state that Mr. Barrows states that in his opinion the intent of the legislative act is confused by the fact that the words "unappropriated general fund surplus" are used in Article H of Chapter 190, P&SL 1947, when it was the intent of the legislature, as evidenced by the totals for the two fiscal years involved, to allocate $5,300,000 from current income.

Upon the foregoing statement of facts you solicit my advice, as you feel that there is a conflict in the wording of the statutes and would like to have it determined whether or not such transfers as above reflected were legally made from the unappropriated general highway fund surplus account.

After reading the whole of Article H, the first paragraph of which you quoted in your memorandum, I am of the opinion that it was the intent of the legislature that the State Highway Commission should make apportionments from current income for federal aid matching funds. In my opinion it makes no difference whether the funds for matching federal aid come from the unappropriated general highway fund surplus or from current income, because under Article I, the unappropriated general highway fund surplus may be apportioned by the State Highway Commission for the following purposes, as you state in your memo, ". . . 2. for matching federal funds." I presume current income not being used would go into the general highway fund surplus, but I can appreciate your position from an auditor's standpoint.

In examining Chapter 208, P&SL 1949, I find that under Article H the same language is in the second paragraph as in the 1947 Article H in Chapter 190, authorizing the Commission to enter into agreements with the Federal Works Agency to provide for obligating $3,600,000 from the general

highway fund to be collected during the fiscal year ending June 30, 1952 for matching federal aid apportioned to the State of Maine under the Federal Highway Act of 1948. Then in place of Article I of Chapter 190 of the Private & Special Laws of 1947, the legislature enacted Section 2 of Chapter 208, P&SL 1949, which authorizes the State Highway Commission to match federal funds from the general highway fund surplus with the approval of the Governor and Council, which was not necessary under the 1947 Act.

For this reason I believe that the transfers of money under the 1947 Act followed the intention of the legislature and were legally made from the unappropriated general highway fund surplus account.

RALPH W. FARRIS
Attorney General

May 27, 1949

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

I received your letter of May 12th stating that on October 17th, 1946, a letter was received from Mr. S. advising that he broke the front spring of his car on account of a depression in the floor of the Wiscasset-Edgecomb Bridge. You state that the situation was promptly investigated by R. M. Vickery of your department who reported that the depression was one of the sections where the 1½-inch asphalt plank had broken out. Mr. Vickery called on Mr. S. and no allowance of his claim was made.

You further state that in 1948 Mr. S. took the matter up again and Mr. Wilder advised him that he did not feel that the depression caused by the failure of the asphalt plank justified the allowance of the claim. In January, 1949, Mr. S. reported the matter to Governor Payne and he still feels that he is entitled to payment for this damage.

It is my opinion after having passed over the Wiscasset-Edgecomb bridge several times during the past two years that in order to break a spring in crossing that bridge in any condition that it has been in since October, 1946, a man would have to be exceeding the speed limit. In fact, he would have to be driving very fast for any depression in the flooring of said bridge to cause a front spring of a Ford car to break. It is my opinion that this claim should not be allowed.

I note that there is a speed limit posted on said bridge and that many motorists are passing over the bridge at an excessive rate of speed. If they do so, they are taking their own chances.

RALPH W. FARRIS
Attorney General

May 27, 1949

To Carl L. Treworgy, Secretary, Racing Commission
Re: Chapter 388, P. L. 1949

Your memo of May 19th received, stating that the Commission would like a ruling on the next to the last paragraph of Section 12, which deals with the 8-week night harness racing meets, the question being whether there can be more than one 8-week night racing meet at the same time.

As I stated in my opinion written to the Commission some days ago, the wording of the statute is in the plural number and there can be more than one 8-week night harness racing meet at one time, provided the statutory requirements are complied with.

RALPH W. FARRIS
Attorney General

May 27, 1949

To Charles P. Bradford, Director, Park Commission

I have your memo of May 11th asking for an opinion on Chapter 206, Resolves of 1949, which appropriates $181,225 for the development and improvement of State Park facilities, to be expended under the supervision of the Maine State Park Commission. This Resolve also designates the various parks and memorials and the amount to be expended in each one.

I wish to state that this is a mandate of the legislature and that it is not necessary for you to obtain the approval of any other State department in carrying out the provisions of Chapter 206 of the Resolves of 1949.

RALPH W. FARRIS
Attorney General

May 27, 1949

To William P. Hinckley, Acting Technical Secretary,
Sanitary Water Board

I have your memo of May 13th calling my attention to Chapter 266 of the Public Laws of 1947. I note that you have talked with County Attorney Hillard Buzzell of Waldo County and that he feels that the phrase, "in a manner and an extent inconsistent with the public interest" is extremely ambiguous and may be a joker which will weaken the law and make it impossible to enforce. You ask my opinion as to what constitutes a breach of the public interest in relation to the deposits of waste and you ask, "Does the phrase 'or so pollute said waters' which appears after the last comma in the sentence in any way temper the legal meaning of the phrase 'in a manner and an extent inconsistent with the public interest?' "

You state in the fourth paragraph of your letter that it seems to you that the change of wording will limit the exemption from pollution of the so-called exempted rivers named in the second paragraph to sawmill waste, oil, and possibly waste from pulp and paper mills, where previously these rivers were legally declared to be receiving waters for all types of waste materials, and you ask if this is the proper interpretation of this change of wording.

In looking over Chapter 332, P. L. 1949, I find that the legislature has inserted the phrase "in a manner and an extent inconsistent with the public interest" in the first part of the first sentence of Section 6 of Chapter 72 of the Revised Statutes, as amended by Chapter 266, P. L. 1947, and struck it out in the last part of said sentence, which in my opinion does not change the meaning of the statute; so the only thing you gain in the amendment in Chapter 332, P. L. 1949, is that it applies to tidal waters. You will have to construe Chapter 266 and administer its provisions the same as you have in the past, since this law became effective on August 13, 1947.

In regard to the phrase, "in a manner and an extent inconsistent with the public interest," this means that when the pollution becomes a public nuisance, the courts can be resorted to. I do not feel that the phrase "or so pollute said waters" has any special significance in this Act. It does not limit the exemption from pollution of the so-called exempted rivers to sawmill waste, oil and possibly waste from pulp and paper mills, as Chapter 345, P. L. 1945 limits pollution to new sources, which further weakens the enforcement of the statute under consideration.

RALPH W. FARRIS
Attorney General

May 28, 1949

To Raymond C. Mudge, Commissioner of Finance and Budget Officer
Re: Chapter 214, P&SL 1949, §2-A, cost-of-living increase to State Employees

I have your memo of May 24th relating to Chapter 214, P&SL 1949, providing for a salary increase of $3 per week for all full-time employees for the period July 1, 1949 through June 30, 1950, except those whose salaries are set by the legislature or by the Governor and Council. You state that your attention has been called to the fact that while the first sentence of §2-A provides for a $3 a week increase to "all full-time state employees or substitutes," the last sentence expresses the intent to provide "a substitute for the so-called $3-$4-$5 increases as granted by the personnel board on October 4, 1948, and continued by chapter 21 of the resolves of 1949," and that these provisions are inconsistent, since the so-called $3, $4 and $5 increases provided only $1.50 per week increases for employees of institutions who live in. You therefore ask for a ruling on the question whether you shall authorize an increase of $1.50 per week or $3 per week for institutional employees who live in.

It is my opinion that it was the intent of the legislature to provide $1.50 per week increase for those employees in State institutions who live in and have maintenance furnished, as this is, strictly speaking, a cost-of-living increase, and in estimating the amount of money to be used for this purpose, the legislature figured an increase of only $1.50 per week on the State institution employees who live in. Otherwise, the legislature would have figured on a larger amount for the payment of these institutional employees, to the amount of $75,000.

You will note in the last part of §2 of Chapter 214 this language: "It is the intent of the legislature under the provisions of this section to provide for the fiscal year ending June 30, 1950 a substitute for the so-called $3-$4-$5 increases as granted by the personnel board on October 4, 1948 and as continued by the provisions of chapter 21 of the resolves of 1949." The Personnel Board granted only $1.50 per week to State institution employees who live in and to whom maintenance is furnished by the State. Therefore we must follow the intent as stated in the act, and follow out the increases granted by the Personnel Board on October 4, 1948, in so far as the $3 increases are concerned for State employees who do not live in and $1.50 for those who do live in.

You also direct my attention to Senate Paper 705, passed by both the Senate and the House on May 7th, which reads as follows:

"That all reasonable administrative economies should be effected in an effort to permit the continuation of existing salary and wage schedules through the second year of the next biennium."

This order, it seems to me, authorizes your office to continue this wage schedule through the second year of the biennium, provided you can find the money.

RALPH W. FARRIS
Attorney General

June 7, 1949

To Carl L. Treworgy, Secretary, Racing Commission
Re: Chapter 388, P. L. 1949, §15

Your memo of May 31st received, stating that the Racing Commission would like a ruling on the last sentence of Section 15 of Chapter 388, P. L. 1949, and asking, "Does this mean that all race meets are subject to the ½% 'Stipend' payment or only those fair meets that are competing with the 8-week night harness race meets?"

In reply I will say that this sentence applies to any race track where is held a race or race meet licensed and conducted by the Maine Racing Commission authorizing the sale of pari mutuel pools described by said Commission.

RALPH W. FARRIS
Attorney General

June 7, 1949

To Jean L. Bangs, Assistant Attorney General

I have your memo of May 26th sending me a letter written by the chief attorney of the Veterans Administration at Togus, Maine, in which he disagrees with the way that we administer the law in regard to minors who are receiving State aid and in which he makes several comments and citations of other jurisdictions relating to this subject matter.

However, I do not wish to change my opinion in this matter.

I will state in passing that the statute provides that the Department of Health and Welfare shall have all the powers as to the person, property, care and education of every child committed to its custody during the term of commitment, which a guardian has as to a ward. That is merely an enabling act, and the State is not in the same position as a private person who has been appointed by a judge of probate and is not subject to the same laws as provided in other provisions of the Revised Statutes.

The question of liability is one for the courts. Of course the State is at liberty to bring an action at any time at any stage of the liability, if there are assets of a child in the custody of the State sufficient to take care of its education, care and maintenance. It is the policy of the State not to burden the taxpayers with the property to pay for their own care and maintenance.

RALPH W. FARRIS
Attorney General

June 8, 1949

To Ernest H. Johnson, State Tax Assessor
Re: Section 139 of Chapter 14, R. S.

I have your memo of June 1st, stating that you are not quite clear as to the meaning of my memorandum of May 27th, relating to the above subject, and you ask me if you are correct in understanding that the proper interpretation is that the Maine Insurance Premium tax rate found in Chapter 14, 2%, is to be compared with the over-all rate in the other State, and if the latter is greater, then credit is to be given for the Maine Fire investigation tax found in Chapter 85, ½%, in determining the retaliatory rate to be applied.

In reply I will state that your interpretation of my memo is correct, as confirmed by me orally in my office in conversation with you and Mr. Fenton.

RALPH W. FARRIS
Attorney General

June 10, 1949

To Col. Francis J. McCabe, Chief, Maine State Police
Re: Chapter 210, P&SL 1949

I have your memo of June 7th referring to our recent conversation concerning an act increasing the pensions of retired members of the State Police, which act is now Chapter 210 of the Private & Special Laws of 1949. This provides that the retired members of the State Police shall receive in addition to their present retirement pay such additional amounts as will equal one-half of the pay per year now paid to members of their respective grades at the time of retirement. Such money shall be appropriated from funds of the State Police. The provisions of this act shall be effective until June 30, 1951. It was the intent of the legislature to change the present retirement pay until June 30, 1951, after which time the present retirement law shall return to full force and effect.

You state that during the time the legislature was in session you were called in before a hearing before the Ways and Bridges Committee relating to this act and you advised them at that time that if this law was passed, you would be able to take care of the financial end of it, that is the payment of money to the various individuals of your department concerned who have retired, and this on the basis of your present budget. At the time you made this statement it was your belief and the opinion of the committee that the scale of pay would be in conformity with your present salary scale.

You further state in your memo that on reading over this bill, which will become law on August 6, 1949, you feel some doubt as to whether this should be based on the present salary scale of the State Police or on the new pay scale which will become effective 90 days after the adjournment of the legislature; and you therefore request me to give you a ruling concerning this new pension scale for retired members of your department.

I wish to advise that it is my opinion that the retired members of the State Police should receive in addition to their present retirement pay such additional amounts as will equal one-half of the pay which will now be paid to members of their respective grades at the time of retirement, and this will include the new salary scale which becomes effective on the same day as this Private & Special Law set forth in Chapter 210, P&SL 1949, which I have quoted, because the two bills do become effective at the same time.

If you do not have sufficient money in your budget to take care of this increase in the retirement pay of your members who have retired, it will be necessary for you to go to the Governor and Council for funds to take care of this Act, because you cannot appropriate funds of the State Police when there are none available for this purpose unless there is a transfer from the General Highway Fund to the funds of the Maine State Police.

RALPH W. FARRIS
Attorney General

June 10, 1949

To Hon. Frederick G. Payne, Governor of Maine
Re: Electoral College

In going through the files of my late Deputy, Mr. Breitbard, I find a letter addressed to you by Henry Cabot Lodge, United States Senator from Massachusetts, which has to do with a bill pending before the 81st Congress consisting of a Constitutional Amendment for abolishing the Electoral College and the office of elector, but retaining the electoral vote as a counting device. You asked Abe's opinion on this matter.

While I was in Texas last fall attending the National Association of Attorneys General, Congressman Ed Gossett of Texas was one of our dinner guest speakers, and he talked about forty minutes on this subject. He stated that he was working with Senator Lodge on the matter of this Constitutional Amendment to abolish the Electoral College. After listening to his speech I was convinced that the Constitutional Amendment would be advisable. I have read some of the statements in the pamphlet which Senator Lodge sent you on March 3rd and I note that some of the same occurrences in Presidential elections were cited by Ed Gossett in his speech at Houston, Texas, last fall.

Of course they are quite convincing on the point that the Electoral College is outmoded and should be brought up to date, and they also indicate what might happen if the election of a President were thrown into the House of Representatives. . . .

RALPH W. FARRIS
Attorney General

June 10, 1949

To Honorable Frederick G. Payne, Governor of Maine

On May 11th one of your secretaries sent over to this office two letters with attached material from Mrs. J. E. Goodbar of Portland. The letterhead is that of the National Federation of Press Women, Inc. She called

your attention to a letter from Dr. J. W. Montgomery of the "Protestant Voice," then at 1021 McGee Street, Kansas City, Missouri, suggesting that she invite you to become a member of its Board of Directors. She also enclosed a copy of the statement of policy of this publication and a copy of a questionnaire.

It is very risky, in my opinion, for a Governor of a State to associate himself as a board member or a director with an organization about which he knows nothing and from which he would probably obtain no benefit. It seems to me that there is no need for a national Protestant newspaper, as all newspapers should be non-denominational, the Constitution of the United States having placed a bar between State and Church. Article I of the Amendments to the Constitution of the United States provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; . . ."

Section 4 of Article I of the Constitution of Maine provides:

> "Every citizen may freely speak, write and publish his sentiments on any subject, being responsible for the abuse of this liberty; no laws shall be passed regulating or restraining the freedom of the press; . ."

Therefore it is my opinion that any publication on a religious basis, whether Catholic or Protestant or other, would not be healthy nor successful.

The first question in the pamphlet sent by Mrs. Goodbar is: "Why is this effort being made?" and the answer is, "Because conditions of our time demand a strong Positive Protestant influence and front." In other words these people are trying to make the "Protestant Voice" a public enterprise. Question 22 is "Why do they not continue on the present basis?" Answer: "Because they understand that as a private enterprise it can never have the scope it should nor fulfill the mission for which it came into existence." In other words they are trying to get the President of the United States and the Governors of the several States behind this Protestant movement. One cannot know without long investigation what is behind these organizations. This one may be a Communist-front organization in the making, and one whose affairs I advise you to avoid. . .

RALPH W. FARRIS
Attorney General

June 11, 1949

To H. H. Harris, Controller

I have your memo of June 6th relating to Chapter 21 of the Resolves of 1949 which provides:

> "That there be, and hereby is, appropriated the sum of $110,000 from the general fund of the state for the purpose of defraying the cost of the temporary salary increase for state employees, as already authorized by the personnel board, for the remainder of the present fiscal year."

You state in your said memo that for payroll purposes the last payroll to be paid in the present fiscal year is for the week ending June 25, 1949 to be paid June 29 and June 30, 1949; but that in determining the estimated requirements for the balance of the present fiscal year, which was the basis of the above appropriation, the week of June 19 through June 25 was used as the last payroll in the present fiscal year.

You state that the payroll for the week of June 26 through July 2 will be paid from the 1949-50 fiscal year appropriation. Then you quote Chapter 214, P&SL 1949, which provides for a further salary increase of $3 per week beginning July 1, 1949 and continuing through June 30, 1950. The funds for this purpose are appropriated from the unappropriated surplus of the general fund, for all full-time State employees or substitutes therefor. Authority is also granted for the same increase for employees paid from funds other than the general fund, the same to be financed from the individual funds involved. This provision does not apply to salaries set by the legislature or approved by the Governor and Council. In said Chapter 214 the legislature stated its intent in these words.

> "It is the intent of the legislature under the provisions of this section to provide for the fiscal year ending June 30, 1950 a substitute for the so-called $3-$4-$5 increases as granted by the personnel board on October 4, 1948 and as continued by the provisions of chapter 21 of the resolves of 1949."

You state in your memo that it appears from this act that funds for the adjusted salary increases become available July 1, 1949 and payroll payments subsequent to this date should be on the revised basis, and you ask me for a ruling upon the following question:

"Should the change from the so-called $3, $4, $5 salary increases, as authorized by the personnel board, to the $3 weekly increase, as authorized by the Legislature, become effective *for the full week of June* 26 *through July* 2 which will be the first payroll to be *paid* in the *next fiscal year*, or should the change be made as of *July* 1, 1949, or should it be effective for the *first full payroll week in July* which would be July 3 through July 9?"

It is my opinion that your payroll should run through for the full week of June 26 through July 2nd for the purpose of eliminating unnecessary bookkeeping and expense of same by prorating the payroll for the full week effective in two fiscal years. The first payroll of the next fiscal year should begin July 3rd, figured at the current rate, the new $3 rate beginning in the full payroll week of July 3rd.

In Section 2 of Chapter 214 the law states:

> "It is the intent of the legislature to continue the provisions of chapter 188 of the private and special laws of 1947."

That is, the $7.20 per week salary increases, provided, however,

> "that the personnel board, with the approval of the governor and council, shall have the authority to make such reduction in any or all of the salary increases herein provided as they may determine."

That is the wording of Chapter 188 of the Private & Special Laws of 1947, and therefore it is my opinion that the effective date of the salary change, so far as all funds are concerned, should be the end of the full payroll week ending July 2, 1949.

RALPH W. FARRIS
Attorney General

June 13, 1949

To J. W. Randlette, Chairman, County Commissioners of Sagadahoc County

In your letter of June 1, 1949 you ask to be informed as to the disposition to be made of fines collected by the Bath Municipal Court for violations of ordinances of the City of Bath.

Section 19 of Chapter 64 of the Private & Special Laws of 1937 provides that fines collected by the judge or recorder of the Bath Municipal Court shall be accounted for and paid over quarterly in the manner provided by law. While the section does not specifically state that such fines shall be paid over to the county treasurer, the title of the section does state that the fines shall be paid to the county.

The reference to their being paid over in the manner provided by law obviously is to what is now Section 5 of Chapter 137, R. S. 1944. This section requires that all fines regardless of the court by whom the sentence is imposed shall be paid into the treasury of the county where the offense is prosecuted, monthly. This provision is for facility in auditing court accounts. The section goes on to provide that the county treasurer, upon approval of the county commissioners, shall pay to the State, town, city, or persons any portion of the fines, costs and forfeitures that may be due.

Neither Section 19 of Chapter 64, P&SL 1937, nor Section 5 of Chapter 137, R. S. 1944, contemplates that the county shall keep or retain the benefit of all fines imposed. In appropriate instances the county treasurer serves as an agency through whom fines pass for accounting purposes on their way to the agency for whose benefit the fines accrue.

Chapter 3 of the Private & Special Laws of 1949, in providing for the disposition of fines imposed for violations of the ordinances of the City of Bath, simply specifies that such fines shall ultimately accrue to the benefit of the City of Bath.

These funds, of course, must be paid in monthly to the county treasurer, as all other funds; but ultimately the county treasurer, upon the approval of the county commissioners, should pay the amount of such fines to the treasurer of the City of Bath.

RALPH W. FARRIS
Attorney General

June 24, 1949

To Carl Treworgy, Secretary, Racing Commission

I have your memo of June 24th, stating that the Commission has made the following rule and regulation:

"In the event that the second half of the Daily Double is not run, after the first half has been run, the amount of the Daily Double pool will be paid as a straight pool to all ticket holders of the winning horse in the first race."

You ask if in my opinion such a ruling is legal.

The Commission is authorized by statute to make rules and regulations for the holding, conducting and operating of all harness horse races or meets for public exhibition held in this State and for the operation of race tracks on which any such race or meet is held. Section 10 of Chapter 77, R. S.,

provides that no person, association, or corporation shall hold, conduct, or operate any harness horse race or meet for public exhibition, if pari mutuel betting is permitted, within the State without a license from the Commission. Section 15 provides for the sale of pari mutuel pools under such regulations as may be prescribed by said commission.

So it is my opinion that under Section 15 of the statutes the Commission has power to make such a regulation as relates to the pari mutuel pools, and therefore this regulation is legal.

RALPH W. FARRIS
Attorney General

June 27, 1949

To Marion E. Martin, Commissioner of Labor and Industry
Re: Chapter 374, P. L. 1949—Elevators

I have your memo of June 24th, stating that a question has been raised relating to Section 99-H, the first sentence thereof, the question being whether "authorized elevator inspectors" hold the authority to issue inspection certificates on the payment of a $1 fee by the owner or user of the elevator.

The first paragraph of Section 99-H reads as follows: "Each elevator proposed to be used within this state shall be thoroughly inspected by either the supervising inspector, a state elevator inspector or an authorized elevator inspector, and if found to conform to the rules of the board, upon payment of the inspection fee where required and a registration fee of $1 per year by the owner or user of such elevator to the inspector, the latter shall issue to such owner or user an inspection certificate. . ."

Section 99-B defines "State elevator inspector" and "authorized elevator inspector," but does not define a supervising inspector. In order to ascertain who the supervising inspector is and what his duties are we turn to Section 99-D, entitled, "Supervising and state elevator inspectors; how appointed." This section reads as follows:

"The commissioner shall appoint with the approval of the governor and council, and may remove for cause when so appointed, a citizen of the state qualified to fulfill the functions of the office to serve as supervising inspector, after he shall have successfully passed an examination prescribed by the board. The commissioner may appoint such state elevator inspectors as are necessary to carry out the provisions of sections 99-A to 99-Q, inclusive, from among applicants who successfully pass the examination."

Under Section 99-E the supervising inspector, under the direction of the Commissioner, is empowered under subsection V, "To issue, suspend, and revoke certificates allowing elevators to be operated; . ."

Therefore in my opinion under Section 99-H, which contains the language you quoted, a registration fee of $1 per year by the owner or user of the elevator to the inspector means the supervising inspector, as he is the only one who is authorized to issue, suspend and revoke certificates, even though the word "supervising" was omitted in the amendment to which you refer in your memo. Authorized elevator inspectors hold no authority to issue inspection certificates.

RALPH W. FARRIS
Attorney General

June 27, 1949

To H. A. Ladd, Commissioner of Education
Re: Maine Maritime Academy—Eligibility for State Retirement Plan

As per your request of even date, I wish to state that it is my opinion that the Maine Maritime Academy, since it was declared a State agency under the provisions of Chapter 24, P&SL 1947, is eligible to participate as a State agency in the State Retirement System.

RALPH W. FARRIS
Attorney General

June 30, 1949

To Unemployment Compensation Commission
Re: Vacation Periods

In connection with the Commission's policy relative to vacation periods affecting the rights to benefits, the words "period recognized as a vacation" refer to a factual situation. If employers and employees are not agreed as to whether or not a period is in fact recognized as a vacation, that question of fact is to be determined by the Commission or its appeal tribunals in their quasi-judicial function of determining eligibility for benefits.

I see no reason why this same rule should not be followed after August 6th in interpreting the statutory provision to the same effect.

JOHN S. S. FESSENDEN
Deputy Attorney General

June 30, 1949

To Ernest H. Johnson, State Assessor
Re: Fertilizer Tax—P. L. 1949, c. 378

In your memorandum of June 23, 1949, referring to Chapter 378, P. L. 1949, an act imposing a tax on commercial fertilizer, effective August 6, 1949, you state: "The law requires persons manufacturing or offering to sell certain fertilizer in this state to file 'on or before September 1st in each year . . a sworn statement . . listing exactly the number of net tons of mixed fertilizer sold by him in the state during the 12 months preceding July 1 of the current year.' With the filing of this statement, each person 'shall pay to the state tax assessor a fee of 1c a ton of 2,000 pounds for mixed fertilizer so sold.' "

Your question is: "The law becomes effective August 6, 1949. Does it require such persons to file a report on or before September 1, 1949 covering sales from July 1, 1948 through June 30, 1949, and pay the tax thereon; or does it require an initial report, and payment of tax, on sales from August 6, 1949 through June 30, 1950?"

The Supreme Judicial Court of Maine has stated repeatedly that unless the legislative intent otherwise is clear, a statute shall be presumed to have prospective operation only. *Coffin v. Rich*, 45 Me. 507, *Oriental Bank v. Freese*, 18 Me. 109, *Carr v. Judkins*, 102 Me. 506, and many other cases. In so deciding, the Maine Court has simply followed the nearly universal rule

of statutory construction to the following effect: Statutes are not to be construed as having retrospective effect unless the legislative intent to make the statute retroactive is stated clearly, explicitly, positively, and unmistakably. Such effect is not to be inferred except when shown unambiguously by necessary implication.

The statute under consideration contains no positive statement of a legislative intent to impose a tax on commercial fertilizer sold in the state during the 12 month period starting July 1, 1948, a date 13 months prior to the effective date of this act.

Those liable to pay the tax when the same becomes due are required to file "on or before September 1st in each year with the state tax assessor a sworn statement, in such form as the state tax assessor may prescribe, listing exactly the number of net tons of mixed fertilizer sold by him in the state during the 12 months preceding July 1 of the current year." (See Section 217-A.) The only suggestion that any tax could be payable September 1, 1949, arises from the following sentence, reading:

"With the filing of said statement, each such person, firm or corporation shall pay to the state tax assessor a fee of 1c a ton of 2,000 pounds for mixed fertilizer so sold."

That this sentence requires a tax on business done between July 1, 1948 and July 1, 1949 is certainly by inference only. It falls short of evidencing a legislative intent of retroactive effect within the rule stated above.

Under the law the first report will be due September 1, 1949. In effect this will be an information return upon the basis of which future revenues can be estimated, but no tax will be due. The second report will be due September 1, 1950, with which a tax will be due for the period August 6, 1949 to June 30, 1950.

JOHN S. S. FESSENDEN
Deputy Attorney General

July 11, 1949

To Lester E. Brown, Chief Warden

I have your memo of June 13, calling my attention to the fact that the last legislature, in Chapter 34 of the Resolves of 1949, authorized and directed the Commissioner of Inland Fisheries and Game to issue a rule and regulation closing Mantle Lake in Presque Isle in the County of Aroostook to all fishing by persons over the age of seventeen, and requesting an opinion as to the constitutionality of this Resolve, also my opinion as to whether or not such a rule and regulation should be issued by the Commissioner, and also whether or not I consider the Resolve enforceable.

I do not pass upon the constitutionality of Acts and Resolves of the legislature. That is a matter for the courts to pass upon when a case is presented to them and both sides have been heard.

It is my opinion that any act or resolve that gives to a class of persons certain rights and privileges because of their age and denies the same privileges to others because they do not fall in the age category set by the legislature, is class legislation; and if you should issue a rule and regulation under this Resolve prohibiting all persons over the age of seventeen from fishing

in Mantle Lake in Presque Isle, I believe that someone would take the case to court. The injustice of the Resolve is so obvious that it is my opinion that you could not enforce the rule and regulation, if you should promulgate it.

RALPH W. FARRIS
Attorney General

July 12, 1949

To Col. Francis J. McCabe, Chief, Maine State Police
Re: Warrant—Excess Weight of Vehicle

Your memo of July 9th received, together with warrant from the Old Town Municipal Court which alleges that the respondent named in said warrant "did drive and operate a certain motor vehicle to wit: a truck tractor and semi-trailer attached, upon and along a certain public way to wit: U. S. Highway No. 2 in the Town of Milford, County of Penobscot, the gross weight of said vehicle and load exceeding fifty thousand pounds, to wit: 1,430 lbs. (one thousand four hundred and thirty pounds).

I note that Lt. Herbert Mariner states that the attorneys for the respondent take exceptions to the phraseology of the warrant.

If I were phrasing the warrant I should have the last part of same read: "the gross weight of said vehicle and load exceeded fifty thousand pounds, to wit, fifty-one thousand four hundred thirty pounds, an excess of one thousand four hundred thirty pounds." The words in the Old Town warrant, "to wit: 1,430 lbs.," might indicate that that was the total load. Of course the word "by" might correct this; but I feel that the proper wording should be as I have outlined it above.

In regard to the second point raised by the attorneys for the respondent concerning the language of the statute, "10% up to 15,000 lbs. and 5% over 15,000 lbs.," they claim that they should be allowed 5% on their 50,000 registered gross. As subsection VI of Section 15 provides that no motor vehicle of either a single unit or combined unit shall be operated on the highways with a load that exceeds 50,000 pounds gross weight of vehicle and load, it is my opinion that the statute is not inconsistent relating to percentages under 50,000. . .

RALPH W. FARRIS
Attorney General

July 14, 1949

To Honorable Frederick G. Payne, Governor of Maine

Re: Appointments to Aeronautics Commission under Chapter 389, P.L. 1949

It is my opinion that the language in Section 4 of the above Act, to the effect that the three members who shall be appointed shall be in no way connected with the aviation industry, means the industry in the State of Maine, and that the intent of the legislature was to prevent the appointment of a Commissioner who was interested in the industry in Maine, which would be under the supervision of the Commission of which he would be a member.

RALPH W. FARRIS
Attorney General

July 15, 1949

To Honorable Ralph Sterling, Register of Deeds, Skowhegan, Maine

I have your letter of July 14th inquiring in regard to Chapter 404 of the Public Laws of 1949. You state that your difficulty is with Section 3 and inquire,

"Does the new provision relative to charge for indexing instruments with more than two parties apply to all instruments or only instruments for which there are no printed forms which are referred to in the paragraph to which it was added?"

It seems to me that this applies only to instruments for which no printed forms are available.

You are entitled to make a charge for making additional indices where there are two grantors or grantees; but where the wife or husband only signs the deed releasing dower or courtesy rights, there is no need of double indexing.

RALPH W. FARRIS
Attorney General

July 15, 1949

To Marion Martin, Commissioner of Labor and Industry
Re: Procedure in Picketing

I have your memo of July 12th relating to the Old Town shoe workers' strike, stating that you would like to have specific rulings with regard to the law as it applies to these situations and asking the following questions:

"1. What constitutes 'mass picketing'?"

Answer. Boisterous conduct, the use of vile language, bellicose demeanor, threats, violence, coercion, intimidation, shouting, and interference with use of premises or impeding public highway are usually denominated mass picketing where a large number of pickets are used. Our courts have held that mass picketing is not peaceful picketing, but is illegal picketing in which laboring men and women have no right to participate. Under the Taft-Hartley Act there is a long definition relating to mass picketing, but it does not get down to the point. It deals more with collective bargaining.

"2. Is there any limit to the number of pickets that may be used on the picket line, providing such pickets allow room for a person to pass through?"

Answer. I know of no statute setting the number of pickets in any picket line, where a strike is on; but any line of pickets that would interfere with the use of the premises or impede public highways would not be legal, as it would constitute mass picketing.

"3. Are pickets forbidden from making any comments while in picket line to those passing through the line?"

Answer. Any comments or words by pickets which tend to intimidate or inspire fear, overawe or make afraid other workers, or which tend to incite to violence would be classed as illegal picketing.

"4. Is there any restriction as to the size, shape or type of placard or sign that pickets may carry?"

Answer. I know of no restriction prescribed by law as to the size, shape or type of placard that pickets may carry. It is a method of giving expression to opinions and the aim of the placards or signs is to convince the public that some wrong is being done which should be rectified by the force of public opinion.

"5. Is there any law which forbids pickets from talking, singing or even calling names while on picket duty?"

Answer. See answers to Questions 1 and 3.

"6. Would people standing across the street from the picket line, in no way connected with the line, have the right to speak freely and say what they like?"

Answer. Everyone has a right to speak freely on every subject, but is responsible for the abuse of said privilege. If people standing across the street from a picket line use inflammatory language, inciting a riot, they certainly would not have a right to speak in language that would amount to threats, violence, or intimidation, especially shouting and interfering with the use of the premises or impeding the public highway.

"7. If, during a strike, the company opens a new plant doing the same type of work as the struck plant, would the unions have the right to picket the new plant?"

Answer. In my opinion, if it is the same employer and employees, I should say they would have a right to picket the new plant.

"8. A company, owning two factories in the same building but which have separate entrances and separate machine rooms, etc., uses workers interchangeably in those factories. A man may be officially listed on one payroll, but will work part-time in the other factory. In picketing the building, workers from both plants are placed at the entrance of each factory. The company maintains that pickets from one plant cannot be used to picket another, because 'they don't work there,' regardless of the fact that the workers are used interchangeably. If the management can use workers interchangeably, cannot they be interchangeable on the picket line?"

Answer. I would say that it is very hard to answer specifically such a question. However, it would seem to me that if they were working on the same premises, interchanging jobs in the same factory, the picket line could be interchangeable.

Do not consider the answers to these questions as law. They are merely advisory opinions based partly on court opinions and partly on the Taft-Hartley Law. We have no statutory law in Maine on the subject about which you inquire. I presume you have a copy of the Taft-Hartley Law in your file. If you look in the index to said law you will find "Mass picketing" with a very long commentary on what may constitute mass picketing.

RALPH W. FARRIS
Attorney General

July 15, 1949

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

Re: Overpayments

I have your memo of July 13th asking for information relative to a claim on which an overpayment was made in 1938. On June 10, 1949 a payable claim was filed in the amount of $22.50 and a deduction of $13.58 was made to apply against the old debit. This deduction should have been $15.38, but an error was made in entering the figures, so there still remains an outstanding overpayment of $2.

It is my opinion that you should charge this matter off, as it was an error in your office and the claim is over six years old; the statute authorizes an action of assumpsit to be brought, which is a statutory action, and the statutory limitation for actions in assumpsit on account annexed is six years. Therefore, in my opinion, the limitation is six years.

It is my opinion that the Commission should always in the future give notice on overpayments immediately on discovery that such exist, as Section 16(e) of Chapter 24, R. S., provides that if *after due notice* any person refuses to repay amounts erroneously paid to him as unemployment benefits, the amount due from such person may be collected by an action in assumpsit with account annexed, brought in the name of the Commission; or in the discretion of the Commission the amount erroneously paid to such person may be deducted from any future benefits payable to him under this Act. So the Commission is not entitled to bring a suit until after due notice, when a person has refused to pay.

Section 90 of Chapter 99, R. S., which enumerates actions to be commenced within six years, in subsection IV provides actions of account of assumpsit upon the case founded upon any contract or liability, express or implied, must be commenced within six years; and in your case it must be after due notice as provided by the MUCC Law.

However, I will state that it is not for the Commission to raise the question of the statute of limitation. It is incumbent upon the person against whom the claim is made, as the statute of limitation is only a defense statute, and if it is not raised when the action is brought, advantage cannot be taken of it later. To be effective, it must be raised by the defendant. So in case of other overpayments that are over six years old, if the persons make no objection, go ahead and collect them and make the necessary offsets.

RALPH W. FARRIS
Attorney General

July 19, 1949

To Edward L. McMonagle, Director S.C.U.T., Department of Education

Re: Conveyance of Private School Pupils

In your memorandum of July 6, 1949, you state as follows:

"Elementary school pupils living in Argyle Township, Penobscot County, attend the Old Town public schools to which they are conveyed on a bus owned by John T. Cyr and Sons of Old Town and operated under a contract with the Commissioner of Education.

"A family which has recently moved into Argyle Township wishes to send children to a parochial school in Old Town and has asked permission for these children to ride on the bus provided by the state for the conveyance of Argyle children who are attending the Old Town schools."

You asked the following question: "Would the Commissioner of Education or any of his agents act contrary to law in granting the permission requested?"

Section 23 and following of Chapter 37, R. S. 1944, sets forth the duties of towns with respect to raising money for "public schools." Section 3 of the same chapter prescribes some of the duties of the Commissioner and refers to "public schools," to "town officers" and to "superintending school committees." All of which have a public connotation. It is reasonable to assume, therefore, that when used elsewhere in the chapter, the words "elementary schools" or "secondary schools" mean public schools unless otherwise expressly stated. It follows likewise that mention of pupils, students, or scholars refers to those attending public schools unless otherwise expressly stated.

I would recommend that you read the case of *Arch R. Everson v. Board of of the Township of Ewing*, decided by the Supreme Court of the United States in 1946. It is reported in 91 L. Ed. 711. This case involved the validity of a New Jersey statute which made provision for the transportation of school children to and from school, "including the transportation of school children to and from school other than a public school, except such school as is operated for profit in whole or in part."

The court upheld the validity of the statute in a 5 to 4 decision. There are two powerful dissenting opinions. Both the majority and minority refer to the historical background for the separation of church and state.

The decision turns on the application of the First Amendment of the Constitution of the United States as made applicable to the States by the Fourteenth Amendment. The case includes as an appendix Madison's "Memorial and Remonstrance against Religious Assessments." This is to refresh the memories of the present day as to the real and important issue involved. Without this background one might easily fail to apprehend the importance of the issue.

Suffice it to say that this country is constitutionally dedicated to the proposition that all use of public funds for religious purposes is prohibited. It is a matter of principle and not a matter of degree or extent.

In the Everson case the majority holds that the New Jersey statute does not use public funds for religious purposes; that it is a statute within the police or welfare powers of the state. The minority holds that the transportation of pupils to religious schools is as essential to education as any other element and that consequently the use of public funds for this purpose constitutes a use for religious purposes.

New Jersey's enabling statute was upheld.

Maine has no enabling statute to permit the transportation involved in your question.

The New Jersey statute was upheld by a seriously divided court.

In the absence of a statute, it is certainly clear that public funds cannot be used for the transportation of pupils to private religious schools.

We do not answer whether it may be done when no additional use of public funds is involved.

JOHN S. S. FESSENDEN
Deputy Attorney General

July 19, 1949

To Ray S. Foster, Sheriff of Washington County
Re: Mittimus Fees

I received your letter of July 11th in regard to collecting mittimus fees. You state that you could never find any authority for you to collect them, so in order to settle the question you are writing me. You state that a man was committed from Lubec to your Machias jail on a mittimus from the Western Washington Municipal Court in default of payment of a fine of $10 and costs of $8.52, a total of $18.52, and that the judge sent you word to collect the mittimus fees before this man was released, plus costs of commitment from Lubec, amounting to $7.20, which would make the total $25.72. You ask whether, if offered the $18.52, you should accept it unless the costs of commitment are also paid.

Under Section 166 of Chapter 79, R. S., subdivision XXIX, the statute provides: "For the service of a warrant, the officer is entitled to $1, and $1 for service of a mittimus to commit a person to jail. . . and usual travel, with reasonable expenses incurred in the conveyance of such prisoner." I think this is sufficient authority for you to charge for the mittimus in addition to the fees. I feel that you should follow this practice, as it means quite a lot to your county. . . The legislature never intended the county to be responsible for transporting prisoners for commitment and I think that the statute which I quoted takes care of the same under "reasonable expenses incurred in conveyance of such prisoner."

RALPH W. FARRIS
Attorney General

July 19, 1949

To Adam P. Leighton, M. D., Secretary,
Board of Registration in Medicine

I received a letter from you dated July 12th, relating to the question of whether the Board should accept graduates of Continental European Medical Schools, with a copy enclosed of the application of Edmund Kahan, M. D., of Hindsboro, Illinois. Dr. Kahan is a graduate of the Vienna Medical School where he received the degree of Doctor of Medicine on February 6, 1937, and was admitted to practice before the Illinois State Board on August 5, 1940. You have a certificate of the Superintendent of Registration of the State of Illinois with his seal thereon.

It is my opinion that if the State of Illinois has registered Edmund Kahan, M. D., and if Illinois is still a reciprocity State, there is no other course for the Board to take than to endorse Dr. Kahan's applicatoon for admission under reciprocity. I spoke briefly with Herbert Locke about this matter the other day, and he could see no other way than I have outlined here. You should advise this gentleman where he stands, so far as Maine is concerned. . I am returning Dr. Kahan's application for endorsement by the Board.

RALPH W. FARRIS
Attorney General

July 19, 1949

To Jean Lois Bangs, Assistant Attorney General assigned to Social Welfare
Re: Estate of Former Recipient of Old Age Assistance

I have your memo of July 13th, giving a brief summary of the situation pertaining to an estate represented by Charles B. Small, attorney of Bath, Maine.

I note that the State has filed proof of claim against this estate in the amount of $1902, which represents the total amount of old age assistance granted during the recipient's lifetime, and that her total estate consists of a legacy from her brother's estate in the sum of $2340. You further state that the expenses of administration and costs of burial amount to approximately $700.

Mr. Small in behalf of the estate has offered to compromise the State's claim for $500, which you refused; but you did offer to settle the State's claim in an amount of approximately $1100. One of the sons of the deceased and Mr. Small, the attorney, feel that the sons should be entitled to a greater allowance and that your figure of settlement is unreasonable.

I hereby confirm your offer to settle this claim for $1100, and I will state that the State is not responsible for the care of Mrs. —— taken by her sons, who are legally responsible to support their own mother, under the Old Age Assistance Law. She did not receive old age assistance after December, 1947. The State's claim is prior to the date of her last sickness and the sons have no claim for services rendered by reason of her last sickness, having filed no claim within the time limit set by statute. Furthermore, if they had filed such a claim and it had been called to my attention, I should have objected to same. Strictly speaking, you should make no allowance to the sons for the care which they gave to their mother during her last sickness. It was a legal and moral obligation on the sons to support their mother. It is a shame that at this late date they should expect the State to assist them in caring for their dying mother.

My advice at this time is to compromise for $1100, as you have offered to do, and if they do not accept this, we shall insist on the full $1600 balance remaining in the estate on our proof of claim, which is now on file in the Probate Court.

RALPH W. FARRIS
Attorney General

July 19, 1949

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

In reply to your memorandum of July 11, 1949, relative to the above subject, you are advised that in our opinion the libraries eligible for participation in the State Employees' Retirement System are those libraries which fall within the scope of Sections 23-31 of Chapter 38, R. S. 1944.

JOHN S. S. FESSENDEN
Deputy Attorney General

July 19, 1949

To State Highway Commission
Re: Westport-Wiscasset Bridge Contract

. . . Representatives of the Westport-Wiscasset Bridge District called at my office a few days ago, with the engineer and the representative of the investment house which is contemplating financing the bonds of said bridge district. They left with me a proposed agreement between the State of Maine, acting through the State Highway Commission, and the Westport-Wiscasset Bridge District, wherein the District agrees to do certain things, and in Section 2 of said proposed contract the Commission agrees that "in the event funds available to the District from any and all sources for the payment of the cost and expense of the Bridge, as determined pursuant to the Resolution, are insufficient for such purposes, it will pay to the District any and all sums by which such cost and expense of the Bridge exceeds the funds available to the District from any and all sources for such purposes. Any such sum or sums shall be paid by the Commission to the District upon notification by the District to the Commission of the need therefor."

Section 4 of said proposed contract provides that "all moneys due and payable to the District by the Commission pursuant to this Agreement shall be paid from any moneys available to the Commission for such purposes, including, but not limited to, unappropriated balances remaining in the General Highway Fund of the State of Maine."

After studying this contract it is my opinion that the Highway Commission has no legal authority under the Constitution of Maine or the Statutes of Maine to enter into any such agreement with the Bridge District.

The charter establishing the Bridge District provides that $2500 can be used from the General Highway Fund, but that it shall be returned when the District bonds are issued.

The charter authorizes the Bridge District to enter into a contract with the State, but there is no authority for the State Highway Commission to use any of the General Highway Funds to take upon itself the financing of this project without legislative sanction.

RALPH W. FARRIS
Attorney General

July 25, 1949

To John C. Burnham, Assistant to Chief Engineer, Highway
Re: Lewiston Drive-in-Theater

In your memorandum of July 8, 1949 you inquired as to the status of an outdoor advertising structure or structures erected by the Lewiston Drive-in-Theatre at its place of business, a part of which structure or structures is within 50′ of the traveled way. It appears that the structure or structures consist of two panels, each of the size of 8′ x 23′ or 184 sq. ft., making a total of 368 sq. ft.

Under Section 116 of Chapter 20, R. S. 1944, as amended, no permit can be granted for any outdoor advertising structure or structures within 50′ from the nearer line of the traveled way. Section 112 of the same chapter, as amended, specifies that not more than 10 signs the total area of which cannot exceed 250 square feet, are exempt from permits and are not required to be 50′ from the traveled way.

Since the area of this outdoor advertising structure exceeds 250 sq. ft., it may not be located within 50′ of the traveled way, and no permit can be granted, unless the structure or structures are more than 50′ from the traveled way.

The advertiser, of course, would be entitled to have smaller signs, the total area of which does not exceed 250 sq. ft. each, within 50′ of the traveled way at his place of business; but this right or privilege cannot be claimed as an integral part of the outdoor advertising structure or structures which exceed the 250 sq. ft. area.

JOHN S. S. FESSENDEN
Deputy Attorney General

July 26, 1949

To Richard E. Reed, Commissioner of Sea and Shore Fisheries
Re: §89, Chapter 34, R. S., as replaced by Chapter 442, P. L. 1949

I received your memo of July 19th relating to the new Section 89 of Chapter 34 of the Revised Statutes which deals with interstate transportation of shellfish. Paragraph 1 of said Section 89 prohibits any person, firm or corporation from shipping or transporting or attempting to ship or transport in any manner beyond the limits of the state any soft-shell clam in the shell. You specifically call my attention to paragraph 11 of said Section 89, which contains several exceptions to the general provisions cited in paragraph 1 of said new section. The last sentence of said paragraph 11 reads as follows:

> "The provisions of this section shall apply only to holders of non-resident shellfish transportation licenses, except that holders of resident shellfish transportation licenses may ship clams beyond the limits of the state for the 'steamer trade' only."

Upon the foregoing statement of the law you ask the following questions:

"Question 1. Does this sentence mean that all provisions of the section apply only to holders of non-resident shellfish transportation licenses, including license and certificate requirements, with the exception that they

apply to holders of resident shellfish transportation licenses in relation to shipment of soft-shell clams in the shell beyond the limits of the state and restricts such shipment for the 'steamer trade' only, or should the sentence be interpreted to refer specifically to paragraph 1?"

Answer. After reading the whole section, it appears to me that it was the intent of the legislature that this provision relating to shipping clams beyond the state for the steamer trade only refers to paragraph 1 of the new Section 89. However, you will note that the exception does not state "may ship clams in the shell." It refers only to "clams" for the "steamer trade" only. It is common knowledge that clams are steamed in the shell, and it is my opinion that it was the intent of the legislature that the holders of resident shellfish transportation licenses may ship clams in the shell beyond the limits of the state for the "steamer trade" only.

"Question 2. Paragraph 1 prohibits shipment or transportation of soft-shell clams in the shell beyond the limits of the state. Paragraph 11 permits the holder of a resident transportation license to 'ship' such clams. Is he also permitted to transport them in that a distinction is drawn between shipment and transportation in section 16, c. 34, R. S. as revised where 'ship' is thus defined, to consign by common carrier."

Answer. In the amended Section 89 the words "ship or transport or attempt to ship or transport," being coupled by the conjunction "or" it is my opinion that the definition would come within the provisions of Section 16 of Chapter 34, which means "to consign by common carrier" as the definitions in Section 16 apply to the entire chapter 34. The wording of the exception in paragraph 11 of Section 89 is as follows:

> "Except that holders of resident shellfish transportation licenses may ship clams beyond the limits of the state for the 'steamer trade' only."

That must necessarily mean by common carrier, as the word "ship" is defined in Section 16.

"Question 3. Inasmuch as there is no legal definition of the term 'steamer trade' it is essential that you should define it for the information and guidance of all concerned."

Answer. Since there is no statutory definition of the term "steamer trade," we must resort to the common usage of the term as employed in the shellfish industry. It is common knowledge that clams for the "steamer trade" are clams in the shell, which can be steamed and sold in hotels, restaurants and shore-dinner resorts to be consumed by the public; and steamed clams is a well-known New England shore-dinner delicacy. Therefore it is my opinion that the definition of the term "steamer trade" should be "clams shipped in the shell" to dealers or hotels and restaurants who buy clams in the shell for the purpose of being steamed and sold to the consuming public.

"Question 4. Section 114, c. 34, R. S., as revised, provides that the holder of a wholesale lobster dealer's license is permitted to ship shellfish outside the state by virtue of such license provided he also holds the proper shellfish certificate. In your opinion is he permitted to ship soft-shell clams in the shell beyond the limits of the state for the 'steamer trade'?"

Answer. It is my opinion that Section 114 refers to the "wholesale trade," as that term is used in paragraph 2 of Section 114. Then again paragraph 4 of Section 114 classifies a wholesale dealer. In my opinion he would not be permitted to ship soft-shell clams beyond the limits of the state for the "steamer trade" as specified in the new Section 89.

RALPH W. FARRIS
Attorney General

July 26, 1949

To the Unemployment Compensation Commission

In connection with the payments of benefits to be made under the provisions of Chapter 291 of the Public Laws of 1949, it is my opinion that when a payable claim is filed, after September 1, 1949, for a week of unemployment in which any day in September falls, the benefit payments should be in accordance with the schedule enacted by this chapter.

In other words, as a matter of practical administration, valid continued claims filed on and after September 6, 1949, will be payable at the new statutory rate, this for the reason that no valid claims for the week ending September 3rd can be filed on September 1, 2, or 3, and September 4 and September 5 are holidays.

JOHN S. S. FESSENDEN
Deputy Attorney General

July 27, 1949

To General George M. Carter

I acknowledge receipt of your memo of July 22nd, attaching communication from the chairman of the board of selectmen of the town of Norway in connection with a request that you return to the town from a previous grant of land for military purposes a strip of land indicated on a plan enclosed with your memo.

It is my opinion that the Commission cannot sell land belonging to the State without legislative authority. . . .

RALPH W. FARRIS
Attorney General

July 27, 1949

To Carl L. Treworgy, Secretary, Racing Commission

Your memo of July 26th received, asking for a ruling on a case where a pari-mutuel clerk issued more tickets than the customer paid for, the tickets were winners, the customer admitted that he had not paid for the extra tickets, refused to pay for them, but still claimed the winnings on them. You ask if the Mutuel Director is justified in withholding payment on the tickets which were not paid for.

I wish to advise that the Mutuel Director is justified in withholding payment of tickets which were not paid for by the purchaser, if they were issued through error and the customer knew it.

RALPH W. FARRIS
Attorney General

July 27, 1949

To Colonel Francis J. McCabe, Chief, Maine State Police

Your memo of July 26th received, stating that you have been requested by the State Personnel Board to assist them in the taking of finger prints of all State of Maine employees. You state that the authority for the State Police and the State Bureau of Identification to take finger prints is embodied in Chapter 13, Sections 13-20, inclusive, of the Revised Statutes of 1944. I will add to this that these sections were amended by Chapter 333 of the Public Laws of 1945.

You further state that the request by the Personnel Board has brought the following questions to your mind:

"(a) Does the Department of State Police have authority to take such fingerprints at the request of the State Personnel Board?"

Answer. There is no statutory authority for the State Police to take such finger prints at the request of the State Personnel Board.

"(b) If an employee refuses to be fingerprinted, what is the proper procedure for the officer to use?"

Answer. If a State employee refuses to be fingerprinted and anyone insists that he be fingerprinted, unless he falls within the classifications of Section 14 of Chapter 13, R. S., as amended by Section 2 of Chapter 333, P. L. 1945, which gives the State Police, sheriffs, police chiefs and other law enforcement officers authority to take or cause to be taken the fingerprint or photographs or both of any person in custody charged with the commission of crime, or of any person who they have reason to believe is a fugitive from justice, or of any suspicious person, or of any habitual criminal, he cannot be compelled to be fingerprinted under our present law.

RALPH W. FARRIS
Attorney General

August 1, 1949

To Ermo H. Scott, Department of Education
Re: Trust Funds

In reply to your memorandum with regard to the investment of funds of the Farmington State Teachers' College, you are advised that it is the opinion of this office that since these are State trust funds, they should be used only in accordance with the provisions of Section 14 of Chapter 15 of the Revised Statutes of 1944, as amended.

Therefore it would not be possible to invest these funds in real estate.

JOHN S. S. FESSENDEN
Deputy Attorney General

August 1, 1949

To Francis G. Buzzell, Chief, Division of Animal Industry

Reference is made to your memorandum of July 13, 1949, in which you ask for an interpretation of a portion of Chapter 417 of the Public Laws of 1949, your question being,

"Would it be permissible for the Department of Agriculture to issue a ruling that cattle could be sold from licensed dealer to licensed dealer without test, although a record is kept of the transaction?"

Subsection II of Section 123-B quite specifically defines the term "dealer" and appends the following:—"whether such purchase or sale be completed by cash, delayed payment, transfer, exchange, barter, or *shipment on commission.*"

Paragraph one of Section 123-F would indicate that the only exception to furnishing a health certificate is in the case of a sale to a recognized slaughtering establishment for immediate slaughter.

The statute is so specific and all-inclusive that it would appear to be the intention of the legislature that health certificates be procured in all cases.

You ask a second question as to whether the term "dealer" means a person whose primary business is the production of milk, or the raising of livestock, but who from time to time buys or sells livestock to maintain the steady production of milk, or to fit into other farm operations.

The statute defines the term "dealer" as meaning, "any person, copartnership, association or corporation engaged in the business of buying or selling livestock, . ."

It would be assumed from this definition that the statute was referring to the regulating of persons engaged in the business, and not of regulating persons such as farmers who need not be licensed as dealers, who purchase or sell merely as an incident to their farming operations.

JOHN S. S. FESSENDEN
Deputy Attorney General

August 2, 1949

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

. . . I am assuming that the question which you raised in paragraph two of your letter refers to the time lapse between the time of hearing and the date of commitment. If during this time lag the child had been placed under supervision pending examinations and decision as to what to do with the child, I would think that under the statute it would be proper for the commitment to follow.

I assume that the question raised in the third paragraph of your letter is with respect to the authority of the Recorder to perform the duties of the Judge of a court.

This matter is covered in Section 6 of Chapter 96, page 1663, Revised Statutes of 1944. . . .

JOHN S. S. FESSENDEN
Deputy Attorney General

August 2, 1949

To Personnel Department
Re: Veterans' Preference

Through the examination supervisor the department has asked for a ruling from the Attorney General's office relative to the allowing of ten points' preference to veterans on open competitive examinations in the State's classified service. The specific question asked is what percentage of present existence of service-connected disability is necessary to qualify a veteran for the ten-point preference.

The statute under which the preference is given to disabled veterans is Chapter 360 of the Public Laws of 1945. The pertinent past of the statute to be considered in answering your question reads as follows:

> "II. Ten-point preference is a term applying to veteran preference which entitles the holder to an addition of 10 points to earned qualifying ratings in examination. The classes of 10-point preference are as follows:
>
> A. Disability preference applies to honorably discharged veterans who establish by official records
>
> 1. the present existence of a service-connected disability, or
>
> 2. the current receipt of compensation, disability retirement benefits, or pension by reason of public laws administered by the Veterans' Administration, the war department or the navy department."

In ascertaining a veteran's entitlement to the ten-point preference, it is necessary that the examining or appointing authority rely upon "official records." Generally speaking, these words mean the records of the United States Veterans' Administration, and the examining or appointing authority is entitled to place reliance thereon unless errors appear on the face of the record.

The record should be scrutinized to ascertain whether it is reflecting the present existence of a service connected disability or reflecting only the existence of a service-connected disability at the time of discharge. The statute contemplates the awarding of the ten-point preference only for the present existence of a service-connected disability under subparagraph 1 quoted above.

If the official record makes no reference to the present existence of a service-connected disability, but does indicate that the applicant is currently receiving compensation, disability retirement benefits or pension by reason of laws administered by the Veterans' Administration, the War Department or the Navy Department, the ten-point preference should be awarded under subparagraph 2 quoted above.

With respect to the percentage of service-connected disability which will entitle the veteran applicant to the ten-point preference, you are advised that a zero percentage will entitle the veteran to the preference if it appears that there presently exists a service-connected disability. The federal laws, regulations and executive orders, when studied as a whole, explain the meaning of the words "zero disability" as used by the Veterans' Administration,

to the effect that they mean that the veteran has sustained a war-service-connected disability and that such war-service-connected disability continues to exist, and that for the purpose of compensation under the federal statute the disability is less than 10%. See *Barry v. Chapman*, 73 N. Y. Supp. 2d, 143.

The purpose of the statute cited above does not entirely refer to disabilities which impair earning capacity. "It points toward a reward for one who had, even in a slight degree, sustained in war service some physical depreciation which the federal government had recognized as such and whose impaired physique due to such recognized illness, disease, or wound has continued to exist." See *Potts v. Kaplan*, 264 N. Y., page 117.

The "zero disability" rating is one which refers exclusively to a rating dealing with the payment of benefits by the federal government for "impaired earning capacity" and has no relation to the question of preferences under the State Personnel Law. See *Barry v. Chapman*, 73 N. Y. Supp 2nd, 142.

The New York statutes being construed by the above quoted cases do not materially differ from the words used in the Maine law. Further support for this opinion may be found in the Maine law itself, in that any other conclusion would render subparagraph 1 of no effect, if the receipt of compensation under subparagraph 2 were a prerequisite to an entitlement to the ten-point preference.

JOHN S. S. FESSENDEN
Deputy Attorney General

August 3, 1949

To W. Earle Bradbury, Deputy Commissioner,
Inland Fisheries and Game
Re: Night Hunting—first and second offenses

In reply to your memorandum of August 2, 1949, you are advised that the provisions of Chapter 250 of the Public Laws of 1949 apply to all offenses of night hunting appearing on the convicted person's previous record. You will note that this section of the law only adds jail sentences to the previous provisions relative to the imposition of fines.

It would appear that this chapter does not supersede the general power of the court to extend probation under the provisions of Section 1 of Chapter 136. The night hunting law merely denies the court the right to suspend the imposition of sentence.

JOHN S. S. FESSENDEN
Deputy Attorney General

August 3, 1949

To Earle R. Hayes, Secretary, Employees' Retirement System
Re: Eligibility, Maine-New Hampshire Interstate Bridge Authority to Membership

In reply to your memorandum of July 11, 1949, you are advised that the State of Maine employees in the employ of the Maine-New Hampshire Interstate Bridge Authority are employees of a "quasi-municipal corporation" within the meaning of the Retirement Law relative to participation in the System by local units of that nature.

JOHN S. S. FESSENDEN
Deputy Attorney General

August 9, 1949

To Honorable Frederick G. Payne, Governor of Maine
Re: Home Industry

I acknowledge receipt of your memo of August 5th, requesting information on a letter, a copy of which you sent me, dated August 2nd, addressed to you, . .

The contents of this letter relate to Chapter 283 of the Public Laws of 1949, entitled "An Act Regulating Industrial Home Work." I note that Section 1 of the act sets up definitions of prohibited home work in the manufacture of certain articles, namely:

"I. Tobacco;

II. Drugs and poisons;

III. Bandages and other sanitary goods;

IV. Explosives, fireworks and articles of like character; or

V. Articles the processing of which requires exposure to substances determined by the commissioner to be hazardous to the health or safety of persons so exposed."

Section 37-G under Section 1 requires every employer to secure a permit from the Commissioner of Labor upon the payment of a fee of $25 provided in Section 37-H; and Section 37-I requires any home worker who desires to engage in industrial home work within the State to secure from the Commissioner a certificate which shall be issued without cost and which shall be valid for a period of one year from the date of issuance, which certificate permits the worker to be employed by one employer only, who shall be named therein. No homeworker's certificate shall be issued to any person under the age of 16 years or to any person suffering from an infectious, contagious or communicable disease or living in a home that is not clean, sanitary and free from infectious, contagious or communicable disease.

On a casual glance at this new law, which became effective August 6th, it seems to me that the making of landing nets, basketball nets, pockets for game tables and shopping bags does not come within the definition of prohibited homework.

It seems to me that we should get together with the Commissioner of Labor and see how far that department is going to go in trying to carry out the provisions of this law.

Another thought that occurs to me is that the provisions requiring a person in another State to pay the State of Maine a license fee of $25 for the purpose of doing business in Maine or having work done in Maine might contravene the commerce clause of the Federal Constitution, and if so, would be invalid.

In regard to your correspondent's criticism of the Department of Labor's not concerning itself with sponsoring a measure requiring company using power-driven tools to protect its employees with insurance, whether there are eight or fewer workers, I will say that this matter comes under the chapter of the Revised Statutes relating to the Industrial Accident Commission. I believe she is wrong in regard to the Workmen's Compensation Law of Maine. That act does not apply to those employers employing five or less

employees or to those engaged in farming, domestic service or logging. She is laboring under a misapprehension when she says that employees are not protected if there are eight or fewer workers. It should be five or less. You will note, however, that her husband was one of only four employees and therefore his employer apparently was not an assenting employer under the Workmen's Compensation Act and did not carry insurance. However, her husband could secure redress under a common-law action for negligence, if there was negligence, if the employer did not carry workmen's compensation insurance.

I think this information will give you something as a basis for an answer to her letter, but the home-work law, which is Chapter 283 and to which she calls your attention is going to stir up, and has already stirred up, considerable criticism from many people doing home work. It appears to have a New Dealish flavor, and attempts to stretch out the fingers of bureaucracy into the homes of our citizens in Maine. I was never consulted by the sponsors of this bill and know nothing about its origin, except what appears on its face, that it was introduced by Senator Collins of Aroostook, February 1, 1949, was referred to the Committee on Labor, and approved by you on April 26, 1949.

If there is any other information that you desire in regard to this statute, I would be glad to secure it for you.

RALPH W. FARRIS
Attorney General

August 10, 1949

To H. A. Ladd, Commissioner of Education
Re: Use of School Conveyances

I have your memo of August 2, 1949, stating that a considerable number of Maine towns and cities have acquired conveyances which they use for the transportation of school children. With these publicly-owned conveyances available in the communities, pressure is frequently brought to bear for their use for other purposes. Your department has had repeated requests for information on the legitimate use of these buses, and to assist the superintendents who must make recommendations to their committees, you would like answers to the following questions:

"1. Is it legal to use a municipally-owned school bus for purposes other than the transportation of pupils to and from school, and activities directly related thereto?"

Answer. There is no statute prohibiting the use of municipally-owned buses, if permission is procured from the municipal officers for the use of same, for other purposes when they are not being used for the transportation of school children, to and from school and related activities.

"2. Is it legal to use publicly-owned school buses to transport pupils, including athletic teams and other organized activity groups and teachers, to contests or meets outside the town—outside the State?"

Answer. There is no statute which prohibits the use of publicly-owned school buses to transport pupils, athletic teams, and teachers to athletic meets, etc., outside the town or city, if permission is given by the owners of the buses. The only question which might be involved is that of liability for injury to the pupils or others riding on buses so used. That is a matter which the municipality would have to take up with the insurance company, to see if the buses had proper insurance coverage when not used for school purposes.

"3. Is the use of school buses for the transportation of children of school age for swimming instruction or for scout activities, during the school year or during summer months, legal?"

Answer. My answer to Question 2 applies as an answer to Question 3.

"4. Would endorsement of such activities by the committee make use of the buses for these purposes conform with the statutory limitations?"

Answer. I did not know there were any statutory limitations for the use of buses, as buses are school buses only when used for the transportation of children to and from school, and the term includes all motor vehicles while used for the transportation of school children. This will be found in Section 9 of Chapter 37, R. S.

"5. Can the town, at its annual or at a special meeting, by vote authorize the use of these publicly-owned vehicles for purposes other than transportation to and from school?"

Answer. If the town owns buses or other motor vehicles which are used for the transportation of children to and from school, the inhabitants at an annual or special town meeting can authorize the municipal officers to use the buses for purposes other than the transportation of pupils to and from school; but the use to which the buses are to be put should be clearly stated in an article in the warrant calling the meeting.

"6. Would the answer to any of the above questions be changed in any way because state funds (equalization) were involved in the payment for the unit?"

Answer. Yes. It is my opinion that if State funds are involved in payment for a bus, in addition to authority from the town, the municipal officers should secure the permission of the Commissioner of Education for the use of these buses for purposes other than transportation of pupils to and from school.

RALPH W. FARRIS
Attorney General

August 10, 1949

To Marion E. Martin, Commissioner of Labor and Industry

I have your memo of August 1st, enclosing correspondence from Philip Schilling of the Wage and Hour Division of the U. S. Department of Labor and asking my advice on the matter. His letter relates to a notice which

was posted in the office of a canning company stating that the employees who refused to sign a petition to reduce taxation on the company would be cut in wages 5c per hour and 2c per case. Letters of complaint in this regard do not state what the town did at the meeting about abatement of taxes.

As you know, all taxes must be assessed equally on property according to the just value thereof, under our Constitution, and any abatement by the town would be illegal and would be contested by citizens of the town.

We have no statute in Maine which covers this particular peculiar situation.

RALPH W. FARRIS
Attorney General

August 10, 1949

To H. A. Ladd, Commissioner of Education
Re: School Property

I have your memo of August 5th, in which you state that during the legislative session you discussed with me the proper disposition of schools which have been officially closed on recommendation by the superintending school committee and vote of the town, but we agreed to postpone formal decision in deference to more pressing problems. The subject had come up in connection with an issue at Harpswell and with questions asked by Superintendent Frank E. Drisko of Union No. 29. You now ask the following questions:

"1. May a town suspend school in a particular building annually, thereby deferring formal closure?"

Answer. Yes.

"2. What are the rights of the town and of the heirs in the instance of a closed school which was built on land, the deed for which includes a reversion clause?"

Answer. The town and the heirs have no rights in the land, as all reversion clauses in deeds state, "When the land is no longer used for school purposes, it shall revert to the original grantor," or words to that effect. Suspending a school annually is not an abandonment of the school building or the school land within the meaning of the law.

"3. Can the town hold the property indefinitely by utilizing the building for storage and related purposes?"

Answer. The town cannot hold the building indefinitely when it has been abandoned by the school authorities for school purposes, if there is a reversion clause in the deed granting the land for school purposes. This is a case where the heirs have some rights to come in after the property has not been used for school purposes for a long period of time and the facts will warrant a general closing of the property for school purposes.

If you will consult Section 8 of Chapter 37, R. S., which provides for the location of any school legally established prior to the 17th day of March, 1893, to continue unchanged, notwithstanding the district is abolished; but any town at its annual meeting, or at a meeting called for the purpose, may determine the number and location of its schools, you will find a provision that such discontinuance or change of location shall be made only on the written recommendation of the superintending school committee on conditions proper to preserve the rights and privileges of the inhabitants for whose benefit such schools were established; provided, however, that in case any school shall hereafter have too few scholars for its profitable maintenance, the superintending school committee may suspend the operation of such school for not more than 1 year, but shall not close such school for a longer period nor again thereafter suspend operation of such school unless so instructed by the town, etc., etc.

So, after the superintending school committee has suspended the operation of any school for more than one year, it cannot suspend operation again, unless instructed by the town at town meeting; and after the school has been suspended definitely by the superintending school committee, the responsibility for the closed school and the transfer of the property devolves upon the municipal officers of the town that owns the school building and land.

RALPH W FARRIS
Attorney General

August 11, 1949

To Marion E. Martin, Commissioner of Labor and Industry
Re: Reconciliation of Inconsistencies in Chapter 290, P. L. 1949

I received your memo of August 8th, stating that Section 7 of Chapter 290, P. L. 1949, provides a 50-hour week for production workers in certain establishments and that Section 6 which you describe as a limitation on the number of hours per day which women may work in the enumerated establishments, in the last sentence thereof states, ". . in no case shall the hours of labor exceed 10 hours in any 1 day or 54 hours in any 1 week." The contradiction, you state, is between the 54 and the 50 hour limitations on the hours which women may work, and on the foregoing statement of facts you ask the following questions:

"Are we justified in interpreting Section 6 in the light of Section 7 by saying that the 54-hour statement in Section 6 would not take precedence over Section 7?"

You then ask me to note that this section is more or less explanatory, and in answer I will say that I do not know what you mean by saying that Section 6 is more or less an explanatory note and not a major portion.

Section 22 of Chapter 25, R. S., permitted the 54 hours in any one week, and the amendment in Section 6, Chapter 290, P. L. 1949, does not change the old law which permits 9 hours in any one day and in no case shall the hours of labor exceed 10 hours in any one day or 54 hours in any one week.

Section 7 of Chapter 290, P. L. 1949, repeals Section 23 of Chapter 25, R. S., which regulated the hours of labor of children under 16 years of age and enacted in place thereof 50 hours a week in certain establishments for females. The new section reads as follows:

> "No female shall be employed as a production worker in any workshop, factory, manufacturing or mechanical establishment more than 50 hours in any 1 week."

That enactment does not nullify Section 22 of Chapter 25, R. S., as amended by Section 6 of Chapter 290, P. L. 1949. It is my opinion that it is incumbent upon the Commissioner of Labor to interpret the new Section 23 of Chapter 25, R. S., as to who are production workers in any workshop, factory, etc. It surely was not the intent of the legislature to change Section 22 in this regard and it did not do so. To further follow out the intent of the legislature, Section 8 repeals Section 24 of Chapter 25, R. S., and enacts the following in its place:

> "No female shall be employed in any mercantile establishment, beauty parlor, hotel, restaurant, dairy, bakery, laundry, dry cleaning establishment, telegraph office, in any telephone exchange employing more than 3 operators or by any express or transportation company in the state more than 54 hours in any 1 week." Etc., etc.

Then again in Section 9 of Chapter 290, P. L. 1949, two new sections are added, to be numbered 24-A and 24-B of Chapter 25, R. S. Section 24-B provides for the application of Sections 22-24 as follows:

> "A relaxation of the application of sections 22 to 24, inclusive, shall be made under the following conditions. Such relaxation shall be by written agreement between an employer and employee or her authorized representative, subject to the approval of such agreement by the commissioner; and provided further, that the relaxation shall be for not more than 15 days, singularly or consecutively, during the calendar year. The commissioner shall not approve such relaxation except on proof of necessity, extraordinary requirements or emergencies."

When you talked with me in my office, I had not had an opportunity to study the entire amendments made in Chapter 290, P. L. 1949, and did not realize, and you did not call my attention to the fact, that Section 24 had re-established a limitation of 54 hours a week for females in the places designated in said new Section 24, which is about the same as Section 22 authorizing females to be employed 54 hours in any one week. Therefore I shall have to rule that under Section 22 and Section 24 of Chapter 25, as amended, females can be employed up to 54 hours in any one week, and Section 23, as amended, relates to females employed as production workers, but it is my opinion that it was not the intention of the legislature to change the 54-hour limitation provided in said Sections 22 and 24 of Chapter 25, R. S., as amended, as this one section is repugnant to two other sections along the same line limiting the employment of females to 54 hours in any one week.

RALPH W. FARRIS
Attorney General

August 11, 1949

To L. C. Fortier, Chairman, M. E. S. C.
Re: Experience Rating

In your memorandum of August 8, 1949, you ask the following question:

"Section 17-IV-A of the Law states that no employer's rate shall change from 2.7% until his experience rating record has been chargeable with benefits *throughout* the 36-consecutive-calendar month period ending on the computation date.

"Does throughout mean every day in the month, or does it mean anytime in the month?

"Example: If an employing unit paid a contribution for 1948 on January 27, 1949, and is found to be liable under the Act, when would he be eligible for a computation under the above section?"

Section 17-IV-A of the Employment Security Law is the basic standard in the Maine Law laying the foundation for additional tax credits to employers under the Federal Unemployment Tax Act. Without this section, or a similar section if other factors were used, the Maine Law could not be certified to the Secretary of the Treasury as an additional credit allowance law.

The applicable Federal Law, the Internal Revenue Code, so far as pertinent reads as follows:

"Section 1602 (a). A taxpayer shall be allowed an additional credit under Section 1601 (b) with respect to any reduced rate of contributions permitted by a state law only if the Federal Security Administrator finds that under such law:

"(1) No reduced rate of contributions to a pooled fund or to a partially pooled account, is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the three consecutive years immediately preceding the computation date." (The following sections deal with other types of funds not pertinent here.)

In Maine the experience factor with respect to unemployment as contemplated by the Federal Law is "chargeability with benefits." Since the basic purpose of Section 17-IV-A of the Maine Law is to meet the Federal standard and serves no useful purpose otherwise, it follows that the section is to be construed in the light of the Federal Law above quoted.

Although the wording of the two statutes differs the result is identical. Section 17-VI fixes the computation date as December 31st of each calendar year. Section 17-IV-A sets s "36-consecutive-calendar month period ending on the computation date." The Federal Law refers to "the three consecutive years immediately preceding the computation date."

Consequently, it would appear to serve little or no purpose to answer your question as to whether the word "throughout" means every day in the month or anytime in the month since the minimum standard to entitle an employer to the benefit of a reduced contribution rate must be "not less than three years immediately preceding the computation date."

Under the provisions of Section 17-III-A of the Employment Security Law the Commission's duty to establish an experience rating account for an employer arises as of the date his status as such is ascertained, to which shall be credited all the contributions which he thereafter pays on his own behalf.

This Section (17-III-A) is important in connection with paragraph 3 of subsection II of Section 16 which reads as follows:

"The deputy shall also determine, in accordance with the provisions of paragraph A of subsection III of Section 17, the proper employer's experience rating record, if any, against which benefits of an eligible individual shall be charged, if and when paid."

Accordingly, since Section 17-III-A sets the date upon which the Commission shall establish the employer's experience rating record this fixes the date as of which it becomes within the power of the deputy in making his determination under Section 16-II, paragraph 3 as to charges against an employer's account.

While you have not asked the question, we should like to observe that Section 17-III-A also sets the date upon which, under Section 16-II, paragraph 3, the deputy shall cease to charge an individual employer's account, namely, the date of termination of his liability as such.

In answer then to the example given in your question the date upon which the employer paid his contributions is not determinative of the date upon which his account shall be charged with benefits; but on the contrary, the date upon which he was ascertained to have the status of an employer instead of an employing unit is the controlling date as to the chargeability for benefits. Therefore, if an employer is first ascertained to be liable within any calendar year that year will not serve as the first of the three consecutive years immediately preceding the computation date. His first year for that purpose will begin on January 1 following the year within which his status as an employer was first ascertained.

From the foregoing, you should be able to readily compute the date upon which the employing unit referred to in your example would become eligible for a computed experience rate.

JOHN S. S. FESSENDEN
Deputy Attorney General

August 11, 1949

To Ernest H. Johnson, State Assessor
Re: Brookhaven National Laboratory, Associated Universities, Inc., Upton, N. Y.

I received your memo of August 10th, relating to the above matter and enclosing correspondence from the Texas Company and the U. S. Atomic Energy Commission, New York Operations Office.

It is my opinion that Brookhaven National Laboratory, working under the Atomic Energy Commission, is an agency of the United States and hence has authority to sign tax exemption certificates. In other words, the Laboratory is an agency of the Atomic Energy Commission, which in turn is a part of the United States Defense set-up.

In my opinion you should advise the Texas Company that you will accept standard form 1094 in lieu of motor fuel tax on credit cards to this customer. . .

RALPH W. FARRIS
Attorney General

August 12, 1949

To H. A. Ladd, Commissioner of Education
Re: Mt. Desert Island Secondary School District

I have your memo of August 3rd asking the following questions:

"1. In the event that a town accepts or acts favorably at a legally called meeting on the question 'Shall the act to create the Mount Desert Island Secondary School District be accepted,' would that town then at a different meeting have the right to elect under the first article under Section 2 of the act whether or not it would join with any one or more of the towns on Mount Desert Island to form a district?"

My answer to Question 1 is in the affirmative.

"2. Having adopted the act under the provisions of Section 12 and having voted favorably by designating the towns it would join with to form a school district under the first article under Section 2, could a town in the event that it was dissatisfied postpone any action under the second article under Section 2?"

Answer. A town may postpone action under the second article under Section 2, because Section 2 provides that before any town shall become a member of said district it shall call a meeting and vote on the two articles set forth.

"3. In the event that towns A and B voted to accept the act under Section 12, would the act take effect and make it possible for towns C and D to vote on the articles in Section 2 without voting under Section 12?"

No. Before any town can vote on the articles in Section 2, the Act must have been accepted by the town under Section 12 at a referendum.

RALPH W. FARRIS
Attorney General

August 16, 1949

To John H. Welch, Administrative Assistant to the Governor
Re: Income from Water Privileges Belonging to the Penobscot Tribe

In response to your question as to the disposition to be made of income from water privileges belonging to the Penobscot Tribe, you are advised that in the assigning of lands to members of the tribe and in connection with subsequent conveyances of these assigned lands to other members of the tribe, the water privileges do not go with the land.

Section 342 of Chapter 22, R. S. 1944, provides as follows:

". . the water privileges belonging to said islands, valuable for mills, booms, fisheries . . are not subject to assignment or distribution to members of said tribe, but shall remain for the benefit of the whole tribe."

Sections 350 and 351 of the same chapter provide for the leasing of the shores of the islands in the Penobscot River belonging to the tribe, such leases to be made by the agent under the orders of the Department of Health and Welfare, the rents to be paid into the treasury of the State and to be expended for the benefit of the tribe. Consequently, the riparian and upland owner has no right to the income from the exercise of the shore privilege.

JOHN S. S. FESSENDEN
Deputy Attorney General

August 23, 1949

To: Ober C. Vaughan, Director of Personnel,
L. C. Fortier, Chairman, Employment Security, and
David H. Stevens, Commissioner of Health and Welfare

Re: Federal grants to meet costs arising in carrying out the Federal "Standards for a Merit System of Personnel Administration."

On August 11, 1949, Mr. Vaughan addressed a joint memorandum to the addressees named above relative to financial participation by the Federal Security Agency to defray the additional costs arising by virtue of federal requirements superimposed upon the State in its administration of the State Personnel Law in so far as the personnel employed or to be employed by the respective addressee agencies are concerned. We have been asked to review the subject matter as to legal propriety and to give our opinion thereon.

Both of these State agencies receive federal grants for administrative purposes under the provisions of Federal Security Legislation originally known as the Social Security Act. In some cases the grants of federal aid defray 100% of the State's administrative costs and in some cases the federal aid is in "matching" form to a specified percentage of State funds. In any event among the conditions of State entitlement to federal aid are the provisions of federal law to the effect that no State shall be entitled to such aid unless the State law includes provision for "such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Administrator shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Administrator to be necessary for the proper and effective operation of the plan." Sec. 2(a), Title I, Social Security Act, as amended.

This quotation applies directly to the State's Department of Health and Welfare. The federal law applicable to the Employment Security Commission reads identically to the closing of the parenthesis and concludes as follows: "as are found by the Administrator to be reasonably calculated to insure full

payment of unemployment compensation when due." Sec. 303 (a), Title III, Social Security Act, as amended. Other titles of the Social Security Act authorizing federal grants for administrative purposes, such as for aid to the blind, aid to dependent children, etc., contain words of the same or similar import.

The Social Security Administration of the Federal Security Agency has promulgated "standards for a merit system of personnel administration," which standards, it says, when complied with, will entitle a State, if all other standards and provisions of law are complied with, to share in federal grants in aid. It recognizes that its standards for a merit system may and frequently do impose upon States added administrative costs over and above those contemplated by State law. Consequently, with respect to the expending of federally granted funds, the same administration has adopted standards which, when complied with, will entitle State agencies to additional funds to defray the added and burdensome expense to the State's personnel agency in the work superimposed upon it by federal requirement identifiable as attributable to the State agencies receiving federal grants in aid for administrative purposes.

Thus far the program appears perfectly clear and logical and is obviously supported by reason.

It remains to determine whether our State laws will permit or authorize such State agencies to receive such additional grants for transfer to or for reimbursement to still another State agency for the additional facilities or services rendered.

It was noted above that the federal funds for administrative purposes were granted in some cases on a 100% basis and in some cases on a lesser percentage basis. If the State's entitlement to the additional grant contemplates, in the case of federal funds on a "matching" basis, that the State agency shall transfer a part of its legislative appropriation to another State agency, the State cannot qualify for the additional grant. There is no statutory authority for the transfer of legislative appropriations between State departments.

It does not appear, however, that such a situation need arise. By virtue of federal law the merit system standards apply whether the grant in aid is 100% of the administrative cost or a lesser percentage. In any event the additional costs identifiable as attributable to compliance with federal standards are the result of the same requirements. If the logic and reason supporting the additional grants in the 100% case is sound, it appears to be equally applicable to the lesser percentage cases since the additional cost is not due to "matching" administration but recognized as 100% due to superimposed federal requirements. In the event this question arises, federal authorities should be requested to give serious consideration to this argument.

With respect to the State's right under existing law to accept federal grants when not otherwise specifically authorized, Section 14 of Chapter 11, R. S. 1944, reads as follows:

> "State authorized to accept federal grants. 1941, c. 315, §1. The governor, with the advice and consent of the council, is authorized and empowered to accept for the state any federal funds or any equipment, supplies, or materials apportioned under the provisions of federal law

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

This section, particularly the second sentence thereof, makes it possible for the State to qualify for and to be eligible to receive the additional federal grants in aid for administrative purposes contemplated in the participation program outlined in the memorandum of August 11, 1949.

When all the details have been agreed upon, including the basis upon which the additional grants will be made, a letter of approval thereof should be obtained from responsible federal authority, particularly for audit purposes, since such additional funds will be, by other federal standards, subject to audit by federal auditors.

A Council Order should then be prepared with a statement of facts supported by, 1) the memorandum of August 11, 1949, or one of similar import; 2) the letter of approval from federal authority; and, 3) this opinion.

JOHN S. S. FESSENDEN
Deputy Attorney General

August 24, 1949

To Marion E. Martin, Commissioner of Labor and Industry
Re: Industrial Home Work

I have your memo of August 23rd in regard to the question raised by a manufacturer in this State, whether he has to abide by Section 38 of Chapter 25, R. S., and pay weekly the workers who are doing work in their homes, even though no finished goods have been returned to him during the week.

You state that it occurs to you that the reasonable way to handle this matter would be to have a ruling that upon delivery of the finished goods, payment must be made within a period of eight days; and you ask, "Is this ruling consistent with the law and can we promulgate such a rule under our rule-making authority granted under Ch. 283, P. L. 1949?"

Chapter 283, P. L. 1949, provides that the commissioner shall have power to make, issue, amend and rescind such regulations and orders as are necessary . . to carry out the provisions of sections 37-A to 37-R.

It is my opinion that you have authority to make such a ruling under this statute.

RALPH W. FARRIS
Attorney General

September 2, 1949

To Honorable Frederick G. Payne, Governor of Maine
Re: Steel Manufacture (Maine Development Commission Memo of August 29, 1949)

Mr. Cram, the industrial agent, of the Maine Development Commission, states that you desire advice from this department with respect to that part of his memorandum to you which refers to Connecticut legislation setting up a "Committee with the power of 'eminent domain' to secure the necessary land for a steel mill in Connecticut, if the steel mill was interested in coming to that state."

The question is whether in the absence of new legislation there is any present legislative authority by which any agency of this state could exercise powers of eminent domain to assist an industry to secure property for its uses.

It is elementary constitutional law that private property may not be taken for public purposes without just compensation; nor unless the public exigencies require it. It is equally well established that private property may not be taken without the owner's consent for private purposes or uses under any circumstances. See *Haley v. Davenport*, 132 Maine 148.

It would be unconstitutional for the legislature to attempt to give the power of eminent domain to any agency for private uses. The power when granted must always be coupled with a public use or purpose.

The justification for the suggested action in Connecticut is apparently that the furnishing of opportunities for employment is such a public purpose as will support the bestowing of the power of eminent domain to secure land upon which a mill may be erected by private enterprise. Whether this may be constitutional in Connecticut would depend, in part, on whether the public benefit doctrine obtains in that state.

In Maine the "public benefit doctrine" does not obtain. Public necessity alone justifies governmental taking of private property. "A public use must be for the general public, or some portion of it, who may have occasion to use it, not a use by or for particular individuals. It is not necessary that all of the public shall have occasion to use. It is necessary that everyone, if he has occasion, shall have the right to use." *Paine v. Savage*, 126 Maine 121.

In *Paine v. Savage* a statute authorizing lumber operations across private lands upon payment of actual damage was held unconstitutional. It was pointed out that "lumber operations as carried on in this State are private enterprises; and while the promotion of their successful operation indirectly benefits the public at large, the power of eminent domain cannot rest on public benefit of this character."

Chapter 248, P. L. 1945 (pertinent part) reads as follows:

> "Sec. 24-A. Real property may be taken by the state by right of eminent domain. The taking of real estate or of any interest therein for the use of the state by right of eminent domain may be effected in the following manner.

"Sec. 24-B. Manner of taking. Whenever the public exigencies require it, the governor and council may adopt an order of taking which shall contain a description of the land taken sufficiently accurate for its identification and shall state the interest therein taken and the purpose for which such property is taken.

"Sec. 24-C. Procedure. All proceedings hereunder shall be in accordance with the provisions of sections 12 to 22, inclusive, of chapter 48."

This legislation only authorizes the Governor and Council to exercise the power of eminent domain within the scope of Article I, Section 21, of the State Constitution as construed by the decisions of the Supreme Judicial Court. Accordingly it is my opinion that there is no present legislation that would authorize the taking of private property without the consent of the owner upon which to erect a mill to be operated by private persons or corporations.

I might point out, however, that in recent years as a result of much social legislation very liberal positions have been taken by various courts. In the cases establishing the constitutionality of the Social Security Act, particularly as to unemployment compensation, the relief of unemployment is declared to be a public purpose or words to that effect. Counsel for interested industries might therefore wish to explore the present possibilities, as a result of decisions rendered since our own court's pronouncements on the subject, that the "public benefit doctrine" could apply in Maine.

JOHN S. S. FESSENDEN
Deputy Attorney General

September 6, 1949

To A. K. Gardner, Commissioner of Agriculture
Re: Expenses of Milk Advisory Committee

This will confirm the oral opinion which I gave to you and to members of the Milk Advisory Committee with respect to that committee's authority to incur expenses pursuant to the provisions of Chapter 278 of the Public Laws of 1949.

The Milk Advisory Committee is authorized to incur expenses for promotional, educational and experimental plans, research and advertising, promotional and advertising plans to be under the supervision of the Maine Development Commission.

The authority to incur expenses includes the authority to contract with the National Dairy Council for research and informational material and also includes authority to contract for the professional services of firms or individuals, pursuant to the general purposes of the committee.

JOHN S. S. FESSENDEN
Deputy Attorney General

September 7, 1949

To Col. Francis J. McCabe, Chief, Maine State Police
Re: Sunday Sports at Agricultural Fairs

I have your memo of September 1st, relating to Chapter 440 of the Public Laws of 1949, amending Section 39 of Chapter 121, R. S. 1944. You seek my opinion relating to this act as it concerns agricultural fairs operating on Sunday, and you ask if this act allows various games to be played on the midways of the fairs on Sundays, and if it allows other recreational activities on Sunday, such as horse pulling, horse racing, and ball games. You also ask me to consider whether or not it would make any difference concerning the above recreational activities if the money collected were turned over to charitable organizations.

Chapter 440 of the Public Laws of 1949 reads as follows:

> "Whoever, on the Lord's day, keeps open his shop, workhouse, warehouse, or place of business; travels; does any work, labor or business on that day, except work of necessity or charity; uses any sport, game or recreation; or is present at any dancing, public diversion, show or entertainment, encouraging the same, shall be punished by a fine of not more than $10; provided, however, that this section shall not apply to the operation of common carriers; to the driving of taxicabs and public carriages; to the operation of airplanes; to the driving of private automobiles or other vehicles; to the printing and selling of Sunday newspapers; to the keeping open of hotels, restaurants, garages and drug stores; to the selling of gasoline; or to the giving of scientific, philosophical, religious or educational lectures, or to musical concerts or theatrical productions."

You will note that this exempts the giving of scientific, philosophical, religious or educational lectures, musical concerts, and theatrical productions.

I feel that Section 39, as amended by Chapter 440 of the Public Laws of 1949, should be read with Section 40 of Chapter 121, R. S. 1944, which legalizes Sunday sports and limits the regulation thereof to local option. That is, the cities and towns can vote whether it shall be lawful to engage in any outdoor recreational or competitive games or sports, between the hours of 1 P. M. and 7 P. M. on Sunday, except boxing, horse racing, air circuses, or wrestling. Section 40 was amended by Chapter 292, P. L. 1947, to permit bowling under the same local option provisions on Sundays between 3 o'clock in the afternoon and 11.30 in the evening. Most cities and towns have accepted the Sunday amateur sports law. The City of Augusta did so on June 19th, the City of Lewiston accepted it recently, the Town of Scarboro accepted it some time ago and has been holding amateur automobile races for some time, at Vinegar Road, Scarboro. I had a complaint from the Civic League on these automobile races and requested the county attorney to investigate. He found that the Town of Scarboro had accepted the Sunday amateur sports law at a regular town meeting and that these races were engaged in by owners of stock cars who were amateurs, and that

the races were run before 7 P. M. I advised the Civic League that apparently these automobile races were amateur races and were permitted by the local government of Scarboro by vote at town meeting, and therefore the races were being operated legally.

I do not believe that the act is broad enough to permit games to be played on the midways at the fairs on Sundays. It certainly does not allow horse racing, nor does it permit ball games unless the inhabitants of the town in which the fair is held have voted to permit amateur sports.

The operation of agricultural fairs, which are scientific, putting on exhibitions of cattle, fruits, vegetables, etc., would undoubtedly be permitted on Sunday under the amendment of 1949, as well as musical concerts and theatrical productions, regardless of whether or not there was any admission charged. There is nothing in the statute to legalize these activities if the money collected is turned over to charitable organizations. That is one of the provisions of the Beano law, but I do not believe that it will be found in any of the Sunday laws.

RALPH W. FARRIS
Attorney General

September 7, 1949

To Col. Francis J. McCabe, Chief, Maine State Police
Re: Game of Flush

I have your memo of September 1st, enclosing a description of a game known as "Flush" which you state seems to you very similar to the game known as Beano. You also enclose a card used in the game of Flush so that I may compare it with the card used in the game of Beano. You state that names and cards are used in the game of Flush, which in the game of Beano are only numbers, and you ask whether this game of Flush would circumvent the law on Beano, so that it might be played without coming under the regulations for Beano. You also ask whether this game of Flush would be considered Beano, and say that after I have considered your questions you would like my opinion as to the legality of this game, in order that, if it is allowed to be played in this State, you may inform all State Police officers accordingly.

In my opinion this game would not come under the regulations of Beano and would not be considered as such, as in Beano an altogether different method is used: a man with a microphone calls the numbers and the beans are placed by the player on the numbers called by the man at the microphone, whereas according to the description of the game of Flush, each player selects his own card by tossing a small rubber ball which goes into a pocket and remains in the pocket into which it has been tossed, until the completion of the game. That is, there is some element of skill in tossing the ball, which may fall on any given card on the board. This game appears to me no different than some of the games which are being played at Old

Orchard, where the balls are tossed into a frame that designates certain cards, and which they call Poker. Of course there is a certain amount of skill, involved in games where balls are tossed to secure the card or number, rather than having a number called by the one conducting the game, as in Beano. I noted that at the various fairs they are placing money on certain games and tossing a ball on a plate with indentations for each color, and when the ball settles on a certain color, the player who has his money on that particular color wins all on the board.

Flush appears to be no different than many other games that are now in use in Maine at various carnivals and fairs, where the throwing of balls, darts, or rings on a certain number or a certain color wins a prize. Therefore I do not care to rule upon the legality of this proposed game at this time. The only thing that I can say is that I do not believe that the operators of this game would be obliged to obtain a beano license under the law. However, I might say in passing that if these other games which I have mentioned as being played at Old Orchard and at agricultural fairs are permitted, Flush should be handled in the same manner.

RALPH W. FARRIS
Attorney General

September 8, 1949

To William Tudor Gardiner, Chairman, Aeronautics Commission
Re: Sunday Air Show at the State Airport

In reply to your memorandum of September 6, 1949, you are advised that the matter has been cleared with the Governor's office and that the Governor has informed me that he sees no objection to the Maine Aeronautics Commission making such arrangements as they deem wise administratively for the use of the Augusta Airport for the promotion of aviation, especially in connection with a VFW demonstration to raise funds for charitable pusposes.

It is our understanding that the proposed plan is to be in no sense an "air circus," nor will it be featured, promoted, or advertised as an "air circus."

JOHN S. S. FESSENDEN
Deputy Attorney General

September 8, 1949

To George J. Stobie, Commissioner, Inland Fisheries and Game
Re: Chain-of-Ponds Dam and Screen

I have your letter of August 24th, enclosing one from C. Stanton Carville of Stratton, dated August 22nd, relating to dam and screen at Chain-of-Ponds, T. 2, R. 6, in the County of Franklin, Resolve for which will be found in Chapter 175, Resolves of 1949. Mr. Carville states that the Stratton Light Company has now entered into this matter, advancing $2000 of the $6000 to be raised to match the State appropriation, in return for which they expect 15 or 18 inches of water when required to operate their plant at Eustis. On the basis of this you ask if you have a right to enter into an agreement of this nature, which was not mentioned at any hearing or at any time during the passage of this bill.

I have examined this Resolve and find no authority in it or in any other statute for you to enter into an agreement with a private corporation, giving them any additional flowage rights to operate their plant. That is something that will have to be worked out between Mr. Carville and the others who are raising the money to complete the project. The Resolve provides only for an appropriation of $6000 for this purpose, with the proviso that the State shall not be liable for more than one-half of the cost of said dam and screen. So it seems to me that you can only go up to $6000 under your authority from this Resolve, and anything further must be worked out with the Megantic Fish and Game Association or others who have interests in this dam.

RALPH W. FARRIS
Attorney General

September 9, 1949

To the Milk Commission
Re: Sales to State Institutions

This will reduce to writing as briefly as possible the verbal counsel which I have given to the Milk Commission on two occasions with respect to the status of State Institutions in connection with the Milk Control law.

Section 1 of that law contains definitions as to the meaning of words used in that law. The word "person" is defined as any person, firm, corporation, association or other business unit. The word "consumer" is defined as any person other than a milk dealer who purchases for fluid consumption. It is a fundamental rule of construction that when a series of words is followed by a phrase such as the phrase used in the definition of person, "or other business unit," such phrase means other things of the same general class as those specifically named. It is obvious, then, that as defined by the Milk Control law, the State of Maine is not a person; and if it is not a person, it follows that it is not a consumer. Therefore, such State institutions as come within the operating functions of the executive departments of the government of the State of Maine are not persons within the meaning of the definition, and therefore are not consumers within the meaning of the statutory definition.

It follows, then, that the Milk Commission cannot set a minimum price at which dealers may sell milk to a consuming unit which is neither a consumer nor a person within the statutory definition.

At the request of the Commission I prepared the original draft of what, I am told, is now paragraph 12 of the Commission's regulations. Several copies of this draft were presented by me to the Board's meeting on July 21st, at which meeting the draft was discussed, together with its implications. Following that time, the secretary of the Commission came to the Attorney General's office with a re-draft of the same material, which we edited, and which I am now told, has been issued as paragraph 12. I do not at this writing have before me a copy of the material promulgated.

JOHN S. S. FESSENDEN
Deputy Attorney General

September 12, 1949

To Marion E. Martin, Commissioner of Labor and Industry
Re: Elevator inspectors; chief boiler inspector

I have your memo of September 7th relating to the interpretation of Section 55 of Chapter 25, R. S. 1944 and Sections 6 and 7 of Chapter 59, R. S. 1944, as affected by Chapter 374 of the Public Laws of 1949, Section 99-D, and asking the following question:

"Are the chief boiler inspector and the supervising inspector of elevators subject to the Personnel Law?"

I have examined Section 55 of Chapter 25, which provides that the Commissioner shall appoint with the approval of the Governor and Council, and may remove for cause, when so appointed, a citizen of this State who shall have had at the time of such appointment certain experience, etc.; and the Commissioner may likewise appoint such deputy inspectors as are necessary to carry out the provisions of Chapter 25 relating to boiler inspection.

Section 99-D of Chapter 374, P. L. 1949, provides that the Commissioner shall appoint, with the approval of the Governor and Council, and may remove for cause, a citizen qualified to fulfill the functions of the office to serve as supervising inspector of elevators, and the Commissioner may appoint such elevator inspectors as are necessary to carry out the provisions of Chapter 374, P. L. 1949, provided that the applicants can successfully pass the examination. Examination is also provided for in Section 55 of Chapter 25.

Therefore in my opinion the chief boiler inspector and the supervising inspector of elevators are not subject to the Personnel Law, as the statutes of the State provide for special examinations under the direction of your department and not by the Personnel Board.

Sections 6 and 7 of Chapter 59 provide that the unclassified service shall comprise heads of departments and members of boards and commissions required by law to be appointed by the Governor with the advice and consent of the Council. Therefore it is my opinion that, theoretically, the Commissioner names the inspectors under both Section 55 of Chapter 25 and Section 99-D of Chapter 374, P. L. 1949, and they are approved by the Governor and Council. Therefore they come under subsection III of Section 7 of Chapter 59, which places them in the unclassified service, and they are not under the Personnel Board.

RALPH W. FARRIS
Attorney General

September 13, 1949

To Ernest H. Johnson, State Tax Assessor
Re: Interpretation of Chapter 438, P. L. 1949

I have your memo of June 23, 1949, relating to the provisions of Chapter 438 of the Public Laws of 1949, which replaces Sections 142-144-A and 142-154-A, relating to the taxation of deposits in savings banks and trust companies. You state in your memo that Section 1 of the new law provides that "Every savings bank, institution for savings and trust company incor-

porated under the laws of this state shall semi-annually . . make a return . . of the average amount of its deposits, excluding deposits of other banking and savings institutions, for the 6 months period, etc."

You then inquire whether in the phrase "excluding the deposits of other banking and savings institutions," the words "other banking and savings institutions" refer only to such banks as are subject to taxation under this law, or also include industrial banks, building and loan associations and national banks.

In interpreting the statute we must resort to the context and the subject matter, as enacted by the legislature.

Section 1 of Chapter 438 replaces Section 2 of Chapter 55, R. S., as amended, which relates to the deputy bank commissioner, examiners, expenses, etc. In the second paragraph of the new Section 2 of Chapter 55 the language reads as you quote in your memo, "Every savings bank, institution for savings and trust company incorporated under the laws of this state, etc." Therefore in my opinion savings banks, institutions for savings, and trust companies are the subject matter of this new amendment. Therefore it is my opinion that the legislature did not intend to include industrial banks, building and loan associations, and national banks, as they exclude deposits of other banking and savings institutions. Apparently they left out the words "savings banks" in the fifth line of said paragraph between the words "other" and "banking," because if they had intended to include industrial banks, building and loan associations and national banks, these institutions would have been referred to in the subject matter of this new section.

Paragraph 3 of the new section refers to "all loan and building associations and institutions other than savings banks, institutions for savings and trust companies," and taxes them a sum equivalent to $2.50 for each $100,000 or major portion thereof of their resources, etc. . .

RALPH W. FARRIS
Attorney General

September 13, 1949

To Philip A. Annas, Associated Deputy Commissioner of Education
Re: Legal Tuition Charge

I have your memo of September 13th, stating that an academy in this State proposes to charge $200 tuition, and that the state average of per pupil cost in all schools last year was $179.17, which amount is the maximum charge allowable to municipalities under Chapter 443, P. L. 1949, but that this academy, in dealing with students from towns not maintaining secondary schools, proposed to charge the town $179 and the parent $21. Upon this statement of facts you posed the following questions:

"(1) Is this procedure legal in the light of Chapter 443 (which amends Section 98, Chapter 37, R. S. 1944?)"

My reply to question 1 is in the negative.

"(2) Would such procedure be legal in the case of a public high school?"

My answer to question 2 is in the negative.

My reason for answering your two questions in the negative is based on the language contained in Section 98 of Chapter 37 of the Revised Statutes, as amended by Chapter 443 of the Public Laws of 1949, which provides that tuition shall not exceed 90% of the average cost of all pupils in the secondary schools of the State for the preceding year. Academies which are receiving State stipends and tuition from the towns for each pupil sent to the academies which are taking the places of secondary schools are bound by this statute, and any charge to the parents of pupils attending secondary schools in excess of that provided by law, would be illegal.

RALPH W. FARRIS
Attorney General

September 14, 1949

To Francis G. Buzzell, Chief, Division of Animal Industry
Re: Livestock Buyers from out of State

On reading the provisions of Chapter 417 of the Public Laws of 1949, it is my opinion that non-resident livestock dealers who carry on the business of buying livestock in the State should be licensed under the provisions of this chapter.

As I understand it, this chapter was enacted under the police powers of the State as a measure necessary for the general health and welfare of the people of the State. It makes provision for the reasonable control of non-residents who carry on the business of being dealers in livestock in the State, and it is difficult to ascertain how the department could exercise such reasonable control as to non-residents if they were not licensed, even though the non-residents represent that they will not re-sell livestock in this State. If a licensed non-resident does not choose to re-sell in this State, it simply means that he does not have to furnish the test information to his buyer, since the law, of course, does not apply beyond the geographical jurisdiction of the State of Maine.

Any aggrieved non-resident is given the right to appeal to the Superior Court of Kennebec County.

JOHN S. S. FESSENDEN
Deputy Attorney General

September 16, 1949

To Fred L. Kenney, Director of Finance, Education Department

I have examined the form which you left at my office a few days ago, together with a copy of Chapter 202, P&SL 1949, relating to assessment of State taxes for the year 1949-50.

I have taken this matter up with the State Treasurer and I think your form can be used and you can begin your advances of funds as of September 15th, subject to the approval of the State Treasurer, as provided by the statute.

However, I should be very careful in making these advances after September 15th and check with the State Treasurer in regard to unpaid taxes by the municipalities to which you are making advances under Chapter 202. . . .

RALPH W. FARRIS
Attorney General

September 19, 1949

To Honorable Frederick G. Payne, Governor of Maine
Re: Employment Security Law

The Employment Security law does not create any vested rights in anyone. While unemployment compensation is a modified form of insurance, it is not actually insurance in the "contract" sense. By this is meant, there is no contract or promise that in consideration of the receipt of a stated amount of premium, the insurance company will pay a stated amount of money upon the arising of a given contingency.

No recipient of unemployment compensation pays anything in the way of a premium. His former employer paid contributions (taxes) into the program fund for the relief of unemployment, if and when it occurs. The amount to be paid to unemployed individuals is determined by the legislature. Effective September 1, 1949, the legislature changed the payment schedule. It has no legal obligation to maintain any particular schedule. It could, if it so voted, repeal the whole program at any time. No rights of contract are involved and hence there are no questions of "legality" as to the validity of legislative acts changing rates as of any given date.

JOHN S. S. FESSENDEN
Deputy Attorney General

September 20, 1949

To Austin Wilkins, Deputy Forest Commissioner
Re: Claim of Somerville Plantation for Reimbursement under the provisions of Chapter 356, P. L. 1949

You stated that the Controller's office has raised a question whether the claim of Somerville Plantation for reimbursement for fire fighting in connection with a fire that occurred in that Plantation on July 24, 1949, should be paid at the rates established by Section 58 of Chapter 85, R. S., as repealed and replaced by Chapter 362 of the Public Laws of 1945, or at the rates prescribed by Chapter 357 of the Public Laws of 1949, which again repealed and replaced the same section.

Chapter 356 of the Public Laws of 1949 did not become effective until August 6, 1949. Subsections IV, V and VI of this act make provision for the rate of reimbursement payments to towns and the methods of calculation for such payments, together with the form and content of informational vouchers upon which such payments can be made.

You have stated that the Somerville fire was finally extinguished on August 18, 1949. Under the provisions of Chapter 356, which became effective on

August 6, 1949, no payment could have been made to Somerville Plantation until the final extinguishment of the fire, since it is after the final extinguishment that the informational vouchers are to be prepared, upon the basis of which the payment shall be made. Consequently, since the extinguishment occurred after August 6th, the Plantation should be reimbursed in accordance with the rates and calculation methods prescribed under Chapter 356 of the Public Laws of 1949.

JOHN S. S. FESSENDEN
Deputy Attorney General

September 20, 1949

To Harland A. Ladd, Commissioner of Education
Re: Educational Benefits for War Orphans

In your memorandum of September 14, 1949, you asked five questions in connection with the administration of Sections 119-122 of Chapter 37, R. S. 1944, which sections provide for scholarships for orphans of veterans who were killed in action or who died from service-connected disabilities.

Question 1. "What is the effective date of the termination of World War I as it pertains to War Orphans' benefits?"

Answer. Chapter 360 of the Public Laws of 1945, which is AN ACT Relating to Preference in State Employment for Veterans, prescribes the ending date of World War I for the purposes of that chapter. There being no termination date prescribed in Sections 119-122 of Chapter 37, R. S. 1944, there would appear to be no objection to using the legislatively defined ending date as given in Chapter 360, since both enactments pertain to benefits to be given as a result of war service. Accordingly determination of World War I, as it pertains to war orphans' benefits, is November 12, 1918, except that if the veteran's service was in Russia, the termination date is April 1, 1920.

Question 2. "What is the effective date of the termination of World War II as it pertains to War Orphans' benefits?"

Answer. Chapter 360 of the Public Laws of 1945 states that for the purposes of veterans' preference in State employment the right shall arise if the veteran rendered service between December 7, 1941 and the date of cessation of hostilities as fixed by the United States Government. Again, since Sections 119-122 of Chapter 47, R. S. 1944, do not prescribe the termination date of World War II, and since they pertain to benefits to be given as a result of war service, it appears reasonable to use the same dates as fixed by the legislature in Chapter 360, P. L. 1945, for veterans' preference in State employment. The President of the United States by official proclamation declared the cessation of hostilities effective December 31, 1946. While there is considerable speculation as to whether we are still at war, and while the President's proclamation states that "a state of war still exists," it should be pointed out that the powers with which the United States was at war having surrendered, the war in fact is concluded, even though in diplomatic circles a state of war may be considered to exist. This situation may, as

a matter of diplomacy, continue to exist until such time as a treaty of peace is concluded. However, a treaty of peace does not in fact end a war; it simply negotiates the terms of the peace under which the nations will continue their international intercourse; the surrender ends the war.

Question 3. "Is it reasonable to define 'service-connected disability' as any disability or death incurred during wartime service whether in combat, camp, or on pass, excluding that which may result from the serviceman's own wilful misconduct?"

Answer. The term "service-connected disability" has by common usage and understanding become almost inseparably within the determinative province of the United States Veterans Administration. It is a phrase coined and used in Federal legislation pertaining to veterans and to the administration of veterans' affairs. While Sections 119-122 of Chapter 37, R. S. 1944, do not modify in any place the phrase "service-connected disability" by the words "as determined by the Veterans Administration," I see no objection to the adoption by the Commissioner of Education of a policy to the effect that "service-connected disability" in the administration of Sections 119-122 shall mean such service-connected disability as is recognized by the United States Veterans Administration. It is suggested that arrangements be made with the Veterans Administration so that such information may be available to the Department of Education in connection with an orphan's application for educational benefits.

Question 4. "Does the term 'children of deceased servicemen' apply to female veterans?"

Answer. Yes.

Question 5. "Is there a time limit which a veteran must have served prior to injury or death?"

Answer. If my answer to Question 3 is followed in connection with "service-connected disability," it would be both reasonable and logical to adopt administratively a policy that entitlement to orphans' benefits shall again be subject to the Veterans Administration's recognition as to the length of service which will entitle a veteran to a rating of "service-connected disability."

In connection with an orphan's entitlement to benefits as a result of the veterans's being killed in action, there should be no length of term of service precedent to the entitlement, since "killed in action" would be a matter of fact, regardless of length of service.

JOHN S. S. FESSENDEN
Deputy Attorney General

September 21, 1949

To Honorable Frederick G. Payne, Governor of Maine
Re: Provisions of Law Relative to Private Detectives

In accordance with a request from your office I am attaching hereto Section 14 of Chapter 131, R. S. 1944.

This section was amended by Chapter 2 of the Public Laws of 1945 by providing that the bond to be given by the licensee shall be executed by a surety company authorized to do business within the State and shall be on a form approved by the Insurance Commissioner and shall be filed with the State Auditor, instead of permitting a simple bond with two sureties approved by the Governor and Council.

The section was also amended by Chapter 26 of the Public Laws of 1949 by providing that the Governor and Council may license not exceeding 50 detectives instead of 35.

I do not see how any individual could operate a detective agency with any authority whatsoever, if he were not licensed in accordance with the provisions of law.

JOHN S. S. FESSENDEN
Deputy Attorney General

September 22, 1949

To the Aeronautical Commission
Re: Interpretation of Chapter 245, P. L. 1949

With your memorandum of September 20, 1949, you enclosed a copy of a letter which the Commission had received from the city manager of Bangor, Maine, raising the question whether the City of Bangor may be eligible to receive allotments from Commission funds for snow removal from Dow Field upon its de-activation by the Air Force. The question raised is whether in connection with the use of that airport by "itinerant planes," use may be limited to those planes having two-way radio, or whether this would so far restrict the use of the airport as to render the City of Bangor ineligible to receive such allotments.

Section 167 of Chapter 14, R. S. 1944, provides for allotments for snow removal for municipal, state and federal airports in such manner and in such amounts as the Commission deems equitable. This section was amended by Chapter 337 of the Public Laws of 1947, but in no manner altered the provisions with respect to the present question. Under the original provisions there would be no question, I believe, but that if the City of Bangor undertakes to operate and control Dow Field as a municipal project, it would be eligible to receive allotments. The question then is whether Chapter 245 of the Public Laws of 1949 so amends Section 167 of Chapter 14, R. S., as to affect the rights of the City of Bangor in connection with the use of that airport by itinerant planes.

Chapter 245 of the Public Laws of 1949 does not alter or amend the rights of the City of Bangor when that city undertakes to operate the airport as a municipal project and obligates itself to take care of the snow removal. Chapter 245 of the Public Laws of 1949 applies only to the extending of

allotments to commercial carriers operating on a regular schedule, to assist them in snow removal when the state, federal or municipal owner of an airport does not obligate itself to take care of snow removal. Chapter 245 does not involve aid to municipalities, but on the contrary aid to the commercial carriers themselves.

JOHN S. S. FESSENDEN
Deputy Attorney General

September 22, 1949

To H. H. Harris, Controller
Re: Mileage

You have asked whether Chapter 368 of the Public Laws of 1949, "An Act Relating to Automobile Travel by State Employees," authorizes the reimbursement to State employees effective at the beginning of the fiscal year at the rates prescribed therein, or becomes effective for reimbursement purposes only as of August 6, 1949.

I have examined Chapter 368 of the Public Laws of 1949 and also Chapter 396 of the Public Laws of 1947 concerning which latter chapter the identical question was raised. In connection with Chapter 396 of the Public Laws of 1947 the then Deputy Attorney General, Mr. Abraham Breitbard, addressed an opinion to you dated May 28, 1947, in which he stated that it was clearly the intention of the legislature to provide the increased allowance per mile to begin immediately after the expiration of the act which increased such allowance in 1945. Since the facts surrounding the enactment of Chapter 368 of the Public Laws of 1949 are identical with the facts concerning Chapter 396 of the Public Laws of 1947, upon which Mr. Breitbard expressed his opinion, his opinion not having been overruled, it serves as a precedent and may be followed in the administration of the provisions of Chapter 368 of the Public Laws of 1949.

If additional authority were necessary, I might point out that Chapter 396 of the Public Laws of 1947 included a second section limiting the force of that chapter to a period of two years. That chapter having become effective on August 13, 1947, its effect might be construed to continue to August 12, 1949. Chapter 368 of the Public Laws of 1949, repealing that chapter, became effective on August 6, 1949, and upon such construction there would obviously be no hiatus between the two enactments.

JOHN S. S. FESSENDEN
Deputy Attorney General

September 22, 1949

To Col. William B. Williamson
Re: "Theatrical Productions"

In response to your inquiry relating to the language of Chapter 440 of the Public Laws of 1949, which is an amendment to Section 39 of Chapter 121, Revised Statutes of Maine, which relates to recreation on the Lord's day, I will say that the amendment of 1949 included the exemption of musical concerts and theatrical productions. You inquired of me this morning whether that would include vaudeville productions.

The term "theatrical productions" is broad and has been judicially defined to include many kinds of entertainment. For example, " 'Vaudeville' is a term describing a species of theatrical entertainment, composed of isolated acts forming a balanced show." The word "production," from a theatrical standpoint, means the act or process of producing, bringing forth, or exhibiting to view. The word "theatre" from the Greek means literally "place for seeing." Standard authorities define it as a building adapted to dramatic, operatic or spectacular representations, or a play-house.

Therefore it is my opinion that the language of the statute would include vaudeville shows produced in a theatre, which, when composed of several acts, form a whole show.

RALPH W. FARRIS
Attorney General

September 22, 1949

To Honorable Edgar F. Corliss, Public Utilities Commissioner

Reference is made to your letter of September 22, 1949, in which you asked my interpretation of the meaning of Section 22 of Chapter 44, R. S. 1944, in the light of paragraph E of subsection I of Section 27 of the same chapter, as those sections pertain to a motor vehicle carrier for hire transporting pulp wood 30 miles by private way in the State of Maine, 30 miles by public highway to the boundary of the State of Maine, and thence 33 miles in the State of New Hampshire.

Section 22 of Chapter 44 was amended by Chapter 263 of the Public Laws of 1949 in respects which, I believe, are immaterial to your present question.

Paragraph E of subsection I of Section 27 was amended by Section 1 of Chapter 212 of the Public Laws of 1949 by inserting immediately thereafter the words "by highway."

Section 22 states that its purpose is to provide proper supervision and control of the use of the "highways of this state." Prior to the amendment to Section 27 referred to above, in 1949, paragraph E referred to the hauling from the woodlot or forest area to points within 40 miles thereof, but did not state whether such distance included private ways or public ways or both. By the amendment inserting the words "by highway" in this paragraph, it would appear that the legislature intended the supervision of the Public Utilities Commission to be measured only by miles of usage of public highways. Since the Public Utilities Commission does not have jurisdiction beyond the borders of the State of Maine, it follows that the mileage an excess of which gives rise to Public Utilities Commission supervision must be mileage over public highways in this State.

My interpretation of the question which you raise is, then, that on the facts presented in your letter of September 22, 1949, the motor vehicle carrier would not be required to obtain a permit for such operation from the Commission.

RALPH W. FARRIS
Attorney General

September 23, 1949

To Everett F. Greaton, Executive Secretary,
Maine Development Commission
Re: Information Center, Kittery—contract for construction

I shall have to revamp this contract as to form, to follow out the provisions of Chapter 206, P&SL 1949, authorizing this construction, and Chapter 35 of the Revised Statutes concerning the powers and duties of the Maine Development Commission, which is a State agency.

I am returning the rough draft which you handed me the other day, to take up with George Varney in regard to the essential elements which you desire to have in the contract. You will note that Chapter 206, P&SL 1949 authorized the State of Maine information center, and the law states that the building is to be known as the State of Maine Information Center. I feel that you should follow the legislative language in designating the name of the building which is to be constructed at Kittery at the junction of state Highway U. S. #1 and the terminus of the Maine Turnpike.

In regard to taxation, the State of Maine is not liable for taxes, and as I understand it, the Turnpike Authority is not liable for taxes, and I doubt whether there should be a clause in there raising the question of taxes, unless George feels that the property is subject to taxation. The building, when completed, will be the property of the State and will not be subject to taxation. I should prefer that the clause relating to assessment of taxes be left out of the contract. . .

RALPH W. FARRIS
Attorney General

September 30, 1949

To Hon. Edgar F. Corliss, Public Utilities Commission

Your letter of September 22nd received, stating that a certain motor vehicle carrier for hire is transporting pulp wood from Kennebago in the State of Maine for the Brown Company in Berlin, N. H., and is performing this transportation under authority granted to him by the Interstate Commerce Commission. He travels some 30 miles by private way, some 30 miles over public highways to the boundary between Maine and New Hampshire, and than an additional 33 miles to the point of delivery to said Brown Company at Berlin, N. H.

You cite Section 22 of Chapter 44 of the Revised Statutes of Maine as amended by Chapter 263 of the Public Laws of 1949, which provides in part as follows:

> "In order that there may be proper supervision and control of the use of the highways of this state, every person, firm or corporation transporting freight or merchandise for hire by motor vehicle upon the public highways between points within and points without the state is required to obtain a permit for such operation from the commission. . ."

I call your attention to the fact that the purpose of this law is to supervise and control the use of the highways of *this State*, and not other States and Canada.

Then you quote Section 27 of Chapter 44, subsection I, paragraph E, as amended by Chapter 212, Section 1, P. L. 1949, which reads as follows:

> "While engaged exclusively in the hauling of wood, pulpwood, logs or sawed lumber from the wood lot or forest area where cut or sawed to points within 60 miles thereof, by highway, or while hauling, within said distance, horses, crew, equipment and supplies to or from such wood lot or forest area."

Upon this statement of facts and the law you ask the following question: "Is the above carrier exempt from the provisions of said Section 22 under said Section I, E?" and add that the Commission asks my interpretation of the meaning of the law in this matter.

You will note that the first sentence of Section 27 of Chapter 44 reads: "There shall be exempted from the provisions of sections 18 to 26, inclusive, the operation over the highways of motor vehicles: . ." Paragraph E of subsection I of said Section 27 provides the exemption of hauling of wood, pulpwood, logs and sawed lumber from the wood lot or forest area where cut or sawed to points within 60 miles thereof by highway.

It is my opinion that the legislature intended to include only public highways within the State of Maine, as under the Constitution of the United States they have no police powers for controlling highways outside the State of Maine. If the legislature attempted to do so, in my opinion it would be imposing an undue burden upon interstate commerce.

This contract motor vehicle carrier is transporting pulpwood under authority of the Interstate Commerce Commission and is using only 30 miles of the public highways in Maine, while he is entitled, with other citizens of the State, to use 60 miles and come within the exemption provided in paragraph E of said subsection I, as amended by the Public Laws of 1949. If this were not so, one contract carrier could use 60 miles of a highway under this amendment, in Maine, and another contract carrier using only 30 miles of highway in interstate commerce might be obliged to secure a permit under Section 22, whereas Section 27 provides that there shall be exempted from the provisions of Sections 18-26, inclusive, the operation over the highways of motor vehicles, which, in my opinion, means public highways of the State of Maine. Therefore, if this contract carrier does not use over sixty miles of public highway in Maine, in my opinion it is not necessary for him to secure a permit under Section 22.

It is true that Section 22 provides that motor vehicles upon the public highways between points within and points without the state shall obtain permits, but Section 27 subsequently exempts the carrier if he does not travel over sixty miles by highway. It is my opinion that the 30 miles traveled by private way would not be included in the term "by highway" as intended by the legislature, as the word "highway" is a generic term embracing all kinds of public ways and does not include private ways.

It is true that large numbers of motor vehicle carriers hauling pulpwood for short distances in Maine to plants outside the State of Maine would naturally increase the dangers to our public highways and would make some more effective regulation necessary to reduce the wear on the highways.

Before the amendment of 1949, paragraph E of subsection I of Section 27 provided only 40 miles from the point in the forest area where the wood was cut, without mentioning highways, but the legislature saw fit to extend the 40-mile exemption to 60 miles on our highways. Therefore if it had intended to include those trucks doing interstate commerce business on our borders, it would have reduced the exemption to 20 or 30 miles rather than extending it to 60, as it did in paragraph I, relating to transportation of seed, feed, fertilizer and livestock.

I trust that this answers your question.

RALPH W. FARRIS
Attorney General

October 1, 1949

To Harold I. Goss, Secretary of State
Re: Itinerant Photographers—Chapter 434, P. L. 1949

In answer to your inquiry relating to the itinerant photographers law as provided in Chapter 434 of the Public Laws of 1949, I will advise that Section 3 defines an itinerant photographer to be "a person, partnership or corporation having no regularly established place of business in this state who personally or by agents or servants goes from town to town or from place to place within a town soliciting the making of photographic pictures or reproductions with a view to selling the same to the persons solicited; . . ."

In my opinion corporations are required to secure a license, if their agents or servants come within the definition of Chapter 434.

The next question is whether the servants or agents of a corporation that has been duly licensed under the provisions of this act shall be obliged to take out licenses to practice itinerant photography; and in answer to this question I will say that Section 3 of Chapter 434, subsection 99-B provides as follows:

> "Any person who practices the profession of an itinerant photographer in this state, whether as principal, agent or servant, and whether engaged in soliciting or in one or more of the operations involved in the making of photographic pictures or reproductions, shall obtain a license as hereinafter provided, . ."

Therefore it is my opinion that even though a corporation is licensed as an itinerant photographer, its servants and agents who personally go from town to town or from place to place within a town in the State of Maine, soliciting the making of photographic pictures or reproductions with a view to selling the same to the persons solicited come within the provisions of this act, and all engaged in this business, whether corporations or individuals, must secure a license as provided by the act.

RALPH W. FARRIS
Attorney General

October 10, 1949

To Lester E. Brown, Chief Warden, Inland Fisheries and Game
Re: Hunting Licenses—State Wards

I have yours of September 29th, stating that you have a problem with regard to certain boys, ranging in age from twelve to seventeen years, who are State wards desiring hunting licenses. You want to know my opinion as to the application to this problem of paragraph six, Section 63 of the Tenth Biennial Revision. Your question is, "Who would constitute the parent or guardian if the ward was to be permitted to hunt without a license, and by the same token who should sign the 'Written Consent'?"

In the case of State wards, the State institution in charge of the State ward would be the one that would sign the written consent, if there was no parent living or legal guardian appointed. I do not believe that the Department of Health and Welfare or the State institution in charge of minors should be signing written consents for hunting licenses for State wards, however.

RALPH W. FARRIS
Attorney General

October 10, 1949

To Ernest H. Johnson, State Tax Assessor
Re: Disposal of Schoolhouses in Deorganized Towns

I have your memo of October 4th, relating to the disposal of schoolhouses in deorganized towns by the State Tax Assessor under the provisions of Section 13 of Chapter 90, R. S., as amended, which section reads in part as follows:

> "The state tax assessor shall have the authority to sell or otherwise dispose of any property, . . provided that he shall first obtain written permission from the commissioner of education. . . Such sale or disposal may take place at any time subsequent to deorganization and the proceeds from the sale shall be expended as is provided for in this section."

On the basis of this statute you ask the following question:

"Under the above provision of the law, has the state tax assessor the right to dispose of schoolhouses declared surplus by the Commissioner of Education by transfer to the Forest Commissioner for demolition?"

It is my opinion that having first obtained the written permission of the Commissioner of Education, you have a right to dispose of said property, if you decide not to sell, as you see fit, and my answer to the question is in the affirmative, as I note by copies of letters from Mr. Ladd, Commissioner of Education, that you have received his consent under the provisions of Chapter 90, Section 13, R. S. 1944.

RALPH W. FARRIS
Attorney General

October 10, 1949

To Ernest H. Johnson, State Tax Assessor
Re: Dresser Schoolhouse and Lot in Albany Township

I have your memo of October 4th, stating that on April 6, 1884, Washington French conveyed a schoolhouse and lot to the inhabitants of School District #2 in Albany, by deed recorded in Book 310, page 227. You further call my attention to an Act of 1893, Chapter 216 of the Public Laws, which provided that all existing school districts were abolished and the towns were given possession of such school property. You further state that as of January 1, 1938, the town of Albany was deorganized. On August 10, 1949, the Commissioner of Education notified the State Tax Assessor of permission to dispose of this property under the provisions of Chapter 90, Section 13, R. S., as amended; but meanwhile, on May 15, 1949, four individuals purporting to be "inhabitants of District No. (2) in Albany" attempted to convey the above schoolhouse and lot to J. Ernest Brown, an inhabitant of said school district. You further state that the purchaser was notified by your office on July 1, 1949, that the above property was state-owned, but that no reply was received to this letter.

Based upon the foregoing statement of facts and the law, you ask, the following question:

"Did the grantee in the above deed acquire any interest in this property by virtue of the deed given on May 15, 1949?"

It is my opinion that after the effective date of Chapter 216, P. L. 1893, abolishing all school districts, the property was no longer in the possession of the school district, but became the property of the town, and the State Tax Assessor is authorized to sell or otherwise dispose of said property, and the grantee in the above deed did not acquire any interest or title in this property by virtue of any deed given on May 15, 1949 by individuals purporting to be inhabitants of the school district, because there was no such school district in existence at the time of the execution of said deed, the same having been abolished by said statute of 1893.

RALPH W. FARRIS
Attorney General

October 12, 1949

To Paul A. MacDonald, Deputy Secretary of State
Re: An Act to Incorporate the Skowhegan School District, Ch. 170, P&SL 1949

In your memorandum of October 12, 1949, you detail the legislative history from the time the above-referred to Act was referred to the Legal Affairs Committee of the 94th Legislature until its final passage by the respective branches of that Legislature and its signature by the Governor of the State. Because of the necessary length of your statement of facts the same is not repeated herein, but it should be considered as incorporated herein by reference.

In brief, it appears that the original Act provided in the referendum clause that the referendum by the people should be held at a special town meeting, to be held "not later than 3 months after the effective date of this act," and that an amendment to the referendum section provided that the referendum should be held at "the next annual town meeting" of the town of Skowhegan. It appears that the proposed amendment failed of passage in the House, but that, due to errors as recited in your statement of facts, the bill as finally enacted and as signed by the Speaker of the House on May 4th, and enacted and as signed by the President of the Senate on May 5th and approved by the Governor on May 6th, contained the referendum clause as proposed by the defeated amendment and not the referendum clause as provided in the original bill.

The question under these circumstances is whether the bill as finally enacted is the law, or whether, due to the error, the bill as it should have been engrossed is the law.

The courts of this country have divided in passing upon questions of this kind between adopting and adhering to two widely differing but nevertheless clearly defined rules of law. In some jurisdictions it is held, under the so-called "journal entry rule," that courts shall have recourse to the record of the legislature to ascertain whether the law has in fact been passed in accordance with Constitutional requirements. (49 Am. Jur., 255; 50 Am. Jur., 123.) In other jurisdictions it is held, under the "enrolled bill rule," that courts may not resort to the legislative record in cases of alleged discrepancy between a bill as finally enacted and the record which may show a contrary intent. (49 Am. Jur., 255; 50 Am. Jur., 123.)

In England it has uniformly been held that the enrolled bill is conclusive and that the courts cannot go beyond it for the purpose of examining the passage of a law or the contents in cases of alleged discrepancies. (50 Am. Jur., 129.) In the same reference the following is stated:

> "Similarly, in the United States according to one line of cases, the enrolled bill imports absolute verity, and the courts will not look beyond it to ascertain whether it has been regularly enacted, or the terms of the statute in cases of alleged discrepancies."

It would appear, then, that the answer to your question should be found in the decisions of the Supreme Judicial Court of Maine, if that Court has been called upon to pass upon the question, it being clear that if called upon, it would announce which of the two rules is to be followed in Maine. It appears that the Supreme Judicial Court of Maine has passed upon the exact question presented in the case of *Weeks v. Smith et al.*, reported in 81 Maine, beginning at page 538. In this case, on page 547, the Court states as follows:

> "But when the original act, duly certified by the presiding officer of each house to have been properly passed, and approved by the governor, showing upon its face no irregularities or violation of constitutional methods, is found deposited in the secretary's office, it is the highest evidence of the legislative will, and must be considered as absolute verity, and cannot be impeached by any irregularity touching its passage shown by the journal of either house."*

*Adhered to, 104 Maine, p. 23.

Accordingly, since Chapter 170 of the Private and Special Laws of 1949 shows upon its face no irregularities or violation of constitutional methods, since it was found deposited in the Secretary of State's office as required by law, since it was duly certified by the presiding officer of each House to have been properly passed, and since it was approved by the Governor, this law cannot be impeached by any irregularity touching its passage shown by the journal of either House.

JOHN S. S. FESSENDEN
Deputy Attorney General

October 13, 1949

To Col. Francis J. McCabe, Chief, Maine State Police
Re: General Investigative Activities of the State Police

In reply to your inquiry of October 13, 1949, wherein you request an opinion from this office as to the authority or availability of the State Police to investigate the administrative organization of personnel membership of a municipal police force, you are advised that a careful review of Chapter 13 of the Revised Statutes of 1944, being the chapter entitled "State Police" and the source of authority for the State Police, reflects that the State Police has neither the duty nor the right to undertake an investigation of this character.

This opinion should not be construed to mean that in the case of any specific criminal violation of law by a police officer employed by a municipality, the State Police should not perform their duty as in all other criminal cases. The opinion applies only to an investigation of a general nature of a municipal police organization.

I should also point out that I know of no appropriation available to the State Police as a source of funds for this purpose and would be extremely doubtful as to whether the Chief would be authorized to defray the salary or expenses of any man assigned to such work, in the absence of an appropriation.

JOHN S. S. FESSENDEN
Deputy Attorney General

October 31, 1949

To E. L. Newdick, Director Plant Industry, Agriculture
Re: Soil Conservation

In reply to your letter of October 12, 1949, relative to Section 10 of Chapter 29, R. S. 1944, you are advised that we have studied said Chapter 29 and have the following opinion:

Chapter 29, entitled, "Soil Conservation Districts," established a Soil Conservation Committee which handles the over-all administration at the State level of the soil conservation program enacted by the legislature. Within this over-all program provision is made for the creation of Soil Conservation Districts. The method of organization, the powers of the districts, and of the supervisors thereof, clearly indicate that the districts themselves are not functionally a part of the State government as such, but are to carry out

locally the stated purposes much in the same fashion as do school districts, water districts, sewer districts, etc.

It is to be noted that these districts may sue and *be sued.* While it is true that the statute states that a district organized under the provisions of the chapter shall constitute an agency of the State, it is to be noted also that such district is a public body corporate and politic, so that it is easily distinguished from State agencies created and acting as part of the executive branch of the State government. In other words, the districts are agencies for the carrying out of soil conservation projects, but are not agencies of government as those words are used when applied to the operation of the executive departments as such. Accordingly, while the State Soil Conservation Committee itself is bound by the Administrative Code as applicable to the various executive departments, the local Soil Conservation Districts are not so included.

JOHN S. S. FESSENDEN
Deputy Attorney General

November 3, 1949

H. H. Harris, State Controller
Re: Snow Removal—Airports

The Maine Aeronautics Commission has called my attention to the provisions of Section 167 of Chapter 14 of the Revised Statutes, as amended by Chapter 337 of the Public Laws of 1947 and Chapter 245 of the Public Laws of 1949. I advised them orally that it was my opinion that they could pay the Northeast Airlines for snow removal last winter from the federally owned airport in Presque Isle, from any unexpended balance, as they shall deem equitable. Chairman Gardiner of the Commission asked me to write you a memo to that effect and to send them a copy.

I wish to advise that it is my opinion that the Northeast Airlines having removed snow from the federal airport in Presque Isle last winter under the provisions of Section 167 and the amendment by Chapter 245, which provides that such assistance may be given for snow removal at federal, state or municipally owned airports used by commercial carriers of passengers and freight operating on a regular schedule, etc., may be reimbursed by the Commission as they deem equitable. While the amendment in Chapter 245 of the Public Laws of 1949 did not become effective until August 6, 1949, the Aeronautics Commission did not know what unexpended balance there would be or whether they could spend such funds to assist in the maintenance of the federally owned airport in Presque Isle or the removal of snow therefrom. Without considering this amendment I am advised by the Commission that the Northeast Airlines removed the snow from the federal airport, with the understanding that they would be reimbursed by the Maine Aeronautics Commission. I feel that the Commission has authority under the statutes cited to reimburse the Northeast Airlines from the unexpended balance in such amounts as the Commission shall deem equitable.

RALPH W. FARRIS
Attorney General

November 8, 1949

To Ernest H. Johnson, State Tax Assessor
Re: Retaliatory Provisions of Insurance Tax Laws

I have your memo of October 19th and refer also to the conversation in my office with you and Mr. Huot since that date, when we discussed the provisions of Section 139 of Chapter 14, R. S., which provides a retaliatory tax to be applied against insurance companies incorporated by states "whose laws impose upon insurance companies chartered by this state any greater tax than is herein provided."

It appears that this office gave an opinion to your office on this provision on June 1st and 8th last.

In your memo of October 19th you call attention to Section 45 of Chapter 56, as amended by Section 5 of Chapter 15, P. L. 1947, which relates to reciprocal provisions as to fines, penalties, etc. After quoting its provisions you state that certain California companies contend that they should be permitted to include fees such as annual licenses, agents' license, and filing fees, together with taxes in computing the aggregate burden imposed by the State of Maine to compare with the aggregate burden imposed by the State of California. Your office contends that the retaliatory provisions with which you are concerned are contained in Section 139 of Chapter 14, R. S., which applies only to taxes, and that the retaliatory provisions found in Section 45 of Chapter 56 do not concern your department but relate only to fines, penalties, fees or deposits, which are under the supervision of the Insurance Commissioner. Upon the foregoing statement of law and facts, you propound the following question:

"In computing the tax liability of a California insurance company doing business in Maine, should the aggregate burden of *taxes and fees* imposed by the State of Maine be compared with the aggregate burden of taxes *and fees* imposed by the State of California; or in computing the insurance tax in this state, should we be concerned *only* with the *taxes* imposed by the State of California against a Maine insurance company doing business there as compared with the *taxes* imposed by the State of Maine?"

In answer to your question I will state that it is my opinion that your office is concerned only with the aggregate burden of taxes under the relailatory provisions of Section 139 of Chapter 14. Your office should be concerned only with the taxes imposed by the State of California against a Maine insurance company doing business in California as compared with the taxes imposed by the State of Maine.

RALPH W. FARRIS
Attorney General

November 21, 1949

To Honorable Frederick G. Payne, Governor of Maine
Re: Letter to you from William P. Shapleigh, Executive Secretary, Maine Truck Owners Association, dated November 16, 1949

I have read Mr. Shapleigh's letter, addressed to you, in which he suggested that by some approach the judges of municipal courts should recognize the implications of a meagre $10-$25 fine for weight violations. He further stated that any existing operating surplus in the MPUC funds should be immediately allocated to further enforcement of both the Commission's regutions and the gross weight restrictions. He also suggested that east- and west-bound platform scales, with 24-hour operation, be installed at Kittery at the junction of U. S. 1 and the Turnpike.

I note that a copy of this letter went to A. J. Cole of Cole's Express, Bangor. I talked with Al. Cole and his son, Jerry Cole, who is president of the Association, last Saturday evening at Bangor, and they both feel that the fines meted out by the municipal court judges in Maine do not deter certain truck operators from violating the over-load statute. They cited a case in Maine where a violator was fined $10 twice for overloading and on the same load in New Hampshire he was fined nearly $300.

Section 27 of Chapter 19 of the Revised Statutes was amended by Chapter 52 of the Public Laws of 1947 and Chapter 349, §22, P. L. 1949, and now reads:

> "No person shall operate, or cause to be operated, any truck, tractor, trailer or combination of truck, tractor and semi-trailer, with a load that is more than 10% above that specified in the registration certificate for such vehicle for trucks of gross weight of not over 15,000 pounds and 5% for trucks of gross weight of over 15,000 pounds; provided, however that no motor vehicle of either a single unit or combined unit shall be operated on the highway with a load that exceeds 50,000 pounds, gross weight of vehicle and load."

The penalty for violation of this statute will be found in Section 135 of Chapter 19, R. S. 1944, which provides as follows:

> "Whoever violates or fails to comply with the provisions of any section of this chapter, or any rules or regulations established thereunder, when no other penalty is specifically provided, shall be punished by a fine of not more than $100, or by imprisonment for not more than 90 days, or by both such fine and imprisonment."

The fines for overloading do not go into the surplus in the MPUC funds, as Mr. Shapleigh seems to intimate in his letter to you. The fines for overloading go into the general highway fund.

Section 23 of Chapter 44, as amended by Chapter 126, P. L. 1947, has to do with operating motor trucks under the jurisdiction of the MPUC. Each application for a permit shall be accompanied by a fee of $15 and each reopening or rehearing of an application requires an additional fee of $5, which is not for revenue purposes, but shall be used by the Commission for the

purpose of defraying the expenses of administering the provisions of Sections 17 to 30, inclusive, of Chapter 44, R. S. Section 30, subsection I of Chapter 44, as amended by Chapter 390, P. L. 1949, provides the penalties for violation of the provisions of Sections 17-29, inclusive, or of any rule, regulation or order made or issued by the PUC pursuant to authority of the statute, and the penalty for violation of these statutes is by a fine of not less than $10 nor more than $500 or by imprisonment for not more than eleven months or both.

I am merely stating the law so that you can explain to the Maine Truck Owners Association that an increase in the fines by the municipal court judges for overloading would not increase the operating surplus of the PUC's funds and could not be used to further enforcement of the Commission's regulations and gross weight restrictions except by act of the legislature.

In regard to the east- and west-bound scales suggested to be installed in Kittery at the junction of U. S. 1 and the Turnpike, that is a matter to be worked out from a practical standpoint.

My only suggestion to you is that you might bring to the attention of the judges of the municipal courts, without encroaching upon the prerogatives of the courts, that these meagre fines of $10 to $25 for weight violations do not seem to deter those who insist on violating the overload law, because they will gladly pay a $10-$25 fine and do the same thing over again; but the judges can only go up to $100 on fines for overloading, as I have outlined in this memo. . .

RALPH W. FARRIS
Attorney General

November 25, 1949

To W. O. Bailey, Deputy Commissioner of Education
Re: Planning and Research Questions *re* School Property

I have your memo of November 8th, stating that the superintendent of schools in Greenville has raised certain questions concerning school property. He states that the Station school in Jackman, which has been closed for a number of years, is located on land donated by the Coburn Heirs by deed stating that when the property is no longer used for school purposes it shall revert to the owners. The school authorities have been using it for storage purposes since no school has been held there, in order to hold it against such time as they might have to re-open it because of increased enrollment. He asks the following questions:

"1. Is the manner which we are using to hold this property legal, if not what steps should be taken?"

Answer. If the school committee is using this building for the storage of school property, it would be a legal use and the land would not revert to the owners. If they are using it for storage of property outside of school property, it would raise a question as to why the land should not revert to the owner. The only step to be taken to prevent reversion is to use the building for school purposes of some nature.

"2. Can the town or school committee legally rent that part of the building not used for storage, to any organization?"

Answer. If the school committee uses this building for storage for school purposes, as outlined in answering Question 1, it has no legal authority to rent any part of the building to any organization not engaged in educational or school work, as this would raise the question of whether or not the whole property was not subject to reversion, where part of it was used for other than school purposes.

"3. Can the town legally sell this building, which is set on a concrete foundation, with the understanding that it would be moved to another lot?"

Answer. It is my opinion that, on vote of the inhabitants on a proper article inserted in the warrant for town meeting, the town can sell this building if it desires to move it off the foundation.

My answer to Question 3 answers Question 4. Only the land reverts to the original owners under the provisions of the deed. This does not include the improvements. The schoolhouse itself belongs to the town. As long as the land continues to be used for school purposes, the land also will continue to belong to the town.

RALPH W. FARRIS
Attorney General

November 25, 1949

To H. A. Ladd, Commissioner of Education
Re: Normal School and Teacher College Trust Fund for Scholarships

Your memo of November 8th is at hand, relating to the provisions of Chapter 210 of the Resolves of 1949 creating a trust fund for scholarships to assist students in the normal schools and teachers' colleges of the State, and transferring $50,000 from the unappropriated surplus to the general fund. This Resolve specifies that the annual expenditure shall not exceed $25,000. You call my attention to that language of the Resolve which provides, in the last paragraph thereof, that the trust fund may be increased by sums donated by groups or individuals. Upon this statement of the language contained in the Resolve you ask if, in administering the provisions of Chapter 210 of said Resolves, year-end closing balances should lapse to the general fund or if they should become resources for the following year.

It is my opinion that in creating this trust fund the legislature intended that it may be increased by such sums as normal school alumni associations, student group activities, or individuals may wish to contribute to said fund for normal school students and did not intend that the appropriations from the general fund should lapse, as their intentions seemed to be to commingle the contributions of groups and individuals with the appropriation from the unappropriated surplus of the general fund. This should be a recurring item which can be supplemented by gifts from these groups named in the Resolve and by appropriations of future legislatures.

RALPH W. FARRIS
Attorney General

November 25, 1949

To Honorable Frederick G. Payne, Governor of Maine
Re: River and Harbor Improvements

I have your memo of November 22nd, enclosing a letter which you had received from the Corps of Engineers, U. S. Army, Army Air Base, Boston, Mass., with three assurances of the State of Maine in quadruplicate, on the Josias River-Ogunquit-Perkins Cove project, Cape Porpoise Harbor project, Kennebunkport, and the Portland Harbor project at Portland, Maine.

I am returning the letter and the so-called Agreements of Assurance from the State of Maine, for the reason . . . that the liability of the State of Maine might be in regard to financing these projects in case local private interests do not meet the conditions of the Act, as outlined in these three drafts which the Government has sent you for approval.

In the first place, you have not approved these projects, and they want you to sign the assurances and the approval of the project in the same document. Before you approve any such projects or sign any such agreements, I feel that you should appoint a committee under Section 115-F of Chapter 207, P. L. 1949, which reads as follows:

> "The governor, with the advice and consent of the council, is authorized to designate any state agency to make such investigation as is deemed necessary in connection with any such improvement or protection project."

I call your attention to the fact that in the Josias River-Ogunquit-Perkins Cove project, local interests agree to contribute one-half of the initial cost of the improvement, but not to exceed $32,000; in the Cape Porpoise Harbor project at Kennebunkport local interests shall contribute one-third of the intial cost of improvements, but not to exceed $20,000; and in the Portland Harbor project the assurance does not state that local interests have agreed to contribute any costs of the improvement, but local interests shall agree to hold the United States free from damage due to construction and maintenance of the work. Therefore if you sign these assurances as Governor of Maine and local interests do not contribute, it is possible that the Federal Government will look to the State to make up the deficiency, since the projects have the official approval of the State of Maine.

I call your attention also to Section 115-E of Chapter 207, P. L. 1949, which provides as follows:

> "When an appropriation has been made by the legislature for such purpose, the governor, with the advice and consent of the council, is authorized to provide for the payment by the state of not more than ½ of the cash contribution required by the federal government for any such improvement or protection project."

So the Government might be in a position to ask this office for an interpretation of this section, as to which I would say offhand that the Governor and Council are not authorized to provide for the payment by the State of not more than one-half of the cash contribution required by the Federal Government, unless the legislature has made an appropriation for such purpose.

Another serious question which presents itself in this connection is how far-reaching is the assurance of the State that it will save harmless the United States from claims or damages resulting from such project, from such dredging. It is possible that they may incur some unforeseen liability in the execution of these projects which might cause damage to private interests in Portland Harbor or the other places named in these projects, and these private interests could come back on the State of Maine instead of the Federal Government, which might possibly be guilty of negligence through its servants or agents in proscuting this work.

Therefore I advise you to answer this letter written by Col. B. M. Harloe of the Corps of Engineers, advising him that you are not in a position to execute any assurances of the State of Maine to save the United States harmless until the assurances specifically state what the nature of the claims or damages is which might result for which the State would be liable; and that furthermore you have not given these projects your approval, as you have not had time to study them and this is the first time they have been brought to your attention; that under the statute you may possibly designate a State agency to make a survey of these projects before signing any assurances.

I am cognizant of the fact that we do not want to be in the position of holding up any projects for the improvement of our rivers and harbors; but the term "local interests" is a pretty broad term to be inserted in a legal document, and if they do not pay their shares under the agreements with the Army and if the State of Maine does not know who the local interests are, as they are not specified in these documents, it may be that the State of Maine will be saving the United States harmless from damages resulting from such improvements, and the Government will look to the State of Maine to make the payments which the local interests, whoever they may be, may have failed to contribute according to their statement in these assurances.

I am leaving for Houlton Sunday morning and will be engaged in the trial of a murder case during the week of November 28th, but upon my return I will be glad to discuss this act and the language of these assurances with you to ascertain as far as possible any resulting liabilities to the State in executing these assurances to the Federal Government.

You will note that I have changed L. D. 193 to Chapter 207, P. L. 1949 in all these documents. If they are to be executed, the statute should be cited specifically by chapter and not by legislative document.

It is possible that if we can arrive at some agreement with the Federal Government, they would accept an additional clause in these assurances, providing that the State will not be liable for any failure on the part of the local interests or the City of Portland to make payment to the Federal Government of their shares of the contribution to these projects. You will note that these contributions by local interests are only of the *initial cost* of the improvement. I feel that as Governor you should know what the "initial cost" of the improvement means, and also what the cost of completing the projects will be to all parties concerned before you sign any agreements of assurance relieving the Federal Government from all liabilities.

RALPH W. FARRIS
Attorney General

December 6, 1949

To Hon. Frederick G. Payne, Governor of Maine
Re: Penobscot Boom

With reference to the correspondence from William Eggleston relative to his appointment as Commissioner of the Penobscot Boom, you are advised that the Penobscot Boom Corporation was created by Special Act of the legislature, which corporate powers have been amended by sundry Private and Special Acts. Among them is Chapter 298 of the Private and Special Laws of 1854, which provides in Section 25 for the appointment of the commissioners by the Governor and Council. It is interesting to note that in Chapter 47 of the Private and Special Laws of 1842 the appointment of the commissioners for the Penobscot Boom required that the Governor and Council shall appoint "three competent and disinterested men," etc. I have found no provision of law to the effect that a commissioner may not be a director of the corporation.

However, it would be competent for the by-laws of the corporation to provide that a person may not be a commissioner and a director at the same time; and if the by-laws do so provide it might be a carrying forward of the intent expressed in the 1842 amendment to the effect that the commissioners should be "disinterested men."

By-laws of corporations are not on file in the Corporation Division of the Secretary of State's office, as there is no requirement to that effect.

If Mr. Eggleston is correct with respect to the corporate by-laws, he would of course have a choice as to whether he would remain a director of the corporation or accept the appointment as commissioner.

JOHN S. S. FESSENDEN
Deputy Attorney General

December 6, 1949

To Honorable Frederick G. Payne, Governor of Maine
Re: Contracts for Repairs and Construction of State Buildings

In your memorandum of December 6, 1949 you request a statement from this office as to the meaning of the word "contract" as used in Chapter 176, Section 5, of the Public Laws of 1943, particularly in connection with the procedure being followed with respect to Governor and Council approval of expenditures made for repairs and construction of State buildings.

Chapter 176, P. L. 1943, became Chapter 58 of the Revised Statutes of 1944, which is the chapter which provides for the office and duties of the superintendent of public buildings. Section 5 thereof reads as follows:

> "All contracts for repairs and construction of state buildings shall be examined and approved by the superintendent of public buildings prior to their submission to the governor and council for their final approval and acceptance."

It would appear that Section 5 must be read in connection with Section 43 of Chapter 14, R. S. 1944, which section reads as follows:

> "All contracts for construction or repairs of buildings at the expense of the state involving a total cost of more than $3,000 shall be awarded

by a system of competitive bids in accordance with the provisions of the following section and such other conditions and restrictions as the governor and council may from time to time prescribe."

While we do not quote herein, attention is also directed to Sections 44, 45, 46, 47, and 48 of Chapter 14, which sections are designed to implement Section 43 quoted herein. A reading of the pertinent sections of Chapter 14 makes it appear obvious that contracts requiring the prior approval of the superintendent of public buildings and final approval by the Governor and Council are those contracts involving construction or repair of State buildings when the cost of the same exceeds $3,000, which contracts must be awarded by a system of competitive bids in accordance with the provisions of law. This system contemplates the performance of contracts by independent contractors and not repair and construction work performed by persons directly employed by the State. It follows therefore that mere expenditures for supplies and materials for the use of State employees in maintenance, repair and construction work within the regular scope of their duties, either in the respective departments or under the supervision of the superintendent of buildings, do not need Governor and Council approval, any more than the purchase of consumable supplies for the use of any other State employees.

I think that it should go without saying that supplies for the use of State employees in repairing, maintaining and doing minor construction work on State buildings are to be purchased in accordance with the State's standard practice as provided in Chapter 14.

JOHN S. S. FESSENDEN
Deputy Attorney General

December 19, 1949

To Fred M. Berry, State Auditor
Re: Contract between State of Maine and M.C.R.R., Carleton Bridge

I received your memo of December 9th calling my attention to the new contract which was consummated with the M.C.R.R. relating to their share of the cost of the Carleton bridge, which reduced their annual payment from $76,569.90 per year to $70,000. per year. In arriving at the new figure of $70,000. the amount deposited in the Kennebec Bridge Sinking Fund and recorded on the State's books at June 30, 1948, of approximately $102,000. was considered. You state in the second paragraph of your memo that since this contract was made, you have analyzed the figures of the Sinking Fund and found that a credit of $30,865.57 was included in the account as of June 30, 1942, which credit appears to be in error, and if it is, you state that the new annual payment of $70,000. should be changed by a subsequent act of the legislature. In the third paragraph of your memo of December 9th, you call my attention to the fact that this error was occasioned by a journal entry having been made as of June 30, 1942, by former Finance Commissioner Mossman; that this amount of money was the balance in the Carleton Bridge Operating Account at June 30, 1942 and was transferred to the account "Sinking Fund to Retire Kennebec Bridge Bonds." You state that the only explanation that can be found as to why this transfer was made is as follows:

"To transfer unexpended balance as of June 30, 1942, in Appropriation Account 9065 to Sinking Fund Account 363." You state in the fourth paragraph of your memo that you have found in the files in regard to this matter some correspondence between Mr. Mossman, then Finance Commissioner, and Mr. Hayes, State Auditor at that time. In that correspondence you find that Mr. Hayes questioned this entry and pointed out the provision of Chapter 81 of the Resolves of 1941, An Act Freeing the Carleton Bridge of Tolls, which provided that after sufficient money had been collected from tolls and from excise taxes to retire 45% of the bonds, all tolls and excise taxes received by the State in excess of those necessary to take care of bond retirement, interest charges, etc., as set forth above, shall go into the general highway maintenance fund of the State. You ask my opinion as to whether or not this transfer of $30,865.57 was rightly made from the Carleton Bridge Operating Account to the Sinking Fund to retire Kennebec Bridge bonds account, or whether it should have been made to the general highway maintenance fund, as stipulated in Chapter 81, Resolves of 1941.

In reply I will state that it is my opinion that the mandate of the legislature as set forth in Chapter 81 of the Resolves of 1941 should have been followed by the Finance Commissioner at that time, and all tolls and excise taxes received by the State in excess of those necessary to take care of bond retirement, interest charges, etc., should have been made to the general highway maintenance fund, as provided by the legislature in said Resolve.

RALPH W. FARRIS
Attorney General

December 19, 1949

To Hubert Ryan, Clerk, County Commissioners' Court,
Franklin County

Re: Fees

I have your letter of December 7th relating to the Judge of the Franklin Municipal Court at Farmington presenting a bill to the County of Franklin in the amount of $33 for appeal fees at $1.50 each under the provisions of Section 28 of Chapter 133, R. S. 1944.

I beg to advise that it was the intent of the legislature when the Franklin Municipal Court Act was amended, that the salary of the Judge and his $400 additional for traveling expenses should be in full for his services; and that all fees should go to the County of Franklin. The salary was set in 1943 at $800, amended in 1945, raising it to $1000, and Chapter 95, P&SL 1949 raised the salary to $1600, allowing not exceeding $400 for necessary traveling expenses. I have checked with the other municipal courts and the other Judges who are on full salary do not charge any fees. All fees on appeals under Section 28 of Chapter 133 go to the county that pays the salary.

Prior to 1947 Trial Justices received fees for their services. The 1947 Legislature by Chapter 262 of the Public Laws of 1947 provided that their salaries should be determined by the County Commissioners and paid from the county treasury, and that they should receive no other compensation except their salaries established by the County Commissioners. It also provided in Chapter 262 that all fines, costs, fees and forfeitures, except as otherwise provided by law, shall be paid over to their respective counties.

Therefore it has been the intent of the legislature for the past few years to get all Judges, Recorders and Clerks off the fee system; and where a salary is provided by the legislature, with traveling expenses, and the salary is paid by the county, it is my opinion that all fees paid to the Judges and Recorders of the Municipal Court should be paid in to the county.

RALPH W. FARRIS
Attorney General

December 20, 1949

To Lester E. Brown, Chief Warden, Inland Fisheries and Game
Re: Powers of Wardens to Arrest and Prosecute

Answering your memo of December 8th, I will say that under Section 111 any officer authorized to enforce the Inland Fish and Game Laws may without process arrest any violators of said laws, etc., and jurisdiction is hereby granted to all municipal courts in adjoining counties, to be exercised in the same manner as if the offense had been committed in that county.

Section 18 provides that the wardens shall have the authority to serve criminal processes on offenders of the law and to arrest and prosecute camp trespassers or persons committing larceny from any cottage, camp or other building, etc., and they may serve all processes pertaining to the enforcement of any provisions of this Chapter.

It is my opinion that Section 111 and Section 18 should be read together, as Section 111 of Chapter 33 uses the language "to enforce the inland fish and game laws," and Section 18 uses the language, "They may serve all processes pertaining to the enforcement of any provision of this chapter."

RALPH W. FARRIS
Attorney General

December 21, 1949

To Ermo Houston Scott, Deputy Commissioner of Education
Re: Legality of withholding credentials, Normal School, for nonpayment of fees

I have your memo of December 21st, in which you ask me to give you a written opinion on the legal aspects of the following policy:

> "No official credentials shall be issued by a Maine state normal school or teachers college in favor of any student or former student, unless that student has met all institutional financial obligations, or has made arrangements satisfactory to the related institutional administration for the eventual payment of such amounts as are receivable."

It is my opinion that the teachers' colleges in Maine and the Board of Education have statutory powers and duties to make rules and regulations relating to normal schools and teachers' colleges, including a rule to the effect that if students do not meet their financial obligations said schools and colleges are legally entitled to withhold their credentials until all financial obligations have been met or proper arrangements for their settlement have been made.

The statute uses this language, "Any student who completes the prescribed course of study and otherwise complies with the regulations of the school shall receive a diploma, etc." You will note the language, "and otherwise complies with the regulations." If a student does not comply with the regulations concerning payment of fees, it is legal for the Board to withhold official credentials until all financial obligations to the institution have been met.

RALPH W. FARRIS
Attorney General

December 21, 1949

To Albert W. Emmons, Clerk of Courts, York County
Re: Biddeford Municipal Court, Referees' Fees

I have your letter of November 29th, stating that last winter and spring you had some correspondence with Mr. Breitbard, my former Deputy, relating to fees of a referee appointed by the Biddeford Municipal Court. You state that there is nothing in the general statutes and you cited to him a section of the municipal charter of the City of Biddeford, just prior to his death, and received no reply.

In checking over his correspondence I find your letter of April 20th, addressed to Mr. Breitbard, which was in answer to his of April 14th. You cited Chapter 151 of the Laws of 1855, the Act establishing the municipal court in the City of Biddeford and recited Section 10, which reads as follows:

> "Actions pending in this Court may be referred in the same manner as in the Supreme Court, and on the report of Referees to said Municipal Court, judgment may be rendered in the same manner and with like effect as in the Supreme Court."

You state that under this section the Judge of the Municipal Court appointed a Referee last winter. He presented a bill of $50, approved by the Municipal Court, to the County, and you ask by whom should these fees be paid, the City of Biddeford or the County of York.

In answer I will say that these fees should be paid by the City, if the City receives the fees from the Municipal Court, and by the County if the County is receiving the fees from the Municipal Court.

I have checked an amendment to the 1855 charter, which is Chapter 247 of the Private & Special Laws of 1887, which provides that the Judge shall receive an annual salary of $1400, payable quarterly out of the County treasury, etc., etc., which shall be in full for his services, and that he shall render to the County Treasurer on the second Tuesday of April and October a signed and sworn statement of all fees received by virtue of his office, etc. In view of this amendment it is my opinion that the County of York should pay Referee's fees.

You asked a second question in regard to the Biddeford Municipal Court, namely whether under the general statutes, in the absence of the Judge, the Recorder of the Municipal Court can hear both civil and criminal matters, and if he can hear civil matters, under what circumstances he can do so.

The general statutes relating to Municipal Court Recorders will be found in Section 3 of Chapter 96, R. S. 1944:

> "In the event of the death or resignation or any vacancy in the position of a judge of a municipal court, the recorder shall, as acting judge, receive the salary of the judge in lieu of salary as recorder and shall further be paid for such clerk hire as shall be necessary on account of the additional duties."

When so acting, of course he can try both civil and criminal matters; but the charter of the Biddeford Municipal Court was amended by Chapter 24 of the Private & Special Laws of 1899, which provides that whenever the Judge of said court shall be absent from the court room, shall be sick, or engaged in the transaction of civil business, said Recorder shall have the same powers and perform the same duties that said Judge possesses and is authorized to perform in the transaction of criminal business.

Therefore it is my opinion that the Recorder of the Biddeford Municipal Court can hear only criminal cases, unless there is a vacancy by death or resignation and he is acting as Judge. . . . .

RALPH W. FARRIS
Attorney General

December 21, 1949

To Norman U. Greenlaw, Commissioner of Institutional Service
Re: Commitment to State Hospitals for Observation

I have your memo of December 1st in which you enclosed a memo which you had received from Dr. Harold A. Pooler, Superintendent of the Bangor State Hospital, dated October 25, 1949, relative to the lack of information from the law enforcement department and from the courts when a person is sent to a State Hospital on a Superior Court commitment for observation to determine whether or not the person committed is insane. You requested me to offer comments and suggestions as to how this situation could be improved.

When a person charged with a crime is committed for observation to determine whether or not he is insane, this is always done by the attorney for the person charged with the offense. He files a petition with the court, asking for commitment for observation, setting forth the fact that he intends to plead not guilty by reason of insanity at the next term of the Superior Court. When the person is committed to the hospital, the Superintendent should be informed by the attorney for the person being committed of the reason why he intends to plead not guilty by reason of insanity, and he should also furnish a little background to the hospital.

The mode of disposing of insane criminals is not satisfactory to me. I suggested a change at the 1947 Legislature, but the only change the legislature made was to insert the words "or any justice thereof in vacation," in Chapter 94, P. L. 1947. I re-drafted this section with the help of Justice Merrill, who is now on the Supreme Court Bench, but the legislature did not seem to want to change the law or to understand what we were driving at.

The law now provides that when a person is indicted or is committed to jail on a charge, by the Judge of a Municipal Court, which means that he is bound over to the grand jury, any Justice of the court before which he is to be tried, if a plea of insanity is made in court or notice is given that it will be made, may in vacation or term time order such person into the care of the Superintendent of either insane hospital to be detained and observed by him until further order of court, etc., so that the truth or falsity of the plea may be ascertained. The Superintendent of the hospital to which the person is committed shall, within the first three days of the term next after such commitment, and within the first three days of each subsequent term so long as such person remains within his care, report to the judge of the court before which such person is to be tried, whether his longer detention is required for purposes of observation. You can see how awkward that section is in actual practice, and I can see Dr. Pooler's point in calling this to your attention. However, there is no law that requires the law enforcement department or the courts to send any information relating to the subject who has been arrested and committed for observation, because the law enforcement officers do not recommend any such commitment. It is always done, as I say, by the attorney for the person charged with the crime.

The only purpose is to see if the truth or falsity of the plea may be ascertained. In my experience most of the persons who have been committed for observation were charged with homicides, either murder or manslaughter, and the attorneys for the respondents are not required to give any information in regard to their clients which might tend to incriminate them or indicate that they were guilty of any crime.

I am sending a copy of this memo to Dr. Pooler, as I was present at the trial of the Robert Bean case in Bangor and examined Dr. Pooler on the witness stand as to this man's mental condition, the true test being, Did he know the difference between right and wrong at the time of the commission of the crime alleged, to wit, the killing of his mother?

Of course it is possible that many of these men might be able to fake enough symptoms to make the doctors believe that they were insane. That is one reason why they are sent to the hospital, to determine the truth or falsity of the plea of insanity by prolonged observation, and that is a matter that Dr. Pooler and his staff must work out after a man is committed. Of course he is entitled to contact a man's family to get the case history. Many times the County Attorney and the defense attorney know nothing about a man's family and background, when he makes a plea of insanity or indicates that he will make such plea when the Superior Court convenes.

In a recent murder case at Houlton which consumed six actual trial days, the respondent had been committed to the Augusta State Hospital for observation, and Dr. Sleeper reported to the court that the prisoner was a mental case, but that he knew the difference between right and wrong at the time of the commission of the crime. Upon the evidence presented by the State the jury convicted the man of murder. Now in this particular case it is my opinion that this man was clever and cunning on the witness stand and lied concerning his movements on the night of the murder, but that he was a sex maniac. We had a record from the Norwich State Hospital in Connecticut that he had been committed there and that the diagnosis was dementia

praecox, hebephrenic type. He was discharged by order of the Superior Court as improved. Thereupon he proceeded to Maine and killed a woman. Therefore, if this man had been found not guilty by a jury in Houlton, the State would have released him and he is a dangerous man to be at large, according to Dr. Sleeper, with whom I talked his case over.

You can see that this is a problem in my office as well as in the State Hospitals where persons charged with crime are committed for observation.

The only remedy I can see in this matter is by legislation. We should have an institution under your department where persons who are afflicted with sex manias could be confined, for life if necessary, instead of being sent to State Prison.

I have been furnishing Dr. Sleeper with information on the cases that have been committed to his institution for observation, when charged with murder. In this particular case of the Houlton murder, I secured the records of the Norwich State Hospital and the man's criminal record from the Connecticut State Police for Dr. Sleeper to peruse during the period of observation. In the case of the hitchhike murder I furnished evidence procured from New Jersey.

If Dr. Pooler will write me when he has patients committed by the Superior Court for observation, I shall be glad to secure information either from the State Police or from State Hospitals in other jurisdictions.

RALPH W. FARRIS
Attorney General

December 23, 1949

To David H. Stevens, Commissioner of Health and Welfare
Re: Rodney Feyler Application to Sanitary Water Board for License

I have your memo of December 22d enclosing the ballots as they were received from the members of the Sanitary Water Board and your file in connection with this matter.

After studying the statute, I am of the opinion that if the board shall determine that such discharge will not cause or increase pollution of this tidal water in Rockland Harbor to such an extent as to be inconsistent with the public interest, it can issue a conditional license to the applicant as set forth in your memo of December 22d.

The Sanitary Water Board Act was enacted for the purpose of protecting the public health and the health of animals, fish and aquatic life and the board has wide discretion in issuing licenses, as the statute specifically states that it is the duty of the board to study, investigate and from time to time recommend to persons responsible for the conditions ways and means to eliminate from the streams and waters of this State, so far as practicable, all substances which pollute or tend to pollute the same, and also to recommend methods of preventing pollution, etc. Therefore, under the police powers of our State, the board has wide discretionary powers in issuing licenses which control the pollution of our streams and tidal waters. . .

RALPH W. FARRIS
Attorney General

December 27, 1949

To Ernest H. Johnson, State Tax Assessor
Re: Gasoline Tax Allowance

I have your memo of December 7th relating to the interpretation of Section 163, Chapter 14, R. S., as amended by the Public Laws of 1947 and 1949, which relates to the assessment of gasoline taxes and provides as follows:

> "An allowance of not more than 1% from the amount of fuel received by the distributor, plus 1% on all transfers in vessels or tank cars by a distributor in the regular course of his business from one of his places of business to another within the state, may be allowed by the tax assessor to cover the loss through shrinkage, evaporation or handling sustained by the distributor; but the total allowance for such losses shall not exceed 2% of the receipts by such distributor and no further deduction shall be allowed unless . . . etc., etc."

Following the quotation of the law as amended you give a concrete example of the audit of the Socony Vacuum Oil Company for the calendar year 1948, which indicates that the company had a total loss through shrinkage, evaporation or handling of 693,284 gallons on total imports of 41,645,262 gallons and total transfers (subject to allowance) of 25,193,927 gallons. If figured on 1% of receipts and 1% of transfers, the allowance of 1% plus 1% would be 668,392 gallons, allowable loss. If you deduct this from the actual loss of 693,284 gallons, in your formula this leaves 24,892 gallons which are not allowable, upon which there would be an additional tax of $1493.52. However, if you take the 2% allowance and apply it, the allowable loss would exceed the actual loss, as follows: 2% of receipts 832,905 gallons; total loss, 693,284 gallons. You therefore ask the question, "Is this interpretation, under which in the present instance the total losses would exceed the allowable losses, correct?"

In answer to your question I will say that I hesitate to give an opinion based on one specific case. You must take the language of the statute which I have quoted, in full, so far as deductible losses are concerned. It is my opinion that a distributor gets an arbitrary deduction of 1% plus 1%, and if he has actual losses, he should receive an additional allowance beyond the 1% plus 1%, up to 2% of receipts, to cover his total losses, and no further deduction shall be allowed. Therefore it is my opinion that the legislature intended that the State Tax Assessor should have authority to authorize allowances for the actual losses, but it shall not exceed 2% of the receipts by such distributor. The actual loss in this particular case was 693,284 gallons, and it does not exceed 2% of the receipts, which is the limit the State Tax Assessor can allow except for losses due to fire, accident or unavoidable calamity, which requires further proof. In other words, we must give meaning to the 2% clause which the legislature wrote into the 1947 amendment in Chapter 279 and also into the 1939 amendment in Chapter 349. That is, the legislature intended that the distributor should be allowed his actual loss in shrinkage, evaporation or handling, but the total allowance for such losses shall not exceed 2% of the receipts, thus allowing the distributor his actual loss in gallons, and yet limiting it to the 2% of his receipts.

The language therefore serves a double purpose. It allows the distributor his actual loss and at the same time limits said loss to 2% of receipts, which is beyond the 1% of receipts plus 2% of transfers.

RALPH W. FARRIS
Attorney General

December 28, 1949

To Marion E. Martin, Commissioner of Labor and Industry
Re: Request from Internal Revenue Department for List of Manufacturers Engaged in Industrial Homework

I have your memo of December 27th, stating that your department has had a request from the Internal Revenue Department for a list of the industrial manufacturers who have taken out industrial homeworkers manufacturers' licenses, and you ask if you should make such lists available to the Federal Government.

In view of the language contained in Section 37-J entitled, "Employment status," "All industrial homeworkers shall be presumed to be employees of their employers and not independent contractors or self-employed persons," it is my opinion that you should furnish such lists to the Department of Internal Revenue on request. Furthermore the Federal Government has been very co-operative in furnishing records of Federal employees, when they were required by this office, unless there was a special Federal statute prohibiting the producing of said records.

I find nothing in Chapter 283, P. L. 1949, which provides that these records of licenses issued by you under this Act are confidential.

RALPH W. FARRIS
Attorney General

December 28, 1949

To Marion E. Martin, Commissioner of Labor and Industry
Re: Definition of "Employer"

I have your memo of December 27th on the above subject, in which memo you state that in Section 37-B of Chapter 283, P. L. 1949, "employer" is defined as "any person who directly or indirectly distributes or delivers or causes to be distributed or delivered to another any materials or articles to be manufactured in a home, and thereafter to be returned to him for other than the personal use of himself or a member of his family, or to be disposed of otherwise as directed or arranged by him, or sells or causes to be sold to another person any materials or articles to be manufactured in a home, and, after such manufacture, to be repurchased by him or purchased or otherwise disposed of by any other person as directed or arranged by him: . ."

You state that a further provision of this law provides that an employer must receive a permit, but that there are some manufacturers who refuse to take out a permit on the ground that they do not distribute materials to the workers. They do, however, give specifications as to the type of material

to be used and the homeworker may buy it from any source she desires. You then set forth two varying situations:

1. Where the manufacturer submits specifications as to the type of material, colors and amounts and states the price that he will pay.

2. Where the worker makes a sample and submits it to the employer who in turn tells her the number that he will buy similar to the sample, the price that he will pay and any variations in sizes, dimensions, colors or type that he would buy.

In this connection I wish again to call your attention to Section 37-B of Chapter 283, P. L. 1949, which provides that all homeworkers shall be presumed to be employees and not independent contractors or self-employed persons. Therefore they cannot take materials and manufacture them under a contract of manufacture and call themselves independent contractors, if the goods are returned to the manufacturer for other than his personal use, etc. If the person who is directing the homework, tells the workers what kind of material to purchase and where to purchase it, and the homeworker manufactures these articles and sends them to the employer to be sold by him in the market or otherwise disposed of, he should be considered an employer under this Act and should be required to secure a license from your department before homeworkers are allowed to send him any goods that they have manufactured under his direction. It does not matter whether the manufacturer does this directly from the home plant or has agents in the field who direct the workers as to what the manufacturer would like to have. If the manufacturer denies that he is a manufacturer and employer under the terms of this Act, you should cite Section 37-J to these skeptical manufacturers, so that they may know they are employers and not merely letting out contracts to homeworkers and thereby escaping their responsibilities as employers.

You state in the last sentence of your memo that this leaves a definite loophole, not contemplated when the law was drafted, and you ask if there is no way that you can bring such people under the Act.

In reply I will say that there is no way that you can bring anyone under the Act who does not want to come under it; but if a manufacturer directs work in the home personally or through agents and receives back a manufactured article, he is an employer. There is no question about it; and the homeworkers are employees. The statute is specific in this regard.

RALPH W. FARRIS
Attorney General

December 28, 1949

To Marion E. Martin, Commissioner of Labor and Industry
Re: Promulgation of Elevator Rules

I have your memo of December 27th, stating that under Section 99-C of Chapter 374, P. L. 1949, public hearings have been held and rules and regulations will be finally adopted by the Board of Elevator Rules and Regulations on January 6th. You state that the requirements of law have been met by the Board so far, and you now wish to know what procedure you should follow to have the rules properly promulgated.

Section 99-C provides that such rules and regulations formulated by the Board shall become effective 90 days after the date they are adopted, except that rules and regulations applying to the construction of new elevators shall not become effective until six months after the date they are adopted. Not having a copy of the rules and regulations which you have formulated, I cannot give you an opinion whether the regulations shall become effective 90 days or six months after their adoption.

In view of the fact that you have had a public hearing after suitable notice had been published in at least three daily papers in the State before these rules and regulations were adopted, the language of the statute which I have quoted, in Section 99-C, takes care of the effective date of said rules and regulations relating to elevators.

RALPH W. FARRIS
Attorney General

December 28, 1949

To Harold A. Pooler, M.D., Superintendent, Bangor State Hospital
Re: Commitment of Resident of one town by another town

I have your letter of December 27th, stating that you appeared before Justice Edward P. Murray on a writ of habeas corpus on December 27th and in reviewing the commitment papers the Justice advised that a ruling should be made by my office relating to the following:

"A person is in jail at Caribou. He becomes insane and has to be committed to Bangor State Hospital. His place of residence is Wade, Maine. A complaint is made by a Justice of the Peace at Caribou, and two Caribou doctors certify that he is insane. Must this complaint be sent to Wade, causing the Municipal Officers to serve papers to hold a hearing to complete commitment proceedings, or should the total proceedings for commitment be carried out in the town of Caribou, where the mentally ill person is confined?"

It is my opinion that under Section 105 of Chapter 23, the complaint should be made by a Justice of the Peace in the town where the insane person is found, and the doctors in that town can certify that that person is insane. The complaint need not be sent to the town of the person's residence. A Justice of the Peace has jurisdiction in all counties and all towns, and the municipal officers have jurisdiction in a town to inquire into the condition of any person in said town alleged to be insane. If this were not so, a person might be found in a town, alleged to be insane, and the Justice of the Peace and the municipal officers might not know his residence. Therefore in my opinion Judge Murray was correct in stating that the hearing should be held in the town where the person is found rather than to require the person to be transported to another town. Your letter was very clear, and when I see Judge Murray in Bangor I will talk this matter over with him.

This question comes up often in small towns, where a person is found in said town to be insane, and the municipal officers thereof sometimes, knowing where the person resides, try to get him into his own town and have the officers there make the complaint; but they have no legal right to seize a man alleged in one town to be insane and take him to another town and try

to force the municipal officers of that town to constitute a board of examiners to inquire into the condition of said person, even though it is the town of his residence. It is the duty of the municipal officers of the first town, when a person is found insane therein, to take action upon a complaint and make commitment from that town. . . .

RALPH W. FARRIS
Attorney General

December 30, 1949

To Marion E. Martin, Commissioner of Labor and Industry
Re: Revenues from the Elevator Law, Chapter 374, P. L. 1949

I have your memo of December 29th, quoting Section 99-K relating to the dedication of revenues and also Section 99-G relating to examination of inspectors, providing for the payment of a fee of $10. You propound the following questions:

"1. Does the supervising inspector collect the $10 examination fee provided in Section 9-G as he does the other fees set forth in 99-K?"

Answer. Yes. The fees should be collected by the supervising inspector and deposited with the Treasurer of State to be credited to the Department of Labor and Industry as set forth in Section 99-K.

"2. Can the funds from the examinations be dedicated to the Department of Labor and Industry?"

Answer. It is unnecessary. It is taken care of by the answer to Question 1.

"3. Can the dedicated funds in Section 99-K be used for the expenses of the Board of Elevator Rules, printing of the rules, office supplies, telephone, etc., in connection with the administration of this bill?"

Answer. The last paragraph of Section 99-K provides that the fees shall be used solely to defray the expenses of elevator investigations and inspections and are hereby appropriated for such purposes. The commissioner may incur such expenses as may be necessary to carry out his duties in investigating, inspecting and causing to be inspected such elevators; therefore it is my opinion that the statute is broad enough to cover these items in Question 3.

RALPH W. FARRIS
Attorney General

January 4, 1950

To Harland A. Ladd, Commissioner of Education
Re: Sections 201 and 204 of Chapter 37, R. S. 1944, as amended

I have your memo of January 2d, stating that paragraph 2 of the former provides in part as follows:

> "Whenever any certified teacher completes, within any 2-year period, 6 credit hours of additional professional work approved by the commis-

sioner and receives supplementary financial assistance in an amount not less than $50 from the town, the town shall receive reimbursement of $50 from the state for such expenditure at the next distribution of state funds."

Paragraph 2 of the latter section directs the distribution of the school equalization fund and prescribes:

"Whenever it appears to the commissioner that any town should receive special aid or encouragement for the purpose of raising the standard of qualifications of teachers, or of increasing the length of the school year, or otherwise adding to the efficiency of the schools, he shall issue to the governor and council a recommendation relative thereto, and upon the approval of the governor and council the state controller may draw a warrant in favor of the treasurer of said town from the equalization fund for an amount to cover the difference between the proceeds of a tax of not less than 12 mills nor more than 20 on the valuation of the town as fixed by the board of equalization together with the apportionment from the state school fund, and the cost of a minimum educational program as hereinbefore defined."

Upon a quotation of parts of these two sections you request me to determine whether the phrase, "together with the apportionment from the state school fund," must include the reimbursing sums for additional professional work as provided in Section 201; and you comment that if this amount is included, it is deductible from the cost of the minimum program and the burden is transferred thereby entirely to the town, a process which seems to defeat the intent of both sections.

After a study of the portions of the statute which I have cited, it is my opinion that when a town has complied with Section 201 and has given to certified teachers, under this provision, supplementary financial assistance in the amount of $50 or less for each teacher, the town should receive reimbursement from the State for such expenditure at the next distribution of State funds; and I concur with your statement that if this amount is deducted from the cost of the minimum program, the town does not receive the reimbursements. In other words, it is taken away from the town, which clearly was not the intent of the legislature.

RALPH W. FARRIS
Attorney General

January 4, 1950

To W. O. Bailey, Deputy Commissioner of Education
Re: Tuition

I have your memo of December 30th, stating that the Superintendent of Schools in Whitefield has raised the following question:

"Does the State Department uphold Wiscasset Academy charging tuition for a full term when a pupil quits after four weeks? They sent out a letter last year that no part-time tuition bills would be sent; if a pupil attended part of the term, they would be charged for the full term."

You ask if I can give you a ruling on the legality of this practice and quote Section 98 of Chapter 37 in part, that "such free tuition privilege shall continue so long as said youth shall maintain a satisfactory standard of deportment and scholarship."

I will state that the law does not permit high schools and academies to charge tuition for pupils who are not receiving instruction, any rule by an academy to the contrary notwithstanding, because if the pupil is not in school, as you state, satisfactory standards of scholarship obviously cannot be maintained. Therefore any charge for tuition after a pupil has left the institution would be illegal.

You state in your note that since State subsidy is based on the amount expended for tuition purposes, it is conceivable that a youth might leave one school after four weeks' attendance and enter another school, thereby requiring his town to pay tuition in two schools and the State to subsidize both towns for their expenditure, if the policy at Wiscasset were deemed legal.

If the Wiscasset Academy insists upon this policy of charging tuition to a town after the student has left the school, it is for your department to handle this as an administrative matter in regard to the subsidy. I feel that if you take this up with the trustees of Wiscasset Academy, they will see the error of their policy on charging a town for a pupil who is not in attendance and that it might involve the town of the pupil's residence in paying two tuitions for the same term, if the pupil transferred to another school.

RALPH W. FARRIS
Attorney General

January 4, 1950

To Arthur R. Savage, Secretary, Maine State Board of Architects
Re: Building Inspectors

I have studied your letter of October 14, 1949, with the accompanying enclosure setting forth the powers and duties of the building inspector of the City of South Portland. You inquire whether or not the specifications of the duties of the building inspector of South Portland would require action by the Board of Architects under the provisions of Section 3 of Chapter 242 of the Public Laws of 1949.

It is difficult, if not impossible, as a matter of legal interpretation to give a categorical answer to your question. In attempting to answer your question I have consulted with a member of the Legal Affairs Committee of the legislature which conducted hearings on the measure, in an effort to ascertain the intent of this legislation. I was informed that it was the intent of the section involved to require the suspension, by the Board of Architects, of a license to practice architecture when one accepted an appointment placing him in a position similar or analogous to the position one would occupy with duties such as those imposed by the building code of the City of South Portland.

In the light of the foregoing it would appear that the Board is clothed with the apparent power to take administrative action to suspend the license of an individual in such a position.

I feel that I would be remiss in my duty if I failed to point out that the statute contemplates "regular employment" and that there might be some question as to whether or not the performance of part-time duties as a building inspector constitutes "regular employment."

I think I should also point out that to the ordinary lawyer this would not appear to be good legislation, since there would seem to be no reason why an architect should not practice his profession in any community other than the one in which he was exercising his office of building inspector, by analogy with other statutes such as those allowing Municipal Court Judges to practice in any court except their own, etc.

There are other serious criticisms to be made of legislation of this kind, which I need not point out here, but which nevertheless influence me in my first statement, to the effect that I cannot give you a categorical answer to your question.

JOHN S. S. FESSENDEN
Deputy Attorney General

January 5, 1950

To Walter F. Ulmer, Business Agent, Bangor State Hospital
Re: Disposition of Money Left on Deposit

I have your memo of January 3d, stating that from time to time the hospital has money left on deposit in personal cash accounts of patients who have died, said patients having been so-called State cases, nothing having been paid for their care and treatment while there. The question arises whether you have the right to take whatever money is left, for care and treatment, or whether you should endeavor to find the proper parties to whom to send such moneys; and you would like to have this situation clarified, so that there will be no question in your mind as to the proper procedure to follow in the future.

When patients who have been in the hospital as State cases die, having moneys on deposit, the money belongs to the estate of the deceased. If administration is not taken out, it cannot be turned over unless all the heirs sign off, if there is a considerable sum of money. If there are only a few dollars, a husband, wife, father or mother could be paid this money, if they would sign a statement releasing the hospital and the State from any liability.

There is another angle to this situation. In cases where State cases leave a considerable amount of money, it should go for their board and care if they have no dependents who are entitled to it; and the matter should be taken up with the relatives or the administrator and the money should be turned over to the hospital on account of the care and treatment received by the patient while there. Of course, actually, any money that is to the credit of the hospital goes to the State Treasurer and not to the hospital under our present statute, as the hospital is operating on a fiscal-year basis on appropriation from the legislature, and any money collected in previous years should be turned over to the general fund of the State.

RALPH W. FARRIS
Attorney General

January 5, 1950

To Honorable Frederick G. Payne, Governor of Maine
Re: Insurance on Automotive Equipment Used by the State

Some time late in the fall the Insurance Department circulated a mimeographed letter relating to a proper arrangement of insurance coverage in regard to ownership and use of automotive equipment used by the State. You call my attention especially to this item in this mimeographed sheet:

"Under the existing insurance coverage, the State has seen fit to insure its liability respecting use of employees' cars on State business but has not provided the same coverage for the identical risk which applies respecting hired trucks used on State business."

I have taken this up with Insurance Commissioner Soule and asked him if he had made any estimate of what the increased premium would be to cover trucks working for the State owned by private citizens; and he stated approximately $4000.

You asked me to let you know what I thought of this proposition.

Under the Constitution and statutes of Maine, the State cannot be sued. Having checked with the State Highway Commission, I find that all trucks used by private owners on State work carry their own insurance. In my experience, when any person was injured as a result of negligence on the part of the operator of a truck used on State business, which was privately owned, the suit has always been against the owner of the truck, and the insurance company always comes in and defends. I do not feel that we should go to this additional expense and waive sovereignty in cases of this kind, and allow suits to be brought against the State on accidents occurring as a result of the negligence or carelessness of private truck owners or operators. We are not having any trouble at the present time, and I believe that we should let well enough alone.

RALPH W. FARRIS
Attorney General

January 13, 1950

To David H. Stevens, Commissioner of Health and Welfare
Re: State's sending a nurse to a pediatric school out of the State

I have your memo of January 6th quoting Section 4, "Employment and Other Qualifications for Training" from Part 14-2 of the USPHS Grants-in-Aid Manual, to the effect that training may be authorized by State health authorities if the proposals conform to the standards which you set forth in your memo to me. Under this State-Federal program you propose to send a nurse from the Maine General Hospital in Portland to a pediatric school out of the State, this nurse to be paid on a stipend basis at the rate of $125 a month by the State of Maine from Federal funds made available to your department by the Children's Bureau for Maternal and Child Health purposes. If you send a nurse to school under this program, it is proper to bill your department rather than have the nurse on the payroll where she is not a State employee, but is rather on a stipend basis. Your department will approve the bills and certify them to the Controller, so that the money will be available from Federal funds to pay for this tuition.

I am sending a copy of this memo to the State Controller, so that he will know my attitude on this matter.

I understand that this arrangement has the oral approval of the Federal agency involved and will have its written approval.

RALPH W. FARRIS
Attorney General

January 17, 1950

To A. K. Gardner, Commissioner of Agriculture
Re: Sardine Packing

A. M. G. Soule, Chief, Division of Inspection in your department, has requested an opinion as to the authority granted to the Commissioner of Agriculture for making uniform rules and regulations with reference to the enforcement of the so-called sardine law as outlined in Section 201 of Chapter 27, R. S. 1944. Mr. Soule states in his letter to me of January 16th that this sardine inspection law has been on the statute books since 1929 and that at various times certain packers have favored cutting the heads of all fish before packing. Such a standard is not at present fixed by law, however; but he states that at least 85% of the packers, or packers who make at least 85% of the pack, would favor an order that the heads of all fish be removed by cutting before packing. This order would insure uniformity and fair competition. Upon this statement of law and fact Mr. Soule asked the following question:

"Has the Commissioner of Agriculture, who is Chief Executive of the sardine law, authority to make a ruling, ordering that all the fish packed for all grades, have the heads removed by cutting, and would such a ruling have the force of law?"

My answer to this question is as follows: Section 201 of Chapter 27, R. S., to which Mr. Soule called my attention, provides that the Commissioner "shall make uniform rules and regulations for carrying out the provisions of said sections (198-205, inclusive) and shall fix standards of quality when such standards are not fixed by law; . . ."

While the standards for contents of certain sardine cans provide that the heads of all fish shall be removed by cutting, namely cans packed with less than eight fish and fancy grade sardines for which the minimum count per can is specified, these do not apply at present to the cheaper grades. The definition of cutting contained in Section 203-A enacted by Chapter 78, P. L. 1945, is "removing the heads of the fish packed, either before or after flaking and steaming, by some implement or device operated by hand, or by a machine or mechanical device operated by power. The operation of 'cutting' does not mean the practice of beheading the fish by 'snipping' or 'pinching' the heads off the fish with the fingers."

Therefore it is my considered opinion, after a study of the laws relating to the packing of sardines and to licenses and standards, that under the provisions of Section 201 you, as Commissioner, have authority to make a rule and regulation ordering that all fish packed of all grades shall have their heads removed by cutting, and that such a ruling would have the force of

law until a court of competent jurisdiction decides otherwise. I base this opinion on the assumption that there is no standard fixed by law for any grade of sardine that provides for the beheading of the fish by snipping or pinching with the fingers. Therefore you have the authority to make this rule and regulation uniform in regard to fixing a standard for cutting the heads off all sardines packed in Maine. However, this is only an advisory opinion and I suggest that the industry and your office prepare to take care of this by proper legislation in 1951.

RALPH W. FARRIS
Attorney General

January 17, 1950

To Fred M. Berry, State Auditor
Re: State Contracts under Section 17, Chapter 122, R. S. 1944

I have your memo of August 16th relating to the provisions of Section 17 of Chapter 122, R. S. 1944, entitled, "Public officers forbidden to have pecuniary interest in public contracts." You call attention to my opinion issued on January 9, 1945 to Joseph P. Grenier, Superintendent of Public Printing. He had inquired as to my opinion whether Section 17 of Chapter 122 applied to members of the legislature, and I answered in the affirmative. There is no question in my mind but that a State legislator is a State officer, but whether he holds a place of trust in the State is another question. However, I have never written any opinion as to the application of Section 17 of Chapter 122, R. S., under our present statute setting up competitive bidding under the provisions of Chapter 14, R. S. 1944, especially Sections 35-53, inclusive, which have to do with the powers and duties pertaining to the purchasing and the making of contracts for the State. The provisions of these sections of Chapter 14 were enacted by the 1931 Legislature and were not effective until July of 1931, three months after the adjournment of the legislature on April 2, 1931.

You call my attention to the fact that H. H. Harris, State Controller, points out that a conflict exists in the rulings of the Attorney General's department and he cites an opinion dated February 18, 1944, written by Deputy Attorney General Abraham Breitbard, which can be found on page 117 in the Report of the Attorney General for 1943-44.

In this opinion he quoted from a letter written by former Chief Justice, W. R. Pattangall while he was Chief Justice of the Supreme Judicial Court, in which he stated informally that he could "hardly see how a member of the legislature could be said to be either a trustee, superintendent, treasurer, or other person holding a place of trust in any state office or public institution of the State."

Commenting further on this matter I wish to call your attention to the fact that the so-called Code Bill had not become law when Chief Justice Pattangall wrote the letter to former Attorney General Clement F. Robinson, March 23, 1931, giving his idea of the wording of the statute in question, which was then Section 11 of Chapter 131, R. S. 1930 and is now Section 17 of Chapter 122 of the 1944 Revision. It appears to me that Mr. Breitbard,

in writing his opinion to Mr. Greenleaf, Commissioner of Institutional Service, in 1944, did not take into consideration the provisions of Sections 35-53, inclusive, of Chapter 14, relating to purchases by the State.

When the provisions of Section 17 of Chapter 122 were enacted into law several years ago, the Governor and Council had the power to let out contracts for State purchases under the provisions of Chapter 155, P. L. 1905, which authorized the Governor and Council to contract in behalf of the State on the basis of competitive bidding for State printing and all other miscellaneous printing authorized by law for each department of the State government, including the legislative printing.

Under this statute the Governor and Council awarded a contract for certain State printing to the Waterville Sentinel Publishing Company. Cyrus W. Davis, then Secretary of State and also Secretary of the Executive Council, was a stockholder and the treasurer of the Waterville Sentinel Publishing Company. Governor Frederick W. Plaisted at that time requested an opinion from the Maine Supreme Judicial Court as to whether or not the provisions which are now Section 17 of Chapter 122 made void the contract between the State and the Waterville Sentinel Publishing Company. The Court held that the contract was void, on the basis:

> "If a member of the Executive Council should be a bookseller and stationer, and the Secretary of State be a printer and publisher, one of the situations probably contemplated by the legislature, would exist, affording an opportunity for mutual favoritism."

The Court further stated in its opinion in 108 Maine at page 553:

> "It was obviously impracticable to anticipate and specify in the statute the great variety of situations that might arise, and in order to accomplish the purpose of the statute and prevent the mischief designed to be remedied, the legislature was compelled to declare in general terms that no State officer should have a pecuniary interest in 'any contract' made in behalf of the state."

It is my opinion that, when the legislature in 1931 set up the Bureau of Purchases under the Administrative Code Bill, which provided the scope of the purchasing authority of the Bureau of Purchases, institutional supplies were to be bid for separately. The Code Bill also authorized the State Purchasing Agent to purchase in the open market specific supplies and equipment for immediate delivery to meet unforeseen causes, including delays by contractors or in transportation and unanticipated volume of work. The legislature set up a provision of statute for a standardization committee composed of the Governor, the Chairman of the State Highway Commission, the Commissioner of Health and Welfare, the Commissioner of Education and the State Purchasing Agent, with authority to advise the State Purchasing Agent and the Commissioner of Finance in the formulation and modification of the rules and regulations which shall prescribe the purchasing policy of the State, and to assist in the formulation, adoption and modification of standard specifications which shall apply to State purchases.

At the time when former Chief Justice Pattangall wrote this letter to Mr. Robinson, then Attorney General, in 1931, we had no Finance Commissioner.

Under Section 42 of Chapter 14, contracts shall be let to the lowest responsible bidder, taking into consideration the qualities of the articles to be supplied, their conformity with the specifications, the purposes for which they are required, and the date of delivery. Bids are received in accordance with certain standards adopted by the State Purchasing Agent with the approval of the Commissioner of Finance, and any or all bids may be rejected. A bond for the proper performance of each contract may be required in the discretion of the State Purchasing Agent, with the approval of the Commissioner of Finance.

Section 53 of Chapter 14, R. S., 1944, provides in regard to unlawful purchases.

> "Whenever any department or agency of the state government, required by this chapter and the rules and regulations adopted pursuant thereto applying to the purchase of supplies, materials, or equipment contrary to the provisions of this chapter or the rules and regulations made hereunder, such contract shall be void and of no effect."

Therefore it is my opinion that the Code Bill, so-called, especially Sections 35-53, inclusive, of Chapter 14, have changed the manner of making State purchases and provided safeguards in the purchasing of State supplies, and has in part impliedly repealed Section 17 of Chapter 122, R. S. 1944, which you cite in your memo. This matter should be presented to the next legislature, so that this statute can be amended to conform to the provisions of Chapter 14, R. S. 1944.

You will note that the language of Judge Pattangall did not express any opinion as to whether members of the legislature or of the Governor's Council came within the provisions of Section 17 of Chapter 122, R. S. 1944. He stated in his original letter, which I have before me, "I *hardly* see how a member of the legislature could be said to be either a trustee, superintendent, treasurer, or other person holding a place of trust in any state office or public institution of the State. I am not even *sure* that this section applies to members of the Governor's Council. The wording is quite different than I supposed."

I interpret the language of Judge Pattangall's letter of 1931 to mean that the members of the legislature and of the Governor's Council were not officers of trust of the State who were charged with purchasing supplies for departments or public institutions of the State. That is, it would not be supposed that they had any pecuniary interest, directly or indirectly, so that there would be any opportunity to receive any drawbacks, presents, gratuities, or secret discounts to their own use on account of such contracts made with the State. His language, "I am not sure," indicated that he was in doubt as to the interpretation of this statute as applying to members of the legislature and of the Governor's Council before the Administrative Code was effective.

I am of the opinion that if the Administrative Code Bill had been law at the time he wrote this letter, he would have been more explicit in his language in this respect.

If this statute were strictly construed, as you intimate in your memo and as pointed out by the State Controller, it would be impossible to facilitate the State's business in a reasonable and practical manner, and I agree with

his conclusion in this respect, because many members of the legislature are officers of corporations which are furnishing to the State materials and supplies under competitive bids through the Bureau of Purchases, and if this statute were strictly construed, without considering the Administrative Code Statute, the State would be cut off from purchasing from its own citizens valuable materials, supplies and equipment which are manufactured or sold within our State and this would seriously impair the functioning of our institutions and departments when they were faced with emergency purchases and could best secure them from corporations of which members of the legislature may be stockholders or directors. Consequently any such corporation, selling or manufacturing supplies that the State is sometimes forced to purchase on emergency purchase orders, should not be barred.

RALPH W. FARRIS
Attorney General

January 19, 1950

To Ober C. Vaughan, Director of Personnel
Re: Reinstatement

I have your memo of January 18th, stating that a former State employee has requested a meeting with the Personnel Board in connection with his reinstatement rights. You state that he had previously been informed by your office that due to the fact that he had been out of State employ for some four years his term of eligibility for reinstatement had run out. This was based on Rule V of the Personnel Law and Rules and the policy of the Board to maintain original entrance and reinstatement lists for no longer than a two-year period.

You then state that he contends that under Rule VI: "Any person holding a permanent position in the classified service who has been separated therefrom by resignation or otherwise, without delinquency or misconduct on his part, shall have his name entered on the proper reinstatement list upon such former employee's application and if a satisfactory service report is filed by the department head under whom such former employee worked." He contends that Rule VI is not restricted by the terms of Rule V.

You state that the Board feels that they would have authority to conform to his request, but that it would be a direct violation of the general policy which has been in effect for several years. Upon this basis you ask my opinion as to whether Rule VI is restricted by the terms of Rule V.

Rule V refers to the eligibility and Rule VI to the reinstatement lists. Eligibility naturally has to do with reinstatement, however. Rule V provides: "The term of eligibility of individuals on reinstatement lists shall begin with the termination of permanent service and shall last for a period of one year therefrom and may be extended in the same manner as the eligibility of applicants on the original entrance lists." So you see that Rule V deals with reinstatement as well as the original entrance lists. Therefore it must be read in connection with Rule VI which provides for the lists.

As in this case application was not filed within the specified period of one year, the Board may extend the eligibility as provided in Rule V, so that the applicant may be reinstated. From my reading of Rules V and VI it seems

to me that the Board has discretion to renew the reinstatement lists at different periods for terms not exceeding two years each at any time they see fit to do so, providing the applicant for reinstatement has complied with Rule VI, that is, that there was no delinquency or misconduct on his part.

RALPH W. FARRIS
Attorney General

January 30, 1950

To Carl L. Treworgy, Clerk, Racing Commission
Re: 8 week night harness racing law

I have your memo of January 30th asking if it would be legal for the Commission to split up the 8-week night harness racing meetings into two or more periods and also if it would be legal to grant less than 8 weeks to a licensee, under the provisions of Section 5 of Chapter 388, P. L. 1949.

In reply I will say that the statute provides that the Commission shall issue licenses, where pari mutuel betting is permitted, to hold night harness races or meets for a period of 8 weeks and no more between June 15th and October 15th of each year; if the applicants are qualified under this section, the Commission has wide discretionary powers in regard to the length of time for which licenses may be issued, having in mind always the economic welfare of the State where pari mutuel betting is permitted.

RALPH W. FARRIS
Attorney General

January 31, 1950

To Philip A. Annas, Associate Deputy Commissioner of Education
Re: Board of Trustees, Greeley Institute

I have your memo of January 30th relating to the status of the board of trustees of Greeley Institute, which was chartered under Chapter 48, P&SL 1913. Section 2 of this chapter states in part as follows:

> "The board of trustees shall be seven, and of this number the selectmen of the town of Cumberland, and each of them, during their term of office, shall always be members. The remaining four shall be first designated by the inhabitants of the town of Cumberland in town meeting, . . ."

In your memo you call my attention to an amendment to the charter of Greeley Institute, Chapter 66, P&SL 1945, which added four new sections. Section 3-A enacted by this chapter provides:

> "Powers of trustees. . . , and when the amount paid under the contract is equal to or exceeds the income of the Institute, in accordance with said section, then the board of trustees is hereby authorized and empowered to choose 3 of their number, who shall not be the selectmen of the said town of Cumberland, to act as a joint committee with the superintending school committee of said town in accordance with said section,

and said joint committee shall have all the powers vested in said committee by the provisions of said section and the town shall have all the benefits provided in said section."

In 1949 the town of Cumberland in town meeting voted to increase the number of selectmen from three to five.

On the foregoing statement of law and fact you ask the following questions:

"Question 1. Does the original charter, providing for three of the seven members of the board of trustees to be selectmen, prevail; or does the action taken by the town in 1949, increasing the number of selectmen from three to five, permit the number of selectmen on the board of trustees to be five?"

In answering Question 1 I will state that the original charter provided for three selectmen to be members of the board of trustees of Greeley Institute and four members to be elected by the inhabitants of the town of Cumberland in town meeting. In view of the fact that in 1945 the legislature authorized the formation of a joint committee of the board of trustees with the superintending school committee and provided that three of their number, who shall not be selectmen, shall act as a joint committee with the town superintending school committee, it is my opinion that the provisions of the charter prevail, notwithstanding the fact that the town has increased the number of selectmen to five, and that it is incumbent upon the selectmen to select three from their number to serve as trustees of Greeley Institute. Those members of the board of trustees elected by the inhabitants to serve on the joint committee should not be members of the superintending school committee; nor can they be selectmen.

"Question 2. If the number of selectmen permitted to be members of the board of trustees is five, how is the membership of the joint committee to be selected?"

My answer to Question 1 practically answers Question 2, as the provisions of the charter, as amended by the 1945 Legislature, should prevail over the action of the inhabitants of the town; and it was clearly the intent of the legislature to have only three members of the board of seven trustees be selectmen.

RALPH W. FARRIS
Attorney General

January 31, 1950

To Ermo H. Scott, Deputy Commissioner of Education
Re: Legality of establishing procedure for approval of teacher-education curricula

I have your memo of January 26th relating to the above named subject. You state that from time to time the State Department of Education is requested to grant approval to collegiate institutions within the State of certain curricula designed for the professional training of teachers; that up to this time such approvals, when granted, have been very informal in character and not based on definite standards; and that they have placed too significant

a responsibility upon the personal judgment of one or two officials. You further state that almost every neighboring State has developed a procedure, whereby, upon application by an institution, examination may determine whether the institution can meet certain predetermined standards before receiving official recognition and approval for the program in question. You further state that in the State Board of Education an agency has been created which might well assume a similar responsibility, but that the law does not provide definitely for the approval of such programs, though it may by inference in Section 156, Chapter 37, R. S., as amended.

On this basis you state that the Board of Education has requested that a written opinion be secured from this office concerning the legality of action by the Board to define standards and procedures whereby the applications of post-secondary institutions for approval of proposed curricula for teacher-education may be properly evaluated and approved, or disapproved until such time as certain standards are met.

In reply I will state that in my opinion the State Board of Education through the Commissioner of Education should set up a regulation to take care of this situation and that the Commissioner should be authorized to issue the certificates, with the approval of the State Board of Education, after the proposed curricula have been evaluated by the Board and the Commissioner and his staff.

RALPH W. FARRIS
Attorney General

January 31, 1950

To Harland A. Ladd, Commissioner of Education
Re: Accident Liability, Rented Property, Teachers' Colleges

I have your memo of January 26th in which you state that the administrators of the State's five teachers' colleges and normal schools frequently have rented auditorium and gymnasium facilities in serving the interests of their communities, and that the State Board of Education is concerned about liability, administrative, institutional or State, in case of accident. The Board has therefore requested you to ask me for a written opinion on the following problem:

"When a facility at a state teachers' college or normal school has been rented, with or without fee, to a nonprofit community organization for educational, recreational or cultural purposes, to what extent is the respective administrator, institution, or the state liable in case of a connected accident on the premises to any patron or participant, not officially associated with the college as a student or employee? To what extent can the party renting the facility be made responsible for the assumption of this liability, if any?"

In answering the question of the State Board of Education, I will state that as a general proposition normal schools and colleges, being merely agencies of the State, are not, in the absence of statute imposing a liability, liable for torts committed by their administrative officers or employees; and the State under its powers of sovereignty is immune from suit. This is on the ground that the relation of master and servant does not exist, and the law provides no funds to meet such claims. However, if someone should be in-

jured while the auditorium or gymnasium of a normal school was rented and there was negligence on the part of the administration of the institution, it is possible that the one injured might come to the legislature with a resolve asking reimbursement for damages. I have never heard of such a case during my several years' experience in the legislature and in the office of the Attorney General.

To clarify further the problem involved, you enclosed certain proposed recommendations which are the basis of the present discussion by the Board of Education.

I feel that these recommendations are very sound and should be carried into effect.

RALPH W. FARRIS
Attorney General

January 31, 1950

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

I have your memo of January 23rd referring to the provisions of Section 6 of Chapter 39, R. S. 1944, relating to expenses of the State Historian. You call my attention to the fact that this section provides that the State Historian is provided with $500 per year by appropriation, and you ask me to note that the law provides that any unexpended balance shall be carried forward and used for the same purpose for the succeeding year.

You further state that it seems to you that inasmuch as the total expenditure is limited to only $500 and that the carried balance may and has accumulated to nearly $2000 over a period of several years, there is a direct contradiction within this section.

Upon the basis of the foregoing you request me to inform you how you can pay the bills of the State Historian and still operate under Section 6 of Chapter 39, R. S.

Some days ago I had a talk with Mr. Griffith and Mr. Mudge, the Finance Commissioner, in regard to the contradictory provisions contained in Section 6 and I stated to them at that time that, in view of the fact that the State Historian's budget was a carrying account and the law authorized the expenditure of $500 a year and any balance left over at the end of the year shall constitute a continuous carrying account and shall be carried forward and credited to the appropriation for the same purpose for the succeeding year, it was the intent of the legislature that if the $500 was not used in one fiscal year, it should be carried over and used in another year, so that there would be money available to carry on the work of the State Historian.

In view of the fact that there is an accumulated balance for this work of gathering data relating to the history of the State, it should be available for the payment of expenses incurred in securing this material. If it were otherwise, it would defeat the intent of the legislature.

RALPH W. FARRIS
Attorney General

January 31, 1950

To Frank S. Carpenter, Treasurer of State
Re: Disposition of Income from Reserve in Permanent Trust Funds
Chapter 31, P. L. 1949

I have your memo of December 15, 1949, relating to the restoration to the Permanent Trust Funds of the amounts of losses in savings account balances impounded in closed banks.

The statute above cited provides: "The treasurer of state and the state controller are hereby authorized to apply in partial or full restoration of losses sustained on impounded bank accounts of the 'Permanent Trust Funds,' from profits available from sale of capital assets of said trust funds in such amount and to each specific trust only in an amount equal to the capital gains of each specific trust, and that no capital gains or securities held in any trust fund shall be applied on losses of any other trust fund excepting only when, as and if, a common fund is created."

By Section 2 of said Chapter 31, the legislature appropriated $42,681.04 to restore the original principal of trust funds to each specific trust where present capital gains are insufficient to offset losses on impounded bank balances, and in such trust funds as had no capital gains.

You state in your memo of December 15th that there is nothing in Chapter 31, P. L. 1949, which instructs you as to the distribution of income earned by the securities in which the reserve funds are invested, and that there is some question in your mind as to whether such income belongs to the reserve funds and should be added to them and become a part of them or whether the income should be distributed as active income to the beneficiaries of the various trust funds involved. You request my opinion as to the proper distribution of such income. You attach a statement of facts concerning the reserve funds.

I have talked this over with the Finance Commissioner and the State Controller, and they agree that income from the reserve funds should be distributed to the beneficiaries of the various trust funds involved. They say that in the absence of any specific instructions in Chapter 31, P. L. 1949, as to the distribution, it would seem that such distribution should be made in the same manner as that provided for the earnings of the trust fund itself.

RALPH W. FARRIS
Attorney General

February 1, 1950

To Norman U. Greenlaw, Commissioner of Institutional Service
Re: Guardianship—Inmates of Institutions

I have your memo of January 30th in which you state that the Augusta office of the Federal Security Agency, Social Security Board, has raised the question of your department's status as guardian over inmates of the various institutions under your supervision as it might relate to beneficiaries under the various phases of Social Security benefits.

You give as an instance that a boy committed to the Pownal State School is a beneficiary under certain conditions of the Social Security Act and the question has been raised as to guardianship in his case by the Department of Institutional Service, through the Commissioner and the Superintendent over his estate or person.

You state that you also have inmates at the Military and Naval Children's Home who participate in benefits under the provisions of Old Age and Survivors Insurance, and the Commissioner and Superintendent are named as co-guardians.

Upon this basis you ask for a ruling as to the status of your department, the Commissioner, and the Superintendent of the institution in question in regard to guardianship of inmates.

I wish to advise that under Section 175 of Chapter 23, the Commissioner and the Superintendent shall act as a board of guardians of all the children who are members of the State Military and Naval Children's Home and shall have all the powers and authority granted by law to guardians, which statute would be sufficient to satisfy the Federal Security Agency. Section 86 contains a guardianship clause in regard to inmates of the State School for Girls.

There is a general statute that provides that all inmates of the institutions shall be wards of the State; but that does not in my opinion give the Commissioner or the Superintendent of the institution the powers granted by law to guardians in the handling of their personal estates. Therefore when a question comes up relating to an inmate of the Pownal State School or one of the State Hospitals, it has always been the policy of this office to advise the Superintendent or the Commissioner to have a guardian appointed in the Probate Court for the purpose of handling any property which may belong to an inmate of an institution. Of course the appointment of a guardian, even if he is the Superintendent or the Commissioner, would in my opinion satisfy the Federal Security Agency relative to the various phases of Social Security benefits. . . .

RALPH W. FARRIS
Attorney General

February 1, 1950

To Norman U. Greenlaw, Commissioner of Institutional Service
Re: Transfer of Mental Patients from Another State

I received your memo of January 30th relating to the provisions of Section 117, Chapter 23, R. S., which provides for the transfer of mental patients "currently confined" in a recognized state mental hospital as a result of proceedings considered legal by that state. You say that of late you have been receiving numerous requests for authority to transfer to Maine persons who have been committed to out-of-state hospitals on an emergency basis, namely, 30-day observation; and that your department does not believe it was the intent of the legislature to authorize the transfer of such persons committed on an observation basis. You would therefore like to have my opinion on this matter.

I wish to advise that in my opinion this statute does not relate to temporary commitments on an emergency basis for observation. In other words, it is my interpretation of the statute that the patient must be currently confined permanently in a recognized state hospital as a result of proceedings considered legal by the State in question; and inasmuch as that State is required by law to furnish a duly certified copy of the original commitment proceedings and a copy of the patient's case history, it is within the discretion of the Commissioner of Institutional Service whether or not a request for transfer is justifiable. If a patient has been committed on an emergency basis, it is my opinion that you would be justified in refusing the transfer of said patient.

RALPH W. FARRIS
Attorney General

February 1, 1950

To Norman U. Greenlaw, Commissioner of Institutional Service
Re: Settlement—Holden Turner

I have your memo of January 24th, stating that on November 30, 1948, your department authorized the admission of Dorothy W. Turner, wife of Holden Turner of Mount Vernon, to the Central Maine Sanatorium. You further state that the patient is approximately twenty-one years of age and that the family consists of four children ranging in age from one month to four years. Mr. Turner was born in Rome, Maine, on October 22, 1924. Patient's application states that her husband earns $20-$25 a week, working in the woods, etc., which makes it obvious that he would be unable to assume the obligation of paying for his wife's sanatorium treatment.

You further state that you have contacted the town of Mount Vernon on various occasions in an effort to have Mr. Turner's legal settlement established and have the town accept responsibility, but have been unable to get any reply by letter or telephone. Further check indicated that possibly Rome might be the place of settlement, but the chairman of the board of selectmen denies this, on the ground that "before his marriage he took his father's settlement and he was 19 years when married so at that time he became emancipated from his father and lived with his wife in Mt. Vernon so I guess it belongs to Mt. Vernon to take care of the bill."

You state that you do not interpret emancipation to mean when a man marries, nor do you figure that he literally becomes of age when he marries, but rather when he reaches the age of twenty-one and that he can then start to acquire a legal settlement in his own right, but until that acquisition is made, would have the settlement of his father, if he had one. In that case you feel that Holden Turner would, until October 22, 1950, hold the settlement in Rome which he derived from his father.

In order that you may attempt to collect from the town of settlement, you ask my opinion whether Rome or Mount Vernon is liable.

Since the law permits the marriage of minors with their parents' consent, parental rights must necessarily yield to the new obligations and rights arising from the marriage relation. When a man marries and founds a new

family he assumes new obligations and duties. When these new obligations and duties conflict with former ties, they must, in the interests of society and the family relation, be paramount. In other words, legal rights between husband and wife are superior to those between parent and child. Therefore it is my opinion that the marriage of Holden Turner emancipated him from his parents and that if he has resided in Mount Vernon since his marriage when he was 19 years of age, his legal settlement would be Mount Vernon, as that would mean that he had resided there for more than six years and had raised a family. This is a question of fact. Our court held in *Lowell v. Newport*, 66 Me. 78, that emancipation may be by marriage, death, misfortune or agreement.

RALPH W. FARRIS
Attorney General

February 2, 1950

To Raymond C. Mudge, Commissioner of Finance
Re: Board of Elevator Rules and Regulations

I have your memo of January 26th asking if the last paragraph of Section 99-K of Chapter 374, P. L. 1949, relating to the inspection of elevators, allows the Commissioner of Labor to expend in excess of the revenue dedicated to this purpose, or must this activity operate within the limits of the amounts collected as specified in this chapter?

In reply I will state that it is my opinion that it was the intent of the legislature that the expenses incurred under the provisions of this section should be paid from the revenue derived from fees, as the legislature appropriated all fees for this purpose.

RALPH W. FARRIS
Attorney General

February 3, 1950

To Harland A. Ladd, Commissioner of Education
Re: Liability in case of school accident

I have your memo of February 2nd relating to liability in case of school accident.

I gave a memo to H. V. Gilson, then Commissioner, on October 16, 1946, on the liability of teachers and school board members in case of death or injury of pupils. If you have not a copy of that memo in your file, I will furnish one from this office.

I call your attention to the case of *Brooks vs. Jacobs*, 139 Maine 371, decided April 2, 1943, in which the Court held that the relationship of teachers to their pupils is in the nature of *in loco parentis*, as the teacher is the substitute of the parent. Therefore if a pupil is injured in school and the teacher is negligent in securing emergency treatment, causing further injury or death to the pupil, that teacher might be held liable, depending on the circumstances of the case.

In the case of an emergency where the pupil is injured and the teacher calls a hospital and has the pupil taken there, the parents of the child are

liable for the care at the hospital and not the teacher; but in cases of accidents that are not serious, like a child's falling outside on the snow or ice, the teacher should always get in touch with the parents before hospitalizing the child, and then there would be no question as to who was responsible for the hospital expenses.

It is not practical for teachers or school nurses to take pupils to hospitals without the consent of the parents. That should be done only in cases of emergency, where a life may be saved or further injury averted.

RALPH W. FARRIS
Attorney General

February 6, 1950

To Marion E. Martin, Commissioner of Labor and Industry
Re: Vacation Pay for Certain Employees

I trust you will excuse the delay in answering your memorandum on the above subject; but since its receipt this office has been intensely busy and Mr. Farris or myself has been called out of the office on official business on a number of occasions, so that the work has been more than one man can do.

Your memorandum raises questions to which the State has an administrative or executive agency, if not a real party in interest. Contract rights between individuals, whether the contract is by the individual personally or by virtue of his membership in an organization authorized to make a contract for him, will be determined by judicial procedures applicable to civil matters. What the particular obligations may be under the terms of any given contract is a matter for judicial construction or for arbitration by agreement between the parties.

There is no State law requiring a company under the terms of a union contract to pay an employee for his vacation, if he is laid off before he takes the vacation. It may well be that under the terms of the contract or by custom and usage the employee is entitled to the pay. The answer to the question is entirely within the terms of the contract, and not a matter of State law.

JOHN S. S. FESSENDEN
Deputy Attorney General

February 7, 1950

To H. A. Ladd, Commissioner
Re: Vacancies in Superintending School Committees

You wrote me on February 3d, stating that a situation has arisen concerning which you desire advice.

A member of a superintending school committee has been committed to the Augusta State Hospital; he has not resigned from the committee. You request me to give you an opinion as to whether the 90-day provision in Section 42, Chapter 37, R. S. 1944, applies under these circumstances.

It is my opinion that when a member of the superintending school committee is absent for more than ninety days, a vacancy shall be declared under the statute.

RALPH W. FARRIS
Attorney General

February 7, 1950

To H. B. Peirson, State Entomologist
Re: Tree Surgery Law

I have yours of January 25th relating to the interpretation of a portion of the tree surgery law, R. S. 1944, Chapter 32, Sections 51 and 52 as amended by P. L. 1949, Chapter 149.

You state that Section 51 provides: "No person, firm or corporation shall advertise, solicit or contract to improve the condition of shade, forest or ornamental trees by pruning, trimming . . . without having secured a certificate."

You continue that there are three concerns in the State whose primary work is the setting of poles and the stringing of new lines, one company also doing some clearance work. Your question is whether these companies have a right to solicit work entailing pruning without having a license.

You further state that the tree surgery board, which has the right to prescribe all rules and regulations governing examinations, has twice ruled that the officer in charge of these companies, who is usually the man to solicit the work from the utility companies, need not have a license, providing he has licensed men in his crew who supervise the actual pruning and who solicit permission to prune from the owners of the trees. You feel that the public is thereby amply protected and that the public utility companies are cooperating with you by insisting that the work be supervised by licensed men; but you state that the Maine Arborists Association, which is made up of licensed tree men, disagrees with your ruling, at least some of them feeling that the man who solicits the work from the company should be licensed. They have therefore asked you to get my opinion on this point.

I agree with your department and the tree surgery board that the men who do the pruning are the ones who should be licensed. The men who solicit the work from the company need not be licensed, as they cannot harm the trees if they do no pruning.

RALPH W. FARRIS
Attorney General

February 8, 1950

To Honorable Frederick G. Payne, Governor of Maine
Re: Allotments for fiscal year, Chapter 14, Section 14, R. S. 1944

I have your memo of today in which you propound the following question:

"In the event that the Legislature should fail to provide sufficient appropriation for the fiscal year ending June 30, 1951 to meet the estimated requirements of the various departments of state, in your opinion would it be within the meaning of the law for the State Budget Officer and the Governor and Council to approve allotments at the beginning of the year which contemplate the expenditure of more funds than are provided for within the appropriations available to these departments?"

It is my opinion that it would not be within the meaning of the law above quoted for the State Budget Officer and the Governor and Council to approve

allotments at the beginning of the year which contemplate the expenditure of more funds than are provided for within the appropriations available for these departments.

Section 14 of Chapter 14 specifically provides that the Governor shall require the head of each department or agency of the state government to submit to the Department of Finance a work program for the ensuing fiscal year, such program shall include all appropriations made available to such department or agency for its operation and maintenance and for the acquisition of property, and it shall show the requested allotments of said appropriations *by quarters* for the *entire fiscal year.*

While under the provisions of Section 14 of said chapter the Governor and Council with the assistance of the Budget Officer may revise, alter, or change such allotments before approving the same, yet the aggregate of such allotments shall not exceed the total appropriations made available to such department or agency for the fiscal year in question. In other words, it is my opinion that the law requires that the work program for the ensuing fiscal year shall show the allotments by quarters for the entire fiscal year within the appropriations made available by the legislature.

RALPH W. FARRIS
Attorney General

February 9, 1950

To Fred M. Berry, State Auditor
Re: Chapter 18, P. L. 1949, Maintenance of State and State-aid Highways

I have your memo of February 6, 1950, relating to the provisions of Chapter 18, P. L. 1949, which was an amendment to Sections 29, 45, 46 and 50 of Chapter 20, R. S., 1944, passed as an emergency measure, so that it took effect when approved by the Governor on February 24, 1949. I also acknowledge receipt of a copy of a letter written by the State Highway Commission to the municipal officers of Maine, dated February 24, 1949.

You state in the third paragraph of your memo that it was the practice of the State Highway Commission to bill maintenance charges to the municipalities on a calendar year basis and that all such charges were billed for the calendar year 1948. You further state that no billings were made by the Commission for maintenance costs for the period January 1, 1949 to February 24, 1949, the effective date of this emergency legislation. The amount of money involved for maintenance charges during this period is estimated at $50,000, which the State would have received if the provisions of Chapter 20, Sections 46 and 50, R. S. 1944, as amended, continued in effect until February 24, 1949. Upon this statement of facts you ask the following question:

"Should the State Highway Commission bill the maintenance charges to the municipalities as were due the State under the provisions of the laws existing prior to the enactment of Chapter 18, Public Laws of 1949; or are all maintenance charges to be assumed by the State beginning with the calendar year January 1, 1949?"

It is my opinion that all maintenance charges under the provisions of Chapter 20 are on a calendar year basis. Section 45 as amended provides that if any town fails to pay its portion of the cost of snow removal work on its state highways on or before the 1st day of January of the following year, the same shall be collected and paid in the manner provided in section 31, and the amount so collected from such town shall be added to the fund for maintenance.

Furthermore, the emergency preamble to Chapter 18 states that "it is essential . . that the towns should have knowledge of the amounts to be raised for the maintenance of state aid highways before the towns hold their annual town meetings in March; and in view of the fact that municipal officers were notified that the emergency legislation had been enacted, providing that the improved state-aid highways shall be continually maintained under the direction and control of the Commission at the expense of the State, the towns made no provision for raising money on a calendar year basis. This indicates that it was the intent of the legislature that the municipalities should be relieved from all maintenance charges for the calendar year of 1949.

RALPH W. FARRIS
Attorney General

February 16, 1950

To Col. Spaulding Bisbee
Re: The Civil Defense and Public Safety Law

Reference is made to the letter addressed to you under date of February 6, 1950, by James L. Reid, County Attorney, Kennebec County. In this letter Mr. Reid raises the question whether or not the County Commissioners are authorized to expend county funds in furtherance of the Civil Defense and Public Safety activities contemplated by the "Maine Civil Defense and Public Safety Act of 1949." Mr. Reid's question is raised because of the fact that the statute defines "political subdivision" as "any city, town or village corporation in the state," not specifically mentioning counties.

It is my opinion that although counties are not specifically mentioned in the definition of "political subdivisions," the counties may nevertheless, and should, participate in the program contemplated by the Act itself. Section 12 of the Act states that the Governor and the executive officers (presumably of the State) or governing bodies of the political subdivisions of the State are to utilize the services and facilities of existing departments, offices and agencies of the State. While the County Commissioners are not in a narrow sense of the words "agencies of the State," it is nevertheless my opinion from an examination of the whole Defense Act that the County Commissioners, in carrying out their functions as administrators of the county government, are an agency or facility of State government in a broader sense, and, I believe, within the contemplation of the Civil Defense Act. Accordingly, in being "utilized" within the meaning of Section 12 of the Act, it would follow that they would be authorized to make such expenditures as are reasonably necessary to carry out their part in the official program which has been promulgated to carry out the terms of the Act.

JOHN S. S. FESSENDEN
Deputy Attorney General

February 17, 1950

To. Col. Spaulding Bisbee, Director, Civil Defense & Public Safety
Re: Conference of County Directors

Your department has inquired as to how the expenses of county directors who have been called to Augusta to attend a conference relative to the carrying out of the State Civil Defense and Public Safety Act can be defrayed.

You are advised that if the respective counties should feel that they should not pay the expenses, due to the fact that it is an activity outside the geographical limits of the counties and an activity not specifically called for in the state-wide plan, as we read the Council Order allocating the sum of $15,000 to the director in charge of the administration of the Act, it would appear that in the allocation sufficient authority was given to the director to authorize those funds to be used for such expenses.

JOHN S. S. FESSENDEN
Deputy Attorney General

February 23, 1950

To Ernest H. Johnson, State Tax Assessor
Re: Refund of Excise Tax

I have your memo of February 16th relating to the case of a resident of Chicago who paid an excise tax on his automobile on December 22, 1949, in South Bristol while visiting there. You state that he took steps later to register his car in Maine and paid the registration fee, giving as his reason that while not a resident of Maine he expected to spend a part of the year in this State. Your question is:

"If a non-resident pays an excise tax in this state and takes steps to register his automobile here but subsequently surrenders his registration and receives refund of his registration fee, is he entitled to receive a refund of the excise tax from the town in which it was paid?"

Answer. I know of no statute which authorizes a refund of an excise tax. The statute you cite prohibits a refund of any excise tax to any person, when once it is paid. The South Dakota decision which you cite, 149 N. W. 422, does not seem to be in point in this case, because the tax agency had jurisdiction under the statute when this non-resident, preparatory to applying for registration, paid an excise tax in the municipality of the State where he was temporarily residing. With no machinery for a refund, I do not see how the tax agency can return the tax paid, even though he changed his mind and decided not to have his car registered in Maine. . .

RALPH W. FARRIS
Attorney General

February 23, 1950

To S. F. Dorrance, Livestock Specialist, Department of Agriculture
Re: Licensing of Dogs in Medford

I have your memo of February 20th, enclosing letter from Bion F. Jose, Town Manager of Milo. You state that his question is whether the officials in Milo have the authority to issue a directive to a constable to proceed on the unlicensed dogs in the unorganized township of Medford.

I wish to quote from Section 223 of Chapter 79 of the Revised Statutes of 1944, which provides: "A constable may serve, execute, and return upon any person in his town or in an adjoining plantation any writ of forcible entry and detainer, or any precept in a personal action when the damage claimed does not exceed $100, including those in which a town, plantation, parish, religious society, or school district of which he is a member is a party or interested; but before he serves any process, he shall give bond to the inhabitants of his town in the sum of $500, with 2 sureties approved by the municipal officers thereof, who shall indorse their approval on said bond in their own hands, for the faithful performance of the duties of his office as to all processes by him served or executed; . . ."

Therefore it is my opinion that the authority of constables in serving papers is limited by this section.

Section 23 of Chapter 88 provides when a constable may kill a dog. However, under this section which I have just cited a deputy sheriff would have authority in a plantation adjoining the town where the warrant was issued or the municipal court in the county having jurisdiction. This will be found in Section 11 of Chapter 88, which provides also that the penalty can be recovered by complaint before any trial justice or municipal court in the county where such owner or keeper resides. . .

RALPH W. FARRIS
Attorney General

March 2, 1950

To Philip A. Annas, Associate Deputy Commissioner of Education
Re: Reimbursement for Tuition

I have your memo of March 2d in regard to a pupil who lives in the town of Gouldsboro with her grandmother who raised her from a baby. You state that she attended the Gouldsboro schools without paying tuition until she completed the eighth grade, and as Gouldsboro does not have a high school, then went to Southwest Harbor to attend high school. While at Southwest Harbor she stayed with an aunt during the winter and returned to her grandmother's for the summer. This pupil claims that her grandmother is her sole support and that she had lived with her from a child although her grandmother has never been legally appointed her guardian. The Town of Gouldsboro now refuses to pay the Town of Southwest Harbor for her tuition on the ground that they are not responsible for her, because her grandmother is not her guardian. Upon this statement of facts you ask the following question:

"Should the State pay this tuition and charge the payment against the school funds due the Town of Gouldsboro?"

Answer. Yes, for the reason that this pupil resides in the town of Gouldsboro and has lived with her grandmother in that town from a child. Her grandmother is *in loco parentis*, that is, in place of her parent. Her father, I understand, has deserted his family, her mother is dead and this child has

been cared for by her grandmother during these school years in the town of Gouldsboro; and there is no legal reason why the Town of Gouldsboro should now try to avoid payment on account of the technicality which it has raised.

RALPH W. FARRIS
Attorney General

March 2, 1950

To Homer E. Robinson, Bank Commissioner
Re: Qualification of Directors, Development Credit Corporation

I received your memo of February 28th, stating that in the interests of the banks of this State which have been asked to become members of the Development Credit Corporation under the provisions of Chapter 104, P&SL 1949, you have been asked to secure a legal opinion from me on the interpretation of Section 5 of this Act.

As you state in your memo, this section provides, in part that one-third of the Directors of the corporation shall be elected by vote of the stockholders and two-thirds by members of the corporation.

Section 1 of the Act creating the corporation provides that it shall have the power to enact suitable by-laws and regulations not inconsistent with the general laws of the State, etc., and shall be possessed of all the powers, privileges and immunities conferred on corporations by the general laws relating to corporations.

You further point out that Section 31 of Chapter 49, R. S., requires that directors must be and remain stockholders, except that a member of another corporation, which owns stock and has a right to vote thereon, may be a director. That is the general law, and it is my opinion that in order to comply with Section 1 of the Special Act creating the corporation, the directors should conform to the general law and qualify themselves as such directors by subscribing for a share of stock in the corporation, thereby avoiding future legal questions in this regard.

RALPH W. FARRIS
Attorney General

March 8, 1950

To Col. Francis J. McCabe, Chief, Maine State Police
Re: School Bus

I received your memo of March 3d, stating that you are receiving a number of inquiries regarding cars operating on pleasure plates, carrying school children and being paid by the pupils or their parents instead of by the municipality.

I talked with the Secretary of State and his Deputy concerning this matter a few days ago, and I believe I advised Sgt. de Winter on the telephone that if private passenger cars carry school children for hire they should have a tag on their license plates and pay a license fee for that purpose, unless the vehicle is a regular school bus.

RALPH W. FARRIS
Attorney General

March 17, 1950

To Stuart C. Burgess, Assistant Attorney General
Re: Fines imposed in Unemployment Fraud Cases

Your question dated March 8, 1950, addressed to the Attorney General, has been referred to me for an expression of opinion.

As I understand the statutes of this State, your question with respect to the disposition of fines imposed in unemployment fraud cases would be as follows:

Under the provisions of Section 5 of Chapter 137, R. S. 1944, the presiding officer of the court imposing the fine for violation of the Employment Security statute for an unemployment compensation fraud committed thereunder should pay the fine into the treasury of the county where the offense was prosecuted.

The authority for such court to impose a fine is found in the penalty sections of Chapter 24 of the Revised Statutes, which is now Chapter 430 of the Public Laws of 1949. In the amended Chapter 24 these penalties are set forth in Section 28 found on pages 569 and 570 of the Public Laws of 1949. In my opinion the fines mentioned in the penalty sections are the same fines as are contemplated in the second sentence of Section 12 of Chapter 430, P. L. 1949, page 543. This being the case, going back to Section 5 of Chapter 137, R. S. 1944, the county treasurer should, upon the approval of the county commissioners, pay to the State for the special administrative expense fund established by Section 12 *supra* the amount of the fine imposed and collected under the penalty sections first mentioned. The duty of the county treasurer in this respect is found in the third sentence of Section 5 of Chapter 137.

JOHN S. S. FESSENDEN
Deputy Attorney General

March 24, 1950

To Honorable Frederick G. Payne, Governor of Maine
Re: Old Age Assistance

There are two philosophies behind this situation:

1. Good administration (so-called)
2. Humanitarianism

I have watched these clash for the thirteen years that I have participated in state government.

While the Social Security program in its overall picture is a great humanitarian movement, many of its administrators at both federal and state levels, treating people as a commodity, operate the program as an *exact* science instead of a *social* science. I have seen it over and over again.

Judges are often criticized in the sentences meted out. However, it is in recognition of the "social science" that discretion is given. You are aware that the opposite philosophy would deny discretion to judges and require the same sentence in all apparently similar cases. This philosophy is entirely wrong in my judgment because its premise is faulty. The premise is, in effect, that since the cases are similar the people are alike.

The philosophy of good administration (so-called) sounds well: namely, stick to your rules and treat everyone alike. It inevitably results in situations like the present case. Although it is never publicly mentioned, this philosophy has the added attractiveness that it saves administrators from having to work or worry their heads over the hearts, souls and bodies of unfortunate people. It saves the administrators headaches.

It is obvious now to you that my personal philosophy runs along the other line.

Among other philosophies involved are two more:

Maine's relatives-to-support requirement;
Federal's complete liberalization.

The second is not exactly as I have named it since they must and do have restrictions to which there are no exceptions and which result in hardship. However, that program is so much more liberal than Maine's that federal authorities find it difficult to "stomach" Maine's restrictions. Not favoring our program, my guess is that in agreeing to a "plan of operations" they are inclined to be strict and make it difficult to operate. This is conjecture on my part, but I have been through it and seen it work. Federal technicians make manifest their helpfulness and hearty cooperation, which is sincere when there is no clash of philosophies but is a "cover-up" when the social philosophies are opposed.

Question: What can be done?

The key is the plan of operations.

Perhaps Federal is adamant and will approve no other plan, but if the plan could be liberalized within the scope of the law it might serve to diminish the number of hardship cases.

As one who knows nothing about the particular field of old age assistance I should like to observe that the premise of the so-called income-and-assets schedule is itself faulty when it assumes that a wage earner earning $1 more than a fixed figure can support another individual for a year. "Needs tests" have to be used in the old age assistance program. The Maine legislature has said, "In considering need you must consider the ability of a relative to support." The administrators have imposed the income-and-assets schedules as an *arbitrary* conclusive as to need, which arbitrary can, and I suppose frequently does, completely ignore the spirit and perhaps the letter of the law by denying benefits to people who are in fact in need.

One's reaction might be that perhaps Fessenden, having such pronounced feelings on the subject, would be a good one to work on a solution. May I point out that I do not feel that there is too much law involved and that no doubt the reason both the federal and state administrators receive so much larger salaries than mine is that they are, or should be, so much more competent to solve the problem.

JOHN S. S. FESSENDEN
Deputy Attorney General

March 28, 1950

To Ernest H. Johnson, State Tax Assessor
Re: Dead River and Flagstaff Plantations

I have your memo of March 17th in which you state that neither Dead River nor Flagstaff expects to hold an annual meeting this year to choose officers and that a flowage map of the Central Maine Power Company indicates that all but a small portion of the highway in each town will be overflowed; therefore it appears that the only problems involved are with respect to current taxation and to safeguarding town funds and records. . . As far as current taxation is concerned, it would appear that the county commissioners could act after April 1st, under the provisions of Section 54 of Chapter 81, which provides that when a town has neglected to choose assessors, the county commissioners may appoint three or more suitable persons in the county to be assessors of taxes. You add that the only taxes to be assessed this year presumably will be state, county, and forestry district taxes, and you pose the questions: "Is the penalty noted in Section 53 necessary? From what state fund is the expense of assessing under Section 54 to be paid?"

Answer. The penalty is not necessary in this case. The charges allowed by the county commissioners should be paid out of the State Treasury from the State Tax Assessor's funds—deorganized towns.

Your next question is: "Should clerk retain her records until deorganization?"

Answer. Yes.

Your next question, in view of the fact that the treasurer does not hold over, is, "Who would receive any funds payable to the town, if paid after April 1?"

It is my opinion that they should be paid to the State Tax Assessor to be held in a suspense account in the State Treasurer's office until deorganization.

Your next question as to taxes is: "Should state, county and forestry district tax warrants be sent to sheriff, or to whom? Should the sheriff pay over all collections, as made, to the county treasurer, and the treasurer pay over to the State Treasurer after collections have been completed? What compensation is the sheriff entitled to, if any?"

Answer. Tax warrants should be sent to the sheriff. Section 124, Chapter 81. The taxpayer shall pay the sheriff 5% over and above his tax for sheriff's fees, and no more. Section 126, Chapter 81. The sheriff should pay over his collections to the county treasurer, and the county treasurer to the State Treasurer to be held in a suspense account.

Your next question is: "Should bank books and other intangibles of the town be turned over to the county treasurer for safekeeping pending deorganization? Or what disposition should be made of them?"

Answer. There is no provision of statute in this regard, but the bank books and other intangibles could be turned over to the clerk of the town to be held until deorganization, or they could be deposited with the county treasurer, whichever the State Tax Assessor designates, as upon deorganization the matter will come into the hands of the State Tax Assessor.

RALPH W. FARRIS
Attorney General

March 30, 1950

Earle R. Hayes, Secretary, Maine State Retirement System
Re: Status of Teachers at Ricker Classical Institute

You are advised that in writing what follows I am not going to attempt to give a conclusive interpretation or so-called ruling, for the reason that I do not find myself in a position to speak with any degree of finality at this time.

It is my understanding that it has been a generally agreed-upon policy to give a liberal construction to the terms of the Employees' Retirement statutes, to the end that the benefits of the System may be available to all persons who come reasonably within the provisions of law. It is with this in mind that I have delayed replying to your memos relative to the Ricker Classical Institute case.

I am inclined to think that Chapter 428 of the Public Laws of 1949 may not include within the System the teachers at the Ricker Classical Institute, in which event, if I am right, the result would be to deny the benefits of the System to those teachers. This inclination is predicated upon the proposition that, as I read your memo and the memo from the Commissioner of Education to you, I infer that that institution has never in fact been supported at any time at least 3/5 by state or town appropriations. If this is the case, then the teachers are not eligible to participate in the system unless they have "heretofore contributed to the Maine Teachers Retirement Association, provided that such contributions have not been withdrawn." I have no information with respect to participation in the Maine Teachers Retirement Association by the teachers at Ricker Classical Institute, nor whether, if they did participate, they have or have not withdrawn their contributions. The alternative provision which would entitle the teachers to membership is a question of fact which possibly can be resolved by reference to your records or those of the Commissioner of Education or those of the Institute itself.

At the present time I am not sufficiently informed as to whether or not all teachers at a given institution were required to participate in the Maine Teachers Retirement Association or whether it was optional among the teachers. I believe that under the Employees' Retirement Law you generally confer eligibility on employees of a unit only if all employees are covered, rather than optional choosers. This would then raise the question whether only those teachers who had contributed to the Retirement Association would be eligible to continue in the Retirement System or whether, some having complied, all presently employed teachers at the Institute would now be covered, and a subsequent question whether all must be covered or whether an option remains.

The giving of a specific answer to the first question raised by you could lead to such ramifications that I consider it unwise to attempt to give a categorical answer.

Although it is not suggested in your memorandum, it seems to me, as I explore the problem, that there must of necessity enter into it some administrative or actuarial problems in arriving at any conclusion which would admit

to the System some few of many employees rather than the entire group. With respect to this I have no way of arriving at a logical conclusion without knowing more about the administrative and actuarial workings of the System.

I notice in the Commissioner's memo the question whether or not by not contributing to the Teachers Retirement Association that fact would constitute the exercising of an election not to become members. Just as an off-hand observation I would say that it would constitute such an election, particularly on reading the last clause of Chapter 428 of the Public Laws of 1949, "provided that such contributions have not been withdrawn," which clause seems to import an intent to permit continued coverage only to those who were in and had not withdrawn their contributions.

To summarize, but not necessarily to express an opinion with finality, the law seems to be that if Ricker Classical Institute has been supported at any time at least 3/5 by state or town appropriations, the teachers presently employed there may be admitted to the System; or if not so supported, if the teachers there formerly contributed to the Maine Teachers Retirement Association (presumably all of them) and have not withdrawn their contributions, then the teachers presently employed there are eligible for membership. The facts are entirely for the determination of the trustees of the Retirement System.

JOHN S. S. FESSENDEN
Deputy Attorney General

March 30, 1950

To Fred M. Berry, State Auditor
Re: Chapter 37, §§ 25 and 78-II

In connection with these sections you have asked,

"Shall all bills or invoices be approved individually by a majority of the members of the School Committee, or would a so-called warrant suffice when a listing of individual invoices by names and amounts is made with bills attached and approved in total by a majority of the members of the School Committee?"

It is assumed that in asking the question you are seeking an advisory opinion with respect to the suggestions, recommendations or advice that you should give to towns when your department has been requested to make an audit of town accounts. It is also assumed that you are not seeking an opinion from this office having the effect of a so-called Attorney General ruling, often misconstrued as regulating that which a town shall or shall not do.

In making suggestions or recommendations to a town, it is our opinion that you should recognize that the two sections of law referred to by you may permit of any number of accounting methods which might well comply with the statute, so that any expression from this office as to any particular method does not preclude the use of some equally statute-complying method.

Section 25 in referring to a "bill of items" certainly contemplates some form of listing bills payable so that the same may be readily scanned and the items avouched as to propriety for payment.

Subsection II of Section 78, when read alone, may suggest that each individual bill should bear the approval of a majority of the members of the superintending school committee. However, this subsection, when read in connection with Section 25, indicates that there would be no impropriety in attaching the individual bills to be approved to the "bill of items" so that the avouching of the "bill of items" constitutes an approval of the listed items as supported by the bills or vouchers attached thereto.

This does not preclude the municipal officers or members of the school committee in any community adopting a stricter procedure, such as that of requiring the signatures of the majority of the committee on each and every bill presented, which procedure, under certain circumstances, a town might think it the part of wisdom to adopt.

JOHN S. S. FESSENDEN
Deputy Attorney General

April 3, 1950

To Fred M. Berry, State Auditor
Re: Volunteer Fire Departments

In your memorandum of March 21, 1950, you inquire whether or not the practice of paying appropriated amounts directly to the treasurer of a volunteer fire department by a lump sum check fulfils the responsibility of a town treasurer.

The payment of amounts appropriated by a lump sum check payable to the treasurer of the volunteer fire department is a relatively common practice, particularly when the appropriation is actually for the nominal salaries paid to the respective members of the fire department.

This office actually, so far as the law is concerned, has no authority to give any advisory opinion with respect to the handling of town affairs. It would be the writer's personal opinion that financial obligations of volunteer fire departments should be paid on vouchers just as are other town bills. This for the reason that any funds not expended within an appropriation should lapse to the surplus, except of course in the categories of those things which by law are carried over.

JOHN S. S. FESSENDEN
Deputy Attorney General

April 3, 1950

To Lester E. Brown, Chief Warden, Inland Fisheries and Game
Re: Chapter 366, Public Laws of 1949

Chapter 366, P. L. 1949, refers to boats or canoes maintained for hire upon inland bodies of water to which the public has right of access. In performing the duties imposed upon the Department of Inland Fisheries and Game, the right and duty of the department to see that this chapter is complied with will be determined in each case by whether or not the boat or canoe is maintained for hire. If it is not so maintained, the owner will not have any duty to comply with this chapter.

JOHN S. S. FESSENDEN
Deputy Attorney General

April 3, 1950

To Fred M. Berry, State Auditor
Re: Verification of Audit Petition

Under date of March 20, 1950, you referred a petition for audit of the books of the Town of Castine to this office with the question as to whether or not the signatures should be verified by the town clerk. This petition was accompanied by a letter signed by Mr. James B. Lake, Jr., as a Justice of the Peace, in which he certified that the signatures are those of registered voters in excess of 10% of those appearing on the voting lists of 1950.

The petition was submitted to you under the authority given in Section 116 of Chapter 80, R. S. 1944.

The extent of verification which you will require as a preliminary to undertaking the audit authorized in this section is entirely a matter for you to decide in the administration of your department.

I am returning the petition and the verifying letter herewith.

JOHN S. S. FESSENDEN
Deputy Attorney General

April 5, 1950

To Honorable Frederick G. Payne, Governor of Maine
Re: Elevator Inspection

At your request the Commissioner of Labor and Industry has asked this office to give you an opinion as to whether or not under the terms of Chapter 374 of the Public Laws of 1949, the State may engage the services of an elevator inspector for the purpose of inspecting State-owned elevators or whether the State would be required to use the services of a State-employed elevator inspector.

As I read Chapter 374 of the Public Laws of 1949, it appears to me that this chapter is a piece of legislation designed to protect the public in its use of elevators and that for this purpose every person owning and operating an elevator must comply with safety standards prescribed by this chapter. Since this chapter is compulsory on owners and operators of elevators, there are of course limitations imposed upon the amount of fees that owners and operators of elevators may be required to pay and these limitations are necessary in view of the compulsory nature of the statute.

I cannot conceive, however, that these limitations are designed to foreclose the right of any owner or operator of an elevator to take any steps which in the judgment of that owner or operator attain to higher standards than those imposed in the statute; nor do I believe that the chapter was designed to foreclose the right of any owner or operator to employ any duly qualified and licensed elevator inspector, regardless of the company by which that inspector is regularly employed.

The sentence in Section 19-F to the effect that an authorized inspector shall receive no salary from the State and have no expenses paid by the State is simply a direct legislative pronouncement to the effect that as a result of taking examinations and becoming licensed by State authority such

an individual does not become a State employee and cannot expect that by virtue of holding such a license he shall be entitled to compensation from the State.

As a matter of fact, if the State were to engage the services of a licensed inspector other than an elevator inspector employed by the State, it would be presumed that such services were engaged for the purpose of receiving the judgment of an independent contractor to overcome the criticism which might result from utilizing the services of a State employee who might be subject to the dictates of his own superiors who are themselves State officials or employees. In engaging such an independent contractor the State would not be paying such licensed individual any salary or expenses, since the very fact of engaging an independent contractor precludes that individual's being an employee, and hence the payment made cannot be in the nature of a salary.

JOHN S. S. FESSENDEN
Deputy Attorney General

April 6, 1950

To Fred M. Berry, State Auditor
Re: Verification of Audit Petition

My memorandum of April 3, 1950, was addressed to you after consultation with the Attorney General and pursuant to his opinion in the matter.

Upon receipt of your memorandum of April 5, 1950, I again conferred with the Attorney General. We are in agreement that there is little more that I can say than was said in my memorandum of April 3, 1950.

The statute involved merely states that the department shall make the audit upon petition of 10% of the legally qualified voters of the town. The statutes do not say whether or not the petition should be verified, nor, if it should be verified, by whom. There are no legal standards set up with respect to the petition.

The cost for making the audit is payable as prescribed in Section 120 of Chapter 80. The result, therefore, of the two sections is that the State shall be reimbursed for the making of the audit, which reimbursement is payable only if the audit was undertaken as a result of the request of 10% of the legally qualified voters of the town.

Whether or not the request was made in accordance with the minimum required in Section 116 is entirely a question of fact and not a question of law. In other words, we feel that you, as head of a State department, in your administration of its affairs, should determine the preliminary question of fact, and having determined that question of fact you should proceed to make the audit, or not, just as your determination of fact dictates.

If in any case you were satisfied that the petition was signed by 10% of the legally qualified voters, you would in that case need no verification by anybody. On the other hand, if you were not satisfied in any particular case as to whether the signatures were the valid signatures of 10% of the legally qualified voters, you could in that case require any evidence or certification satisfactory to you before proceeding.

Since, as we view it, this is entirely a question of fact, there seems to be little more that this department can offer in the way of advice.

JOHN S. S. FESSENDEN
Deputy Attorney General

April 7, 1950

To Fred M. Berry, State Auditor
Re: County of Oxford

I have your memo of March 21, 1950, relating to your examination of the accounts of the County of Oxford and your report thereof, in which you seek my advice on the following matters:

"Certain expenditures were noted which did not appear to conform with the provisions of three different statutes. They relate to payments made to the County Attorney and County Commissioners. I am attaching a list of the items in question for your information so that I may receive an opinion as to whether or not these payments are legal.

"Chapter 79, Sections 130 and 131, Revised Statutes of 1944, relate to the salaries of County attorneys—duties and civil procedure. Section 130 provides in part:

" 'County attorneys . . . shall receive annual salaries. . . . and no other fees, costs, or emoluments shall be allowed them; . . .'

"The case in question pertains to per diem charges allowed the County Attorney for attendance at municipal court.

"Chapter 122, Section 17, Revised Statutes of 1944, relates to public officers forbidden to have pecuniary interest in public contracts. The expenditures in question concerning this statute relate to one County Commissioner, and the County Treasurer selling insurance to the County.

"Chapter 79, Section 6, Revised Statutes of 1944, relates to the salaries of County Commissioners. It reads in part:

" 'Said salaries shall be in full for all services, expenses, and travel to and from the county seat . . except that when outside of the county seat on official business, including public hearings, inspection and supervising construction et cetera . . they shall be allowed all necessary traveling and hotel expenses connected therewith; . .'

"The expenses of a Commissioner in this case were for travel to the County seat, on days of regular commission meetings."

On the basis of the foregoing statement of the facts and law in your memo you say that my assistance concerning these matters will be deeply appreciated and you attach proposed comments concerning this matter, to be found on page 3 of your schedule, which lists the various items in question, copy of which you enclose. Page 19, Schedule A-11, is headed:

"Expenditures by County Applicable to Provisions of
Chapter 79, Sections 130 and 131
Chapter 122, Section 17
Chapter 79, Section 6,
Revised Statutes of 1944"

This schedule then lists certain travel expenses by Earl P. Osgood, who is a county commissioner of Oxford, in the sums of $72.65 and $77.70, and your reference to Section 6 of Chapter 79 seems to cover this. This section provides that the county commissioners in the several counties shall receive annual salaries from the counties and that said salaries shall be in full for all services, expenses, and travel to and from the county seat, etc. Your comments on these expenditures for travel are well taken.

In regard to the County Attorney's charging for court attendance, municipal expenses, I will say that if he is charging a per diem, as you state in your memo, it would seem in conflict with Sections 130 and 131 of Chapter 79. Section 130 provides that the county attorneys of the several counties shall receive annual salaries from the state and that no other fees, costs, or emoluments shall be allowed them. However, in Section 131 there is a provision which reads: "For the services herein mentioned the county attorney shall receive no compensation other than the salary from the state, except actual expenses when performing said services, the same to be audited by the county commissioners and paid from the county treasury." Without knowing for what purpose the County Attorney attended in the municipal court, whether it was in the interests of the county, for the county commissioners, where he would be entitled to actual expenses when performing said services, or whether it was attendance for regular criminal procedure, for which he is to receive no other fees, costs, or emoluments, under Section 130, I cannot advise you.

In regard to Section 17 of Chapter 122, R. S., which you cite in relation to Goodwin's, Inc., insurance premiums, there is some question in my mind as to whether or not a county is a quasi-municipal corporation, and of course Goodwin's, Inc., is not a county officer. The same applies to W. J. Wheeler & Co., Inc., the name of which company appears as having received insurance premiums from the county. In the Maine Register for 1949-50, Stanley L. Wheeler is listed as one of the county commissioners. Whether or not he has any pecuniary interest in W. J. Wheeler & Co., Inc., I do not know. This being a corporation, he is not receiving insurance in his own name as county commissioner. The same applies to Robert W. Goodwin, who is listed in the Maine Register as county treasurer of Oxford County, with regard to Goodwin's, Inc., if that is a corporation, as its name indicates.

Section 17 of Chapter 122 provides that no trustee, superintendent, treasurer, or other person holding a place of trust in any state office or public institution of the state, or any officer of a quasi-municipal corporation shall be pecuniarily interested directly or indirectly in any contracts made in behalf of the state, etc., or of the quasi-municipal corporation in which he holds such place of trust, and any contract made in violation thereof is void. It is my opinion that county commissioners are not state officers and that counties are political subdivisions of the State and creatures of the legislature, having only such powers and duties as the legislature has conferred by statute.

Section 197 of Chapter 79 provides that the county commissioners of the several counties shall, without extra charge or commission to themselves or to any other person, procure all necessary supplies, etc., for the jails and the prisoners therein, etc., and that no county commissioner shall be interested directly or indirectly in the purchase of any such supplies or in any contract

therefor made by the board of which and while he is a member thereof, and that all contracts made in violation hereof are void. Therefore this brings up the question of whether or not the furnishing of the insurance policies for the county comes within the provisions of this section. Even if the county commissioners come within the provisions of this section and also within Section 17 of Chapter 122 and the contracts made in violation thereof are void, the voiding of contracts is a question for the courts to pass upon. For that reason I do not want to give an opinion as to whether or not these payments are legal which you set forth in your Schedule A-11, page 19 of your audit. The county commissioners as a board have passed upon these vouchers and the vouchers have been paid by the county treasurer. It seems to me that only court action could bring about a determination of whether or not these payments are legal, and in order to do so, further evidence would have to be obtained as to what interest, direct or indirect, a county commissioner had in W. J. Wheeler & Co., Inc., and the county treasurer in Goodwin's, Inc., if these two firms are duly incorporated.

On reference to the records in the Attorney General's office, we find that Goodwin's, Inc., was incorporated June 10, 1948. Pauline McCormick of Norway is listed as clerk, and the 1949 tax has been paid. Our records also indicate that W. J. Wheeler & Co., Inc., was organized on June 21, 1918. The clerk is Gertrude N. Abbott of South Paris, and the 1949 tax has been paid. Therefore the county commissioners were approving vouchers of two corporations rather than in their capacity as county officers, and the question is whether they are pecuniarily interested, directly or indirectly, in these contracts.

The last paragraph in your general comments states, "It is believed that review can be made of the expenses listed on Schedule A-11 to ascertain their legality." Under the present situation I would not include that in your comments if I were you. I would simply leave the statutes quoted in your general comments as they are, because a review can be had only by the courts to ascertain whether or not the contracts are void. There is no penalty in any of these statutes, unless there is a drawback.

RALPH W. FARRIS
Attorney General

April 10, 1950

To Ernest H. Johnson, State Assessor
Re: Sanford-Dover, N. H., line

I have your memo of March 17, 1950, relating to the Boston & Maine Railroad's selling a 44-mile branch line operating between Sanford and Dover, N. H., to the Sanford & Eastern Railroad on July 1, 1949. You inquire whether, in computing the railroad tax this year, under Chapter 14, § 111, the tax should be computed as follows:

"Boston and Maine should include in its report gross receipts and operating expenses for this line for the period January 1 to June 30, and in computing its average mileage consideration should be given to this mileage for the period owned—that is, 44 miles for ½ year, or 22 miles average,—and the tax assessed at 3½% or more depending on the net operating revenue as compared to the gross operating revenue.

"Sanford and Eastern should report on its gross receipts for the period July 1 to December 31 and an assessment made of 2% on such receipts.

"Or, should the Sanford and Eastern tax be based upon gross receipts of this particular 44.9 mile line for the entire year (including the portion when it was operated by Boston and Maine), with Boston and Maine excluding any receipts and expenses attributable to this line from its report?"

After reading your memo and also after the conferences which I have had with you and Mr. Huot of your department, it is my opinion that the Boston & Maine should include in its reports gross receipts and operating expenses for this branch line for the period January 1 to June 30 and that in computing its average mileage consideration should be given to this mileage for the period owned, that is, 44 miles for ½ year, and the tax assessed at 3½% or more, depending on net operating revenue; and the Sanford & Eastern Railroad should report on its gross receipts for the period July 1 to December 31 and an assessment should be made of 2% for such receipts, as this entire line is less than 50 miles.

RALPH W. FARRIS
Attorney General

April 11, 1950

To Ermo H. Scott, Deputy Commissioner of Education
Re: Liability of superintendents of schools to the provisions of Par. II, Sec. 201, C. 37, R. S. 1944, as amended

Reference is made to your memorandum of March 31, 1950, relative to the above subject. You have asked whether or not the following sentence as it appears in Subsection II of Section 201 of Chapter 37, R. S. 1944, applies to superintendents:

"Whenever any certified teacher completes, within any 2-year period, 6 credit hours of additional professional work approved by the commissioner and receives supplementary financial assistance in an amount not less than $50 from the town, the town shall receive reimbursement of $50 from the state for such expenditure at the next distribution of state funds, provided further, that the renewal of each teaching certificate shall be conditional on the completion of at least 6 semester hours of professional study within each period of 5 years."

The particular clause to which you refer reads as follows:

". . . provided further, that the renewal of each teaching certificate shall be conditional on the completion of at least 6 semester hours of professional study within each period of 5 years."

I have given this clause considerable study and am inclining to the opinion that the clause itself has little or no relevance to the rest of the sentence in which it appears. However, since I must, as a matter of law, construe the clause as being properly in context, it is my opinion that the renewal of cercertificates, referred to in the clause cannot refer to renewal of superintendents' certificates, for the reason that the $50 subsidy referred to in the context is not paid because of superintendents' qualifications but only for teachers' qualifications. Since the status of a superintendent can have nothing to do with the giving of a $50 subsidy, the clause, as it appears in the context, cannot apply to superintendents.

You have stated that it has been suggested that the clause should be read as obviously out of context, and as having nothing to do with the granting of $50 subsidies, as though it were a separate section of statute requiring six semester hours of professional study within each period of five years as a condition precedent to the renewal of a teaching certificate. While I am not expressing any opinion as to whether the clause could or should be so read, I will say that if it should be so read, it cannot in and of itself be considered as a requirement imposed upon superintendents, for the reason that Section 77 authorizes and delegates to the Commissioner the authority and duty to prescribe by regulation the circumstances under which State certificates of superintendence grade shall be issued.

JOHN S. S. FESSENDEN
Deputy Attorney General

April 11, 1950

To Harland A. Ladd, Commissioner of Education
Re: Equal Pay for Equal Work

I acknowledge receipt of your memorandum of April 11, 1950, advising me that you have been asked by representatives of two local teacher organizations in the State for an opinion as to whether or not the provisions of Chapter 262 of the Public Laws of 1949 apply to teachers, and you request me to advise you on a proper response to this question.

I should advise them that Chapter 262 of the Public Laws of 1949 is an addition to Chapter 25 of the Revised Statutes, which relates to the Department of Labor and Industry. Sections 38, 39 and 40 of said Chapter 25 relating to the Department of Labor and Industry, have a sub-heading designated, "Payment of Wages," and Section 40-A is an addition to Section 40 under said sub-heading and relates to the payment of wages by corporations, persons, or partnerships engaged in certain industries as set forth in Section 38. The profession of teaching is not mentioned in Sections 38, 39 and 40 or in the new Section 40-A, which is under the designation of "Payment of Wages," and therefore does not apply to teaching positions which are under contracts with superintending school committees or superintendents of schools in cities and towns.

RALPH W. FARRIS
Attorney General

April 11, 1950

To Raymond C. Mudge, Commissioner of Finance
Re: Request, The National Association of State Budget Officers—
Block Grants

I have your memo of March 29th attaching a letter dated March 21st, from The National Association of State Budget Officers, signed by Ted Driscoll, Assistant Director of The Council of State Governments, asking for certain information for use by the Committee on Federal-State Fiscal Relations.

In answer to Question 1 in Ted Driscoll's letter I will say that there is no Constitutional or statutory objection to the use of federal money made available in block-grant form.

In answer to the second question in his letter I will say that there will be no State Constitutional difficulties about proposals to permit transfer of funds between categorical grants, and I can find no statutory difficulty that cannot be taken care of with the approval of the Governor and Council under the budget and Chapter 14.

In answer to the third question propounded by Ted Driscoll in his letter of March 21st, whether, if federal grant-in-aid money is appropriated by our legislature, difficulties would arise in drafting the appropriation bills if block grants or the transfer device were in effect, it is my opinion that we would have no difficulties if this matter was taken up at the budget hearings conducted before the legislative session. As I understand it now, our legislature does not appropriate federal grants-in-aid. They are merely allocated to the departments for which federal aid is requested and do not figure in legislative appropriations of state funds. I cannot see where the appropriation of State matching funds would be made more difficult by the block grant form of federal aid.

You know more about the workings of the State Budget than I, and therefore you can answer his letter on the basis of what information I am giving you on this score added to your own knowledge of the handling of the State Budget and the Department of Finance. . .

RALPH W. FARRIS
Attorney General

April 20, 1950

To Ermo H. Scott, Deputy Commissioner of Education
Re: State liability for accident incurred in transporting the basketball team at the State Normal School, Presque Isle, Maine

We have carefully reviewed the correspondence and attached papers submitted by you with your memorandum of March 13, 1950.

It appears that in this case the Athletic Association at the Aroostook State Normal School authorized a student to enter into a contract to rent a car for the transportation of part of an athletic team to a regularly scheduled contest. The contract is very specific and clearly authorizes the company owning the vehicle to sue on the contract. You will note among other things that the renter agreed that he would return the vehicle to the owner in the same condition as he received it.

It would appear to us that the Athletic Association should pay on the claim of the company owning the vehicle unless by chance that company has already been reimbursed through its own collision insurance. This is a matter which should be determined locally.

JOHN S. S. FESSENDEN
Deputy Attorney General

April 20, 1950

To H. H. Harris, State Controller
Re: Carleton Day Reed d/b/n/Reed & Reed, Woolwich, Maine

Under date of June 8, 1949 the Attorney General addressed the following memorandum to the Bridge Division of the State Highway Commission:

"I am informed that the subject has currently been engaged under a contract to construct or repair a bridge under the jurisdiction of the State Highway Commission.

"I am also informed that this individual owes Unemployment taxes in the gross amount of $1439.09.

"Kindly withhold any settlements with this individual until adjustments have been made on the Unemployment taxes due."

This office is now informed that, including interest, the amount due as Unemployment taxes now exceeds $1800 and that Mr. Reed has never made a claim for payment from the Bridge Division, nor has he brought forward the issue in any way.

I see no reason why the amounts being held by the State should not be credited to the Unemployment Compensation Commission as this would in no way divest Mr. Reed of any of his rights, since if the State's claim for taxes is not well founded, the amount could be refunded to him under the refund provisions of the Employment Security Law.

JOHN S. S. FESSENDEN
Deputy Attorney General

April 24, 1950

To Carl L. Treworgy, Clerk, Boxing Commission
Re: Section 9, Chapter 78, R. S. 1944

I have your memo of April 21st, stating that the Commission would like a ruling on the interpretation of the last paragraph of Section 9, the last sentence of which reads:

> "In the event the final judgment of the court reverses the finding of the commission, the court finding and order shall be conclusive upon the commission."

I note that you do not ask an interpretation of the true wording of the statute, however, but on the situation that arises when the court upholds the Commission in denying a license.

In my opinion that means that the applicant cannot secure a license unless the Commission so decides.

RALPH W. FARRIS
Attorney General

April 24, 1950

To Dr. Alonzo H. Garcelon, Division of Dental Health
Re: Maine Seacoast Missionary Society

I have your memo of April 24th in regard to the program of the Maine Seacoast Missionary Society and note that the people who would participate in this program are dental students in their third and fourth years who are not licensed to practice in any State.

It is my opinion that the statute does not authorize unlicensed persons to practise dentistry in Maine. However, the recent graduates of Harvard Dental School and faculty members of Harvard Dental School who are licensed to practise in Massachusetts could be taken care of under the reciprocity section of your statute.

Section 2 of Chapter 66, R. S., provides that the board "may make such rules, not contrary to law, as they may deem necessary for the performance of their duties, and shall conduct theoretical and practical examinations upon such subjects pertaining to dentistry as are hereinafter prescribed."

Therefore it is my opinion that the Board has no authority to promulgate any regulation under this provision of the Revised Statutes which would permit persons to practise dentistry in Maine, unless they had complied with Sections 3, 4, 5, and 6 of Chapter 66.

RALPH W. FARRIS
Attorney General

April 25, 1950

To H. H. Harris, State Controller
Re: Fish Screen, Plantation No. 33, Hancock County, Resolves of 1949, c. 106

The Department of Inland Fisheries and Game informs me that you wish a memo in regard to paying the vouchers for labor in installing a fish screen on the west branch of the Union River at the outlet of Great Pond in Plantation No. 33, Hancock County, for which an appropriation was made by the legislature in the sum of $655.68, the State to be liable for only one-half of the cost of said screen; providing that Frank Honey of said Plantation No. 33 shall assume all liability for the maintenance of said screen.

In view of the fact that many of the persons who did work in the installation of said fish screen have filed waivers for pay, it is suggested that the money be paid to the individuals who did the work on the screen upon their presenting proper vouchers for their labor and material, and not make payments of the full amount of the appropriation, to wit, $655.68, to Frank Honey of Plantation No. 33.

RALPH W. FARRIS
Attorney General

April 25, 1950

To Ralph A. Jewell, Chairman, Maine Racing Commission

In answer to your inquiry at my office Friday morning, April 21st, on which date you left a letter with me dated April 6, 1950, addressed to you from Attorney John E. Willey of Portland which related to the interpretation and definition of the word "shall" within our Revised Statutes: —

The reason for his letter was perhaps based on my memo to you dated May 17, 1949, in which I stated that the Commission "shall grant such licenses for night harness racing to such applicants only, who shall have and maintain adequate pari-mutuel facilities, etc., etc.," as provided in Section 5 of Chapter 388, P. L. 1949. I wish to state that John is right in his interpretation of the word "shall" and that his cases cited in his letter seem to be in point. I stated in my memo that the words, "The commission shall grant such licenses," are mandatory and in the plural number and I added, "to such applicants only who shall have qualified, etc." It is mandatory in the sense that you can issue licenses only to those who have qualified, but

I did not mean to imply that the wording of the statute takes away all discretionary power from the Commission in granting licenses under this provision of the statute, but that you shall grant them only to those who have qualified. It does not mean that you must grant a license to every applicant who has qualified, if in the Commission's discretion if feels that it would not be wise and would not be for the best interests and welfare of the State of Maine to do so. You have wide discretionary powers as John states in his letter. The legislature does not attempt to do away the discretionary powers of a board, commission or court in enacting legislation which contains the word "shall" as in many instances it is merely directory. . . .

RALPH W. FARRIS
Attorney General

April 27, 1950

To Carl L. Treworgy, Clerk, Racing Commission

I have your memo of April 26th, stating that the Commission would like to know if it would be legal under the statute above cited to require licenses of sulky drivers and concessionaires who sell selection cards at pari-mutuel tracks.

There is nothing in Chapter 77 that authorizes the Commission to require licenses of drivers or concessionaires at pari-mutuel tracks. This is a matter that should be taken care of by legislation if the Commission desires to have further control on the drivers and concessionaires at pari-mutuel tracks.

The Commission also asks if it would be legal to assess a fine for the failure of any horse to appear in the paddock one hour before post time.

I wish to state that the Commission does not have power under Section 9 of Chapter 77 to assess fines. This also is a matter for legislation if you wish to have a penalty for the failure of the owner of any horse to have it appear in the paddock one hour before post time.

RALPH W. FARRIS
Attorney General

May 1, 1950

To Col. Francis J. McCabe, Chief, Maine State Police
Subject: Speed at Intersections and effect of the use of dolly wheels on registration

Under date of March 25, 1950, Troop F asked certain questions with respect to registration of vehicles equipped with dolly wheels, so-called, and under date of March 18, 1950, Troop B asked similar questions. We are answering all the questions in one memorandum and trust that your office will see that the dissemination is such as to give the answers to the respective Troops from which the questions came. These answers are being prepared in collaboration with the Deputy Secretary of State, inasmuch as it was felt that the questions more properly pertain to the laws under the jurisdiction of that department than the Attorney General's office.

In the interests of saving space we are paraphrasing the questions.

Question 1 inquires as to whether or not a car traveling on a through way such as Route 1 is required to slow to 15 miles per hour at a view-obstructed intersection. Presumably this question was asked in the light of the provisions of Section 102-II-B, found on page 62 of the Motor Vehicle Laws of the State of Maine, 1949 Edition, as compiled by the Secretary of State. On pages 52 and 53 of the same pamphlet in Sections 78 and 79 are found the applicable provisions of law which serve more or less as an exception to the 15-mile limit, so that motor vehicles on through ways duly established in accordance with law will not be required to slow down to the 15-mile limit.

A second question asks whether or not a tractor and trailer can be lawfully operated on the highway when registered for less than the empty weight of the tractor-trailer unit. A tractor-trailer unit is not lawfully registered when registered for less than the gross weight of the empty vehicle. For all practical purposes this would be a foolish registration since obviously it is intended that such a vehicle should carry loads. However, in no case is it a lawful registration when it is for less than the empty weight. The vehicle should be registered to cover any load that it may be hauling. A short-term permit (short-term increase) is not registration. It is only a permit to haul loads of larger tonnage for a limited period of time when the vehicle is otherwise properly registered.

A third question is, May a person be allowed one move a year on a house-trailer without registration?

I know of no provision of law that permits a house-trailer one move a year without registration, except that under the provisions of Section 13, found on page 8 of the pamphlet, the Chief of the State Police may under stated circumstances grant a permit in writing for an unregistered vehicle to be towed either by a service wrecker or by the use of a tow-bar.

A fourth question includes several variations or subsidiary questions, all with respect to registration of trucks equipped with dolly wheels, so called. One of these questions is substantially as follows: Can a truck with dolly wheels directly behind the regular rear wheels carry 50,000 pounds gross?

The answer to this question would appear to be "Yes," provided that the dolly wheels are so attached to the vehicle as to produce a result in compliance with all of Section 100, found on pages 60 and 61 of the Motor Vehicle Laws. For example, under paragraph 1, it would not be a lawful registration if the gross weight exceeded 32,000 pounds with the dolly wheels off the ground and not working; and provided that the total working axles on the vehicle were two, exclusive of the dolly wheels. Similarly, using the table, with the dolly wheels on the ground and supporting part of the weight, the distance in feet between the extremes of axles would have to be more than 7 feet. But this alone is not the end of compliance requirements, for due consideration must be given to that part of the section which follows the table, wherein the imparted weight may not exceed 22,000 pounds on any one axle; and if the two or more axles are less than 10 feet apart, the weight imparted to the road surface may not exceed 16,000 pounds from either axle; and the further provision must be taken into consideration that the imparted weight to the road surface may not be greater than 600 pounds per inch width of tire (manufacturer's rating). From the foregoing it would appear that it is conceivably possible to equip and rig a vehicle with dolly wheels in such a way as to permit a registration in excess of 32,000 pounds.

Properly equipped trucks with dolly wheels may be considered as three-axle trucks when the effect of the dolly wheels is such as to bring the vehicle within the limits of weights permitted to be imparted to the road surface as provided in Section 100, page 60 of the Motor Vehicle Laws.

It has also been asked whether or not it makes any difference whether the dolly wheels are supplied with motive power. The answer is that motive power has nothing to do with it. The question is simply one of weights imparted to the road surface.

Whether or not in any particular case State Police officers, in weighing trucks, should allow these trucks equipped with dolly wheels credit for three axles will depend entirely upon whether the dolly wheels carry the weight to bring the vehicle within the limits of weight imparted to the road surface.

It has also been asked, as to the measuring of the distance between the extremes of axles, whether the measurement should be taken to include the dolly wheels. In the light of the foregoing, the answer to this question would be, Yes, if, as stated above, the dolly wheels are so rigged as to perform the function of keeping the vehicle within the limits of weights to be imparted to the road surface.

JOHN S. S. FESSENDEN
Deputy Attorney General

May 2, 1950

To Harland A. Ladd, Commissioner of Education
Re: Chapter 102, P&SL 1949; your memo of April 18, 1950

In your memorandum you ask the question:

"1. Does Chapter 102 of the Private and Special Laws of 1949 give the commissioner of education authority to approve a prorating of capital costs for the new building as a part of proper tuition charges?"

In this question your reference to "new building" refers to a proposed plan to erect a new school building, which construction would not be that of an alteration to an existing building. As you know, a town, under the general law of the State, may erect school buildings within the financial limits of the town, so that the particular question involved here, under Chapter 102, is not whether or not the Town of Brunswick has authority to construct a building, but whether, under the provisions of the chapter, the building having been constructed, you, as Commissioner, would have authority to approve an augmented tuition charge by the Town of Brunswick to towns sending pupils to Brunswick, over and above the standard tuition charge as fixed by the formula in the general law of the State.

Mr. Farris and I have studied Chapter 102 and the general laws of the State very carefully and have come to the conclusion that, under the provisions of Chapter 102, you would not have authority to approve a contract calling for an augmented tuition charge to defray the additional expense to which the Town of Brunswick had subjected itself in building a new school building.

In your memorandum you ask a second question, reading as follows:

"2. If the new building is connected to the existing high school structure by a corridor or breezeway, would this be construed as altering existing buildings and thereby make the supplementing charges legal?"

There is no question that under the provisions of Chapter 102, P&SL 1949 you have authority to approve a contract calling for an augmented tuition charge over and above the standard charge prescribed by the general laws, to help reimburse the Town of Brunswick for additional expense to which the Town of Brunswick is put in the alteration of any existing building. Whether or not the connecting of a structure to an existing high school building by a corridor or breezeway constitutes an alteration to an existing building would be a question of fact, in which all pertinent circumstances would have a bearing in determining whether the enterprise constituted an alteration or new construction. Since this is a question of fact, we are unable to advise you whether, as a matter of law, the connection by a corridor or breezeway would constitute an alteration within the meaning of the statute.

JOHN S. S. FESSENDEN
Deputy Attorney General

May 5, 1950

To Col. Francis J. McCabe, Chief, Maine State Police
Re: Motor Vehicle Inspection

I acknowledge receipt of your memo of May 3d, in which you ask for an interpretation of Paragraph 5 of Section 35, Chapter 19, R. S., relating to the inspection of motor vehicles. This statute reads as follows:

> "No dealer in new or used motor vehicles shall permit any such vehicle owned or controlled by him to be released for operation upon the highways until it has been inspected as herein provided and a proper sticker certifying such inspection placed thereon. If such vehicle bears thereon a certificate showing a prior inspection, the same shall be removed. The provisions of this paragraph shall not apply to sale of vehicles as junk or to those which are to be repaired and put into condition so as to pass inspection by the purchaser thereof."

It seems to me, after reading this paragraph of Section 35, that the intent of the legislature is very clear. When a used-car dealer takes a motor vehicle in trade with the inspection sticker thereon obtained by the previous owner, he must remove said sticker and have the car reinspected under the provisions of this statute before the car is again put on the road. In other words, the certificate of the previous owner is not sufficient in the case of a dealer in new and used cars.

RALPH W. FARRIS
Attorney General

May 9, 1950

To Brig.-Gen. George M. Carter, The Adjutant General
Re: Plane Insurance

With reference to your memorandum of April 14, 1950, relative to the study that has been made as to insuring against bodily injury and property damage which may result from the operation of aircraft flown by Maine Air National Guard pilots, you are advised that the Attorney General and I have conferred on the problem and that he has suggested that I write you along the following lines:

As you know, the liability for a bodily injury or property damage to others as a result of the operation of a vehicle depends upon the proving of negligence by the operator and the lack of contributory negligence by the injured party. So far as we know, liability of one piloting an airplane would be determined upon the same principles as are applied to the operators of any other kinds of vehicles. Whether this will always be so, we do not know, as it would seem strange if one had to prove the negligence of a pilot in order to recover damages for having the roof taken off his house by an airplane which was out of control. Perhaps there will some time be either statutory or case law giving more protection to persons who are injured by airplane accidents.

As we see it, at the present time, as a matter of law, the carrying of insurance to protect innocent third parties might not afford those third parties any real protection, if they are required to establish negligence of the pilot. Whether or not your prospective insurance would afford a broader protection to innocent third parties is a matter that we cannot tell, since the terms of the prospective contract for insurance have not been presented to us for analysis.

It is of course a principle of law that the State cannot be sued without the consent of the legislature. We have assumed that in this prospective liability insurance for aircraft operation you have been proceeding by analogy with the fact that the State covers liability from motor vehicle accidents by insurance and that possibly aircraft operation should be covered in the same way. This would be a matter of administrative policy decision, rather than a question of law to be determined by the Attorney General. If it were determined as a matter of policy that such insurance should be carried, may we point out that the planes themselves are owned by the United States Government and are lent to the Maine National Guard, and that the planes are subject to changes and replacements practically without notice. This being the case, the insurance policy should be of such a blanket nature as to cover any planes being operated by Maine National Guard personnel rather than the usual type of policy which would cover the planes by specific identification, for it is a rule of law that in the specific-type policy, if the vehicle is not correctly identified, the insuring company has no liability.

While the actual cost of operating and maintaining these planes, as we understand it, is defrayed by federal grants, we have ascertained that no federal funds are available for insurance premium purposes; therefore the entire cost of insurance would have to be met by State funds.

Except for the few legal observations made above, we should like to repeat that the decision is entirely a matter of administrative policy and we would only suggest that if the insurance is to be procured, this office and the Insurance Commissioner's office should carefully scrutinize the terms of the policy before it is actually issued.

JOHN S. S. FESSENDEN
Deputy Attorney General

May 9, 1950

To George C. West, Esquire, Assistant Attorney General,
Department of Health and Welfare

Re: Old Age Assistance

At our conference today you showed me Miss Schopke's letter dated May 2, 1950, relative to federal participation in terminal payments of Old Age Assistance, which letter, I understand, was the result of requests I had made previously to you for clarification of the subject, particularly in relation to the standards appearing in the Handbook of Public Assistance Administration, as they relate to Section 269-A of Chapter 22, R. S. 1944, which was enacted as Section 1 of Chapter 122 of the Public Laws of 1945.

While I am, of course, no specialist in the field of Old Age Assistance, which is entirely within the scope of your duties, and am viewing the situation more or less as a stranger to the problems involved, I should like to suggest that possibly the federal authorities and perhaps people in the Department of Health and Welfare, may have misconstrued the section above cited.

You will remember that one of the reasons for the enactment of this section was to counteract the difficulty that was being experienced by Old Age Assistance recipients in getting into convalescent homes, due to the fact that they could not pay in advance and could not guarantee the last month's bill in the case of final sickness. It strikes me that this section, which is construed in Miss Schopke's letter as being a limitation on terminal payments, is not a limitation at all, but that on the contrary the statute creates a preference in favor of creditors in a particular category, namely creditors for board or medical or nursing services, which creditors may be paid directly by the department; but that in creating such preference the statute does not foreclose the right of any other creditor or proper person to receive the payment of any balance after administrative action is taken in favor of the preferred creditors.

I simply give you the foregoing, not as an official interpretation, but to show my reaction to the statute in the light of the approach of one who is not continuously confronted with administrative operations under it.

May I suggest that my interpretation would appear to be reasonable, since, as far as I can see, it would bring Maine's administration directly within the provisions of Paragraph 5430, Part IV, of the Handbook and does this without doing violence in any way to the words of the statute.

If you think there is any merit in my ideas, I would appreciate it if you would send them along to the proper federal authorities with a request for a reconsideration in the light of this new approach.

JOHN S. S. FESSENDEN

Deputy Attorney General

May 15, 1950

To H. M. Orr, Purchasing Agent
Re: Bid of Pennsylvania Petroleum Products Company

Reference is made to your memorandum of May 11, 1950, which was accompanied by a letter dated May 4, 1950, addressed to you by the Pennsylvania Petroleum Products Company and signed by B. W. Sears, President, a balance sheet of that company as of November 30, 1949, also signed by the president of the company, and bid No. H-2147, which was transmitted to you under cover of the aforementioned letter of May 4, 1950.

In your memorandum of May 11, 1950, you stated in part: "You will note upon examination of the enclosed bid that they failed to sign the bid. It is requested that you furnish this office with a written opinion as to the validity of the bid."

As we view the situation, the sole question before us is whether or not, if you were to award the contract to Pennsylvania Petroleum Products Company and that company failed to carry out the contract in accordance with the terms thereof and the provisions of the Administrative Code, so called, under which you are acting, this office could secure redress for the State of Maine.

The exact legal problem presented is whether or not the letter of May 4, 1950, signed by the president of that company, to which are attached the financial statement and bid, is sufficiently specific to bind the company as a bidder even though the bid form itself is not signed.

Since the determination of this question would depend in a court trial upon the intention of the bidder, it was necessary for this office as a result of your memorandum to ascertain the exact intent of the bidder before advising you. Accordingly I talked with Mr. B. W. Sears on Thursday, May 11, 1950, during which conversation I ascertained that it was his intention to be bound by his letter of May 4, 1950. Since he assumed that he was bound by his letter, I asked him to confirm the same in writing. We have now received from him a letter dated May 11, 1950, in which he states that the letter of May 4, 1950, is binding upon that company and that if we have any question as to whether or not they are bound they would be pleased to sign a document which would be binding.

In view of the contents of his letter of May 11, 1950, I do not consider it necessary to secure any additional signature, since his letter adequately expresses his intention.

I am transmitting herewith his letter of May 4, 1950, with accompanying attachments and his letter addressed to me, dated May 11, 1950.

JOHN S. S. FESSENDEN
Deputy Attorney General

May 17, 1950

To E. K. Sawyer, Supervising Inspector of Elevators
Re: Section C, Chapter 374, P. L. 1949

I acknowledge receipt of your communication of May 9th in re Section C. Chapter 374, P. L. 1949, which relates to the duties of the elevator inspectors, You state that the above section provides the duties of the Board relating

to the installation, construction, etc., of elevators, and that the question has come up whether the Board has any jurisdiction over the construction of shaftways with respect to fire resistance, and you state that you can find nothing in your law covering this.

It is my opinion that your Board has powers and duties only in regard to the construction and installation of elevators and not in regard to anything that comes under the building codes, which in cities are a local matter, while towns have building inspectors. The shaftways would be under the control of the building inspectors, as they are part of the construction of the building, and only when it comes to installing the elevator in the shaftway would you have something to say as to whether or not the construction was safe for the installation of the elevator. Until such time as the construction and installation of an elevator is brought to your attention, you have no authority to interfere with the building committee or the architects in charge of the construction of the building.

RALPH W. FARRIS
Attorney General

May 23, 1950

To Philip A. Annas, Department of Education
Re: Tuition Liability, §§98 and 99, Laws Relating to Public Schools

As I understand your question of May 3, 1950, relative to two students whose parents live in the town of New Sharon and who are attending high school at Farmington under the provisions of Sections 98 and 99, I must assume that all the applicable provisions of both sections have been complied with except that the superintending school committee of the town of New Sharon have not approved the qualifications of the two students for occupational training, so that the narrow question of law is whether or not the approval by the superintending school committee of the qualifications of the students is a condition precedent to the right of the Commissioner to pay the appropriate amount of tuition to the receiving town and to charge the same against the apportionment fund of the sending town. You state in your question that the New Sharon school committee refuses to act on the qualifications of the students; but I notice in the correspondence which accompanied your question that it simply states that the superintending school committee of New Sharon voted not to approve payment of tuition. This may, of course, imply that they refused to pass upon the qualifications; but it does not directly so state. The clause, "whose qualifications for such training are approved by the superintending school committee of the town," as it appears in the first paragraph of Section 98, obviously was intended to give the superintending school committee of the sending town some control over the student, so that students could not willingly attend any school of their own choice at the expense of their home towns. Certainly, to this extent, this approval is a condition precedent to a youth's election to attend some other approved secondary school.

It is not the province of this office to advise any citizen as to his rights to compel action by any town officials who refuse or who fail to act within the scope of their duties. In such matters, private citizens should seek advice from their own counsel.

We therefore confine ourselves to that which is within the scope of our duties, namely, advising your department as to your authority within the provisions of paragraph 3 of Section 99 relative to the payment of tuition to the receiving town when the sending town has failed to pay.

This situation never having been construed by a court, we have no precedent to follow. While the approval of the superintending school committee of the sending town may be a condition precedent to a youth's right to elect to attend some other approved secondary school, the balance of Section 98 is in mandatory terms, indicating that a youth meeting the standards set forth as qualifying him has an absolute right to free tuition. As I understand it, you have ample evidence to establish that the students involved in this case are clearly within the statutory standards in all respects save the qualification by their own superintending school committee. Clearly, if the superintending school committee of the town disapproved the qualifications of the students and they nevertheless attended another school, you would have no authority under the provisions of Section 99 to pay the tuition to the receiving town. It also clearly follows that if the superintending school committee does approve the qualifications and the town thereafter fails to pay the tuition to the receiving town, your authority is plain under Section 99 to pay the appropriate tuition to the receiving town and to charge the same against the sending town's apportionment. When no action whatsoever is taken, although the same has been requested, your position under Section 99 is not clear, so that we are unable to state with any authority what your legal duty is under the circumstances. You, as administrator, have it within your power to take the position that the approval of qualifications by the sending town's school committee is a condition precedent to the coming into play of the balance of the statutes, including any obligation for the sending town to pay tuition to the receiving town and the subsequent arising on your part of any obligation to see that payment is made at the State level. On the other hand, you, as administrator, also have it within your power to take the position that since there is ample evidence that the students do qualify in all respects to elect to attend another approved secondary school; since the New Sharon High School does not offer two approved occupational courses of study; since the Farmington High School does offer not less than two approved occupational courses of study; since the parents or guardians of the students had requested the approval of the superintending school committee of the Town of New Sharon; since the school committee had failed to pass upon the qualifications as required by statute; these facts warrant your office in proceeding under the third paragraph of Section 99 to adjust the tuition between the two towns as provided by law. In either event this office would be prepared to defend the legality of your action.

JOHN S. S. FESSENDEN
Deputy Attorney General

May 23, 1950

To Honorable Frederick G. Payne, Governor of Maine
Re: Housing Acts

I have reviewed the material which you transmitted to me with your letter of May 15, 1950. I have also checked this in connection with Chapter 441 of the Public Laws of 1949, which, as you know, is our own State Housing Act.

The Federal Housing Act of 1950 deals, *seriatim*, with temporary housing, demountable housing, and permanent housing. With respect to temporary housing and demountable housing, various localities have until December 31, 1950 to make their requests for transfer of those units to the local Housing Authorities. With respect to permanent housing immediate action is necessary, since any locality, if it wishes to avail itself of the benefits of the Federal Act, must take action before June 1, 1950.

In view of this situation I have by telephone acquainted the respective corporation counsel of Bath, Portland and South Portland with the situation so that they may take proper action. These three cities appear to be the only places in the State wherein permanent housing is located.

Under our own State Housing Act it appears to me that our respective councils or governmental bodies have all the authority that is necessary to take action. Towns can act only at their annual meetings, which on the surface of things might indicate that they would be stymied in attempting to avail themselves of the provisions of the Federal Act, since their next annual meetings will not be until March of 1951. However, on page 15 of the Housing Act of 1950 there is this loophole, "Provided, that, in any case where the applicant is unable to comply with all conditions to the relinquishment or transfer because of the need for the enactment of state legislation or charter amendment, such date shall be June 30, 1952, and may be extended by the Administrator, upon request in a particular case, to December 31, 1952." While this applies strictly only to the actual relinquishment or transfer itself, I feel that with this loophole in the statute it may be possible for an interested town to make a request for transfer, pointing out that it cannot officially do so under State law until its annual town meeting of next March.

Except for dissemination of information I am unable to find anything either in the Federal Act or in the State Act requiring action at the State level; and with respect to dissemination of information, may I point out that this may not be necessary from your office since the communication addressed to you by the Public Housing Administration under date of May 10, 1950, is also addressed to mayors and heads of cities and towns, heads of county governments, local Housing Authorities, local public agencies, educational institutions and non-profit institutions with which the PHA has contracts.

JOHN S. S. FESSENDEN
Deputy Attorney General

May 23, 1950

To Col. Francis J. McCabe, Chief, Maine State Police
Re: Operation of Farm Tractors without License

In your memorandum of May 5, 1950, you ask the following questions:

1. Is it permissible for a person who has been convicted of Manslaughter and whose right to operate a motor vehicle has been suspended by the Secretary of State, under Section 122 of the Motor Vehicle Laws, to operate a farm tractor, as provided in Section 13 of the Motor Vehicle Laws?

2. Does Section 13 of the Motor Vehicle Laws regarding the operation of farm tractors without license or registration apply to the owner's relatives or hired man?

3. If a person's right to operate motor vehicles is suspended after such person has been convicted of Drunken Driving, is he permitted to operate farm tractors under Section 13 of the Motor Vehicle Laws?

The Attorney General and I have conferred on your memorandum and have arrived at the following conclusions:

1. We believe that the action taken by the Secretary of State under Section 122 of the Motor Vehicle Laws in revoking a license upon conviction of manslaughter refers to the right to operate a motor vehicle on the public ways of this State, and that since no registration or license is required for the operation of a farm tractor when the same is used solely for farm purposes pursuant to the provisions of Section 13, an individual whose license has been revoked may operate a farm tractor within the limits of Section 13.

2. Farm tractors may be operated without license or registration by the owner's relatives or hired men from or to the premises where the tractor is kept, to or from a farm lot and between farm lots used for farm purposes, by the owner, meaning the owner of both the tractor and the farm.

3. The answer to Question 1 would be the same for Question 3.

JOHN S. S. FESSENDEN
Deputy Attorney General

May 23, 1950

To Fred L. Kenney, Director of Finance, Department of Education
Re: §92-D, Chapter 37, R. S. 1944

Reference is made to your memorandum of 31 March, 1950, in which you ask an interpretation of the phrase "exclusive of refundings" as it appears in Section 92-D of Chapter 37, R. S. 1944. You ask whether or not this wording "might permit the establishing of indebtedness with *no limit* by calling certain series of bonds for payment, issuing new bonds to cover refunding and then proceeding to issue more bonds to make up the maximum of 5% of the total valuation of all the participating towns."

From a careful reading of the statute it becomes evident why you should ask this question, since it appears that the statute could be construed in that light. Of course, the procedure contemplated in your question could not be followed, if pursuant to Section 92-A, the town in taking action on the articles prescribed by that section had excluded the phrase "exclusive of refundings" in its third article.

Any comment that this office may have to make in the way of an interpretation of the meaning of the phrase is largely academic, since I can conceive of no circumstance under which, in this connection, an opinion from this office would have any official persuasive authority. Our reasons for this thought are that the point of law, if it arises, is bound to arise between the community school district trustees and the financial institution or institutions contemplating a loan to the district or the purchase of the district's bonds, whereupon as a practical rather than an academic matter the decision or interpretation will be reached by the attorneys for the financial organizations interested.

May I point out that the history of legislation in Maine, as well as court decisions, both with respect to municipalities and with respect to borrowings for State highways, is nearly uniformly along the line of placing limits on the borrowing authority and that unless the intention is clearly expressed to have no limit or loose limits, I should personally favor a construction resulting in a limit upon borrowing authority.

JOHN S. S. FESSENDEN
Deputy Attorney General

May 29, 1950

To Honorable Frederick G. Payne, Governor of Maine
Re: National Highway Safety

I have your memo of May 19th asking me to go over a letter which you had addressed to John M. Gleason, Chairman, State and Local Officials' National Highway Safety Committee, in answer to his letter of May 17th.

It is my opinion after reading his letter and your reply thereto that your statement is legally correct, that it would require legislative action, as we have no specific appropriation for the purpose in question.

While I feel that this is a meritorious service which the National Highway Safety Committee is performing, yet if the Governor and Council dip into the contingent fund to carry on private enterprises outside the State, even though they are meritorious and indirectly benefit the State, there would be no end of calls upon you from similar organizations to finance their support. However, in the seventh paragraph of Mr. Gleason's letter he states, "The Committee has been assured that such subscriptions by the States will be matched by Federal funds available for certain types of highway safety work in cooperation with the States. Full control of policies and activities, however, will be retained by representative State and local officials who compose the Committee."

Our statute is in reverse in regard to authorization for the State to accept Federal grants. Section 14 of Chapter 12 provides that the Governor and Council can accept Federal funds or any equipment, supplies or materials

apportioned under the provisions of Federal law. I understand that this association is private and not Federal. The Governor and Council are further authorized to direct departments of the State to which are allocated the duties involved in carrying out such State laws as are necessary to comply with the terms of the Federal Act authorizing the grants of Federal funds, supplies or equipment, and expend such sums of money and do such acts as are necessary to meet such Federal requirements. This activity, worthy though it is, does not come within the purview of our statute. If the Federal funds were available to our Highway Safety Division and we had to spend a little money to match said Federal funds or equipment, supplies and material, it could be done through our Highway Safety Director; but the way this is set up, the Federal Government is going to match the subscriptions of the States to private funds for the carrying out of this work of National and State Traffic Safety Conferences. . . .

RALPH W. FARRIS
Attorney General

May 29, 1950

To Maurice G. Pressey, Chairman, Merit Award Board
Re: Chapter 357, P. L. 1949

I have your communication of May 23rd, giving the history of the Merit Award Board legislation and calling my attention to Section 8 of the Act relating to the appropriation to carry out the provisions of the Act. You ask me if the unexpended appropriation balance on June 30, 1950, should lapse because of the provision in Section 23, Chapter 14, R. S. 1944.

You state that the Board has been operating under the impression that, since no specific amounts were designated for each of the fiscal years, the $10,000 appropriation was to finance its activities for both years of the biennium, or until the next legislature provided it with regular appropriations; and should the unexpended balance be lapsed on June 30, 1950, the Board would be without funds for 1950-51 and the purpose of the Act would be defeated.

Chapter 357, P. L. 1949, which amended Chapter 59 of the Revised Statutes by adding four new sections to be numbered 6-A to 6-D, provided an appropriation from the general fund of the State in the sum of $10,000 to carry out the provisions of Sections 6-A to 6-C, inclusive, of Chapter 59 of the Revised Statutes.

It is my opinion that it was the intent of the legislature that this appropriation, not having been set up in the general appropriation Act on a fiscal year basis, is for the purpose of carrying out the provisions and purposes of the Act and that no part of the $10,000 should lapse so as to defeat the apparent intent of the legislature in carrying on this work which is set forth in said Chapter 357, P. L. 1949.

RALPH W. FARRIS
Attorney General

May 29, 1950

To Raymond C. Mudge, Finance Commissioner
Re: Merit Award Board

I herewith enclose copy of memo which I have this day written to the Maine State Merit Award Board, giving my interpretation of the provisions of Chapter 357, P. L. 1949.

It is my opinion that the legislature did not intend to create an activity and provide an appropriation therefor, and then have same defeated by the general appropriation bill.

The general law provides that at the end of each fiscal year, all unencumbered balances, except those that carry forward as provided by law, shall be lapsed to the unappropriated surplus (Section 23, Chapter 14, R. S. 1944.)

It is my opinion that this is an exception and should be carried forward as provided in Chapter 357, P. L. 1949. That seems to be the plain intent in creating the activity and giving it an appropriation to carry on the purposes of the Act until the next legislature convenes.

RALPH W. FARRIS
Attorney General

May 31, 1950

To Ernest H. Johnson, State Tax Assessor
Re: Assessment for road repairs under Chapter 79, §§62 and 65

I have your memo of May 22d, stating that Henry Crowell, Chairman of the County Commissioners in Somerset County, advises you that a washout in Lexington township has necessitated the expenditure of money for road repair under Section 65 of Chapter 79, R. S. 1944, which provides that expenditures for sudden injuries to highways shall be added to the next assessment of the county commissioners made under Section 62. You call my attention to the fact that Section 62 of said Chapter 79 permits the county commissioners to assess a road tax within an unorganized township to an amount not exceeding 2% of the valuation of the property in the township, and you ask the following question:

"When expenditures are made under Section 65, and added to the next assessment by the county commissioners for road maintenance, are the amounts expended under Section 65 in addition to the 2% limit in Section 62? In other words, if sudden injury requires additional expenditures, can the total assessment for the following year exceed the 2% limitation of Section 62?"

Answer. It is my opinion that the amounts expended under Section 65 for sudden injuries to highways are added to the next assessment by the county commissioners for road maintenance. The amounts expended under said Section 65 are in addition to the 2% limit provided in Section 62, as Section 65 provides as follows: "That portion of said assessment, which is for repairs of sudden injuries as aforesaid, shall be set down in the assessment in distinct items in a separate column and shall be enforced as is provided in section 63."

In my opinion this assessment for sudden injuries should be in addition to the amount of 2% of the valuation as provided in Section 62.

RALPH W. FARRIS
Attorney General

June 1, 1950

To Lester E. Brown, Chief Warden, Inland Fisheries and Game
Re: Jurisdiction—National Parks

Your letter of May 4, 1950, addressed to the Attorney General, has been referred to me for reply, in his absence.

It is our understanding that complete jurisdiction over National Parks is in the hands of the Federal Government and that it does not rest within the province of State officials.

JOHN S. S. FESSENDEN
Deputy Attorney General

June 14, 1950

To H. A. Ladd, Commissioner of Education
Re: Section 206, Chapter 37, R. S. 1944

I have your memo of June 2nd relating to the above captioned section, which authorizes towns to expend sums received from the State school fund, in conjunction with funds raised by the towns, for certain purposes in both elementary and secondary schools outlined in the section which you cite, any unexpended balance of moneys raised by the towns or received from the State to be credited to the school resources for the year following that in which said unexpended balance accrued.

You state that certain cities in Maine have adopted a procedure whereby a detailed budget for the public schools is approved and a supporting appropriation is voted. All subsidy allocations from the State are credited to the general funds of the city.

It is my opinion that this practice conforms to the intent of Section 206 as amended by Chapter 350 of the Public Laws of 1945, which amendment strikes out the words "school fund" in the first line of said Section 206.

RALPH W. FARRIS
Attorney General

June 14, 1950

To General George M. Carter, The Adjutant General
Re: Fines Imposed by Courts Martial

I have your memo of June 1st, enclosing a communication received from Lt.-Col. Joseph B. Campbell, Judge Advocate, State Staff, MeNG, in which he asks for an opinion from the Attorney General for guidance of the department in carrying out the provisions of the statute cited in his memo, namely, R. S. 1944, c. 12, §67 as amended by P. L. 1949, c. 326, §27.

It is my opinion that the sheriff, under this statute, is authorized to accept the fine adjudged against the accused at any time after he has been apprehended on warrant of commitment and he also may accept the fine after the accused has been committed to jail and release him, as it appears from reading the statute that the legislature intended this to enable the National Guard to collect fines and costs which have been rendered as a sentence of

a court martial of the National Guard, and once the fine and costs are paid, the prisoner is intended to be discharged. If the fine is not paid within ten days of the imposition thereof, it is my opinion that the confinement is mandatory until such fine is paid. He may avoid confinement, or secure his release from confinement, upon payment of his fine and costs, if any.

I do not agree with the contention of the Cumberland County sheriff's department that this statute should be construed strictly when he feels that confinement is mandatory, because this is not a penalty for a criminal act. The statute is intended to enforce the payment of fines and costs in court martial cases, which differ from the ordinary penalties in our criminal statutes.

It is my opinion that the sentence is one day for any fine not exceeding $1 and one additional day for each dollar above that sum, plus one additional day for each dollar of cost. If the accused pays the fine, or tenders that amount, that automatically suspends the penalty.

You will note that the statute provides that it shall be the duty of the sheriff to take the body of the person convicted and confine him in the county jail for the time specified in the sentence, *or* one day for any fine not exceeding $1, etc. That is the alternative for the sheriff, and if the accused pays the fine and costs up to date there is no reason why he should be held for further punishment. . .

RALPH W. FARRIS
Attorney General

June 14, 1950

To Fred M. Berry, State Auditor
Re: Tax Collectors of Towns

Reference is made to your memo of June 1st in which you state that during municipal audits you have often been asked if it is legal for the municipal officers to recommit taxes from one tax collector to another, if a vacancy occurs in that office due to employment elsewhere. You add that this particularly applies to town managers who may change positions frequently.

You call my attention to Sections 106 and 107 of Chapter 81, R. S. 1944, which provide that collectors removed or removing may be required to give up the tax bills and settle and provide also how a warrant can be issued to the new collector, etc. In such cases the assessors shall make a new warrant and deliver it to the new collector with said bills, to collect the sums due thereon, and he has the same power therein as the original collector.

You also call my attention to Chapter 80, §22, R. S. 1944, which has to do with vacancies in office of any officer not required to be chosen by ballot. This does not apply to collectors, as Section 12 provides what officers are to be elected at annual town meetings, which includes collectors of taxes. Therefore collectors of taxes are elective officers.

Section 15 of said chapter says that the other officers may be elected by ballot, and if not so elected, shall be appointed by the selectmen. Therefore if a tax collector is not elected at the annual meeting, he can be appointed by the selectmen; but you must take each case on its own merits, as to how the collector shall be chosen, because Section 22 of Chapter 80, R. S., provides for the appointment by the municipal officers in case of vacancy of any

officer not required to be chosen by ballot; but Section 106 of Chapter 81, which you have quoted in your memo, refers to collectors who have removed or in the judgment of the municipal officers are about to remove from the State before the time for the payment of the warrant to the town treasurer. Therefore you can see that it depends upon how the vacancy occurs in the office of tax collector, as to how the appointment shall be made.

Section 106 provides that at the meeting of the committee held to settle with the collector for the money that he has received on his tax bills, they may elect another constable or collector, and the assessors shall make a new warrant, etc., and he shall have the same power as the original collector.

Then you have the question of bonds to consider in regard to commitments. The selectmen must be very careful in regard to having the assessors issue new warrants in case a new collector is delinquent and the town wishes to proceed against the sureties on the original collector's bond.

You inquire particularly about town managers who often serve as collectors. I call your attention to Section 18, Chapter 80, R. S., which provides the powers and duties of town managers, especially to subsection V which authorizes the selectmen to prescribe the duties of the town managers, such as road commissioner, town treasurer, tax collector, etc., *any other provisions of statute to the contrary notwithstanding.*

I am going to quote from "Maine Civil Officer, Eighth Edition" by Judge Francis Sullivan, page 88, under subtitle, "Appointment and Fees of Collectors":

"Collectors of taxes are elected at the annual town meetings and may be chosen by ballot, or if not so elected, they shall be appointed by the selectmen, and in case of a vacancy the municipal officers may fill such vacancy by written appointment. When towns choose collectors, they may agree what sum shall be allowed for performance of their duties. The treasurer and collector of taxes may be one and the same person, but such officers shall not be selectmen or assessors until they have completed their duties and had final settlement with the town.

RALPH W. FARRIS
Attorney General

June 21, 1950

To Marion E. Martin, Commissioner of Labor and Industry
Re: Letter from Nathan C. Fuller of H. C. Baxter & Bro., Hartland

I have studied Mr. Fuller's letter of June 2, 1950, which was referred to this office by your memorandum of June 15, 1950, which letter involves whether or not Irish potatoes are perishable products within the meaning of Section 28 of Chapter 25, R. S., as amended.

I have found no statute under which the legislature has attempted to define that which is or may be considered to be a perishable product; and with the very limited facts supplied I can say only that it would be an impossibility to give you a definition as to that which is a perishable product as a matter of law.

I would suppose that in each case where the point was in issue, it would be a question of fact as to whether or not the product being processed was

perishable and required immediate labor thereon to prevent decay or damage. This being true, the question is more one of administration than it is of law. Stated in another way, the problem simply is that if, in the administration of the labor laws, it is found that the product being processed is perishable, the law applicable thereto is clear. Accordingly you would be in a much better position to answer Mr. Fuller's letter than would this office. . . .

JOHN S. S. FESSENDEN
Deputy Attorney General

June 22, 1950

To Col. Francis J. McCabe, Chief, Maine State Police
Re: Policing Harness Racing

I am returning herewith the material which was left in our office by Lt. Hoxie, which constitutes a complete report of an episode that occurred at the Cumberland race track on June 16, 1950.

It is my opinion, in which the Attorney General concurs, that under the provisions of the harness racing statute (Section 22 of Chapter 77, R. S.) the State Police have no duty to administer or enforce the provisions of that statute on the spot, nor to exercise any judgment as to whether any particular act violates the harness Racing Commission's rules.

With respect to harness racing *per se* the law clearly contemplates that regularly constituted law enforcement officials shall act only through the Attorney General or the respective county attorneys after a complaint has been made to those officials by the harness Racing Commission.

The foregoing should not be construed to mean that the State Police do not have jurisdiction over violations of law which may occur within the confines of an area being used for harness racing and which are within the regular and customary jurisdiction of the State Police.

JOHN S. S. FESSENDEN
Deputy Attorney General

June 23, 1950

To Norman U. Greenlaw, Commissioner of Institutional Service
Re: Emil Lake Account

I think that you should instruct the superintendent to defray Mr. Lake's unpaid balance out of Mr. Lake's funds now in the superintendent's possession. An exact record of this transaction should be kept and the balance in his hands should be turned over to Mr. Lake's personal representative (administrator or executor) when appointed. On such accounting the fact that the set-off has been made should be clearly shown.

If under these conditions the personal representative then has a claim for any of the funds that have been used in set-off, any lawfully required adjustment can be made. Otherwise the State's claim will stand as satisfied.

The necessity of refunding the amount used in set-off should arise only in the case of insolvent estates, when statutory priorities of creditors would be involved.

JOHN S. S. FESSENDEN
Deputy Attorney General

June 29, 1950

To David B. Soule, Insurance Commissioner
Re: Associated Hospital Service of Maine

On June 5th I received your memo dated June 1st, in which you state that in 1939, under a Special Act, Chapter 24, P&SL 1939, a charter was given to the Associated Hospital Service of Maine. You call my attention to the fact that Section 3 of said Chapter 24 sets forth the purposes of said corporation as "to establish, maintain and operate a non-profit hospital service plan whereby hospital care may be provided, etc." You further call my attention to Chapter 149, P. L. 1939, in which the Insurance Commissioner is authorized to license a non-profit hospital service plan whereby hospital care could be provided, and under this statute the Associated Hospital Service of Maine has been licensed by your department since its incorporation in 1939.

In 1945, by Chapter 21, P&SL 1945, the purposes of the Associated Hospital Service of Maine were amended to provide that the corporation may establish and operate a non-profit medical service plan whereby medical or surgical services expense is provided to such persons or groups of persons as shall become members of such plan under contract with the corporation. However, at the time of this amendment in 1943, no change was made in Chapter 149, P. L. 1939.

You have now been approached by the Associated Hospital Service of Maine requesting a license for the purpose of operating such medical service plan. In view of the general law which authorizes you to license non-profit hospital service plans, but does not contain any reference to non-profit medical service plans, you ask me if you would be justified and acting within your authority to license the Associated Hospital Service of Maine to operate a non-profit medical service plan.

In reply I wish to advise you that under the general statute you have no authority to license the Associated Hospital Service to operate a non-profit medical service plan. However, they are authorized to do so by the Private and Special Act of 1943, and I understand from Mr. Paul that they have amended their corporate purposes accordingly.

It is my opinion that in order for you legally to license anyone to operate a non-profit medical service, the statute should be broadened which was passed in 1939 and is now Section 217 of Chapter 56, R. S. 1944.

If Associated Hospital Service enters the medical service field under the Private and Special Act, they do so at their own risk and not under license from your department, under the law as it now stands.

RALPH W. FARRIS
Attorney General

June 29, 1950

To Frank S. Carpenter, Treasurer of State
Re: Deposits of State Funds

I have your memo of June 20th, relating to the interpretation of the second paragraph of Section 11 of Chapter 15, R. S. 1944, relating to the authority of the Treasurer of State to deposit State moneys in banking institutions, trust companies, mutual savings banks, etc.

The paragraph which you request me to interpret reads as follows:

> "No sum exceeding an amount equal to 25% of the capital, surplus, and undivided profits of any trust company or national bank or a sum exceeding an amount equal to 25% of the reserve fund and undivided profit account of a mutual savings bank shall be on deposit therein at any one time. The above restriction shall not apply to deposits subject to immediate withdrawal available to meet the payment of any bonded debts or interest or to pay current bills or expenses of the state."

The last sentence of said paragraph is an exception to the 25% of the capital, surplus and undivided profits rule because it states in plain English that this restriction shall not apply to deposits subject to immediate withdrawal, etc. Therefore it is my opinion that the 25% restriction in this section does not apply to deposits that are subject to immediate withdrawal in checking accounts in the banks which are deposited for the purpose of meeting payment of bonded debts, interest or to pay current bills or other expenses of the State.

You further state that the Treasurer has on deposit in savings accounts a considerable amount of money held in trust for private trusts, such accounts as those for the Kennebec Bridge (Bath) and the Waldo-Hancock Bridge. You say that this money is also subject to withdrawal although it may not be withdrawn by checks drawn by the Treasurer of State. It is my opinion that these trust funds are not subject to immediate withdrawal for the purposes provided in the last sentence of Paragraph 2 of Section 11, and the 25% restriction would apply as to these funds, and you should make arrangements in regard to these deposits so that they will not exceed the 25% restriction contained in paragraph 2 of Section 11, Chapter 15, R. S.

I am basing my interpretation of the savings banks and trust fund deposits upon the legal definition of the word "immediate" because you have knowledge when certain bond issues mature and, if they mature immediately, they would be subject to immediate withdrawal. But if the bond issues were not due for a long period of time they would not be subject to immediate withdrawal.

In the case of *Inhabitants of Robbinston vs. Inhabitants of Lisbon*, 40 Me. 287, the Maine Court said the word "immediate", strictly construed, includes all intermediate time. It has been held to mean "Within such convenient time as is required for doing the thing," so that some of the deposits of trust funds in savings banks might be subject to immediate withdrawal because a bond issue was coming due immediately, and other deposits might not be subject to immediate withdrawal because of no occasion to draw the same. For that reason you must use your own judgment as to whether or not these funds are subject to immediate withdrawal when deposited in savings banks for the purpose of keeping within the restriction of 25%.

RALPH W. FARRIS
Attorney General

July 5, 1950

To Honorable Frederick G. Payne, Governor of Maine
Re: Correspondence with Ralph Jewell of the Racing Commission

I have your memo of June 30th, attaching a copy of a letter which you wrote to Ralph Jewell on that date, together with a letter you had received from him, dated June 28, 1950, as a result of a request you made upon him for certain correspondence between him and the U. S. Trotting Association. You call my attention to the fact that the U. S. Trotting Association is stepping into another field of activity, namely, telling the people of the State of Maine what they must pay for purses in order to hold race meets, and commenting that it seems to you that they are going far afield of their rights in this matter and you would like to have me look over the correspondence and tell you what I think of the situation.

In reply I will say that Chapter 77, R. S. 1944, as amended by the Public Laws of 1945, 1947 and 1949, provides what the set-up of the State Racing Commission shall be. Section 8 of said chapter provides that the Commission shall make an annual report to the Governor on or before the first day of December in each year, including therein an account of its actions, receipts derived under the provisions of said chapter, the practical effects of the application of the provisions of this chapter, and any recommendation for legislation which the commission deems advisable.

This statute further authorizes the commission to make rules and regulations and to issue licenses. It also provides for a bond to be given by every licensee under the provisions of this chapter. It provides for pari-mutuel pools, records, and supervision by the commission. There is nothing in the chapter which I have cited which gives the U. S. Trotting Association any authority to set the amount of the purses which the Maine State Racing Commission must pay.

Under Chapter 77 authorizing the commission to make rules and regulations, Rule 2 adopted by the commission provides as follows:

"2. Harness racing when conducted by licensees of the Maine State Racing Commission shall be conducted in accordance with the rules and regulations of the United States Trotting Association, with exceptions, and at all times racing rules of the Maine State Racing Commission shall supersede conflicting rules. . ."

Rule 20 provides as follows:

"20. No race allowed to be run under Pari-Mutuel betting unless for bona fide purses.

(a) Race purses shall not be paid from the Mutuel building or from the Judges' stand during pendency of the racing program.

(b) Any race Secretary or representative of any Association operating under license from the Maine State Racing Commission at which pari-mutuels are in operation, who hires or procures horses to race for other than bona fide purses shall be subject to fine of not more than $200, and the license of such Association may be revoked."

I find also in the last sentence of paragraph six of Section 12 of Chapter 77 as amended by Chapter 388 of the Public Laws of 1949 the following language:

> "Said licensees shall also pay purses at least equal to minimum purses paid at any other New England harness racing track."

This is all that I find in the statutes and the rules and regulations which relates to purses.

It is my opinion that the Maine Racing Commission has wide discretion except that the commission should take an over-all view of the minimum purses paid at other New England harness racing tracks, in fixing the purses at our Maine harness racing tracks. It seems to me that the commission should set the purses to fit the financial picture of our own State, of which the U. S. Trotting Association would have no knowledge except from hearsay.

If there is anything further that you would like us to check in regard to the Maine State Racing Commission statute and the rules and regulations, please advise me.

RALPH W. FARRIS
Attorney General

July 5, 1950

To Harland A. Ladd, Commissioner of Education
Re: Renting of School Buildings

I have your memo of June 29th, stating that my opinion is sought on a phase of administering the principle of the division of church and State. You state that the school department of the City of Presque Isle has been requested to make the high school auditorium available for a series of meetings sponsored by the Seventh Day Advent Churches of Aroostook, and the superintendent of schools wishes advice on what to tell his committee. You ask if the next to the last sentence in the September 1, 1943, statement of the late Attorney General, Frank I. Cowan, is pertinent.

I quote the language to which you refer, which is found on page 71 of the Report of the Attorney General for 1943-44:

"In my opinion, a school board in any municipality of this State cannot lawfully permit the use of a public school building by any group for any particular type of religious training."

In answer to your question I will state that in my opinion this statement is pertinent, and I concur in same.

RALPH W. FARRIS
Attorney General

July 6, 1950

To Marion E. Martin, Commissioner of Labor and Industry
Re: Section 38, Chapter 25, R. S. 1944

As I read the weekly payment of wages law, it appears to me that the requirement of payment weekly of wages earned up to within eight days of such payment refers to calendar days.

With respect to the question whether or not there is any regulation or method by which an employer might comply with the statute and still pay employees on a semi-monthly or bi-weekly payroll basis, you are advised that the statute appears to be clear and unambiguous. Whether or not there is some method by which an employer might legally circumvent the statute is a matter upon which I am not in a position to express an opinion. . .

JOHN S. S. FESSENDEN
Deputy Attorney General

July 7, 1950

To Norman U. Greenlaw, Commissioner of Institutional Service
Re: Pott's Disease

I received your memo of June 28, 1950, stating the facts in regard to the admittance to a State Sanatorium of a woman whose application stated that she was afflicted with Pott's Disease. In order to give this patient every consideration you authorized her admittance for observation under the provisions of Sections 166 and 167 of Chapter 23, R. S. 1944.

You further state that you have been advised by the sanatorium officials that this patient does not have tuberculosis, but is in need of hospitalization and her husband is not cooperative about removing her from the sanatorium, although he has on several occasions been requested to remove her. He does not reply to your letters, even when sent by registered mail. This morning you were advised by the Superintendent that he had seen the husband twice since he received your registered letter, but he "has done nothing yet" about moving his wife. You add that you are not equipped to give this case the treatment it requires and that in fairness to others awaiting admission you feel justified in asking that this patient be removed at once, thereby releasing a bed to some other patient. You have been advised that she should be in a general hospital or a convalescent home, and you feel that such an arrangement should be her husband's responsibility. You then request my opinion as to how this matter should be handled and what procedure should be followed in removing this patient from the sanatorium.

I note by Sections 166 and 167, to which you refer, that the sanatoria shall serve the needs of the people for the care and treatment of persons affected with tuberculosis, and I note that these sections nowhere use the word "pulmonary." On referring to the definition of Pott's Disease, I note that it is termed "tuberculosis of the spine." Therefore it appears to me that if you removed this woman from the sanatorium without her husband's permission and he took the matter to court, you would not be on very safe ground, if the court should rule that Pott's Disease is tuberculosis under the provisions of Section 166 which establishes our sanatoria for the treatment of tuberculosis.

Ask your Superintendent if Pott's Disease is not tuberculosis, caries of the vertebrae, often resulting in curvature of the spine and occasionally in paralysis of the lower extremities.

I do not know practice of the Maine tuberculosis sanatoria with regard to the admission of patients affected with any form of tuberculosis such as Pott's Disease; but Section 167, to which you refer, provides:

> "Residents of the state may be admitted to these sanatoriums, if found by any regular practicing physician to be suffering from tuberculosis."

As I stated before, this is a matter for administration at the sanatorium, as it depends on what the practicing physician who asked that this patient be admitted stated to the authorities of the sanatorium.

RALPH W. FARRIS
Attorney General

July 12, 1950

To L. C. Fortier, Chairman, M. E. S. C.
From John S. S. Fessenden, Deputy Attorney General
Re: Your memo, July 8, 1950—subject: Appropriation

Your memorandum raises a question as to an appropriation of $20,000 for the fiscal year 1948-49. According to the State Auditor, the appropriation was "transferred to the 'General Fund Contributions and Transfers' account, and subsequently lapsed to the General Fund Surplus at the close of the year." Comment is made that the transactions were not reflected on the books of the Maine Employment Security Commission. The auditor also cites pertinent sections of the Employment Security Law setting forth the general rule that balances in the unemployment compensation administration fund shall not lapse, but shall be continuously available to the commission for expenditure consistent with the provisions of the Employment Security Law chapter.

The question involved is the propriety of the Employment Security Commission's handling of the item and the lapsing of the item as an apparent conflict with the statute.

When the Unemployment Compensation Law was first enacted in Maine, it was mandatory that the State appropriate a prescribed sum ($20,000) as its part in the administration of the employment service. This mandate arose from the administration of the U. S. Employment Service pursuant to the Wagner-Peyser Act. It is my understanding that for a number of years the sum so appropriated was used under the authorization of work programs and allotments as required by the respective appropriation bills and Section 14 of Chapter 14, R. S. 1944.

In the exercise of emergency powers during World War II, by presidential order, the employment service was taken over by the Federal Government. No State employment service was left in existence. With no State employment service and no cooperative service, pursuant to the Wagner-Peyser Act, there remained no purpose consistent with the provisions of the Unemployment Compensation Law for which the State-appropriated sum could be expended. The balances necessarily lapsed.

Following the war, the States through concerted effort, after a long and somewhat bitter struggle, secured the return of the employment service to State operation, fully anticipating that each State would be required to appropriate a sum of money, as before, as its share in the cooperative program. In Maine the sum set by law (see sub. II, Sec. 7, Chapter 430, P. L. 1949) was annually appropriated in anticipation of the return of the employment service to obviate any possibility of the necessity of calling a special session of the legislature to appropriate the sum required to qualify the State to participate in the program.

Upon the return of the employment service and as a result of some action at the Federal level about which I have no information, Federal authorities did not require the State to allot and use the sum in controversy, but it was understood that they (the Federal authorities) might at any time do so and still had such authority. The appropriation being for the purpose of complying with Federal requirements and the requirement not having been imposed, there is no purpose consistent with the provisions of the Employment Security Law for which the sum should remain continuously available to the commission. The amount appropriated must therefore of necessity lapse, as in the previously mentioned instance.

I do not feel that it is within my province to express an opinion as to propriety of bookkeeping or how the matter should be handled by the commission in collaboration with the Department of Finance and the State Auditor's department, so long as the result is as stated above.

In your memorandum you ask, "Furthermore, is there any way that the law could be corrected so that we would not run into this incident in the future?"

If, at the Federal level, the law has been amended so that the administration can no longer require an appropriation by the States, I would suggest that the second sentence of subsection II, Section 7 of Chapter 430, P. L. 1949, and the first two words of the next sentence be repealed and that biennially no appropriation be requested.

If the Federal law has not changed and it is still possible that the State would be required to contribute State funds to the program, I would recommend that the appropriation bill state that the sum appropriated is to become available only upon the contingency of a demand by competent Federal authority that the amount be allotted and used.

JOHN S. S. FESSENDEN
Deputy Attorney General

July 12, 1950

To Honorable Frederick G. Payne, Governor of Maine
Re: Term of Office, Board of Registration of Optometrists

By Chapter 333 of the Public Laws of 1947 the term of office of the Board of Optometry was changed from three years to five years. In making this change the legislature prescribed:

> "They shall be appointed for terms, as the terms of the present members expire, so that eventually the term of one member shall expire each year,

and each shall hold office for a term of five years and until his successor is appointed and qualified."

In presently making appointments to the board, as the terms of the members expire, it is my opinion that you should make your appointments for such terms of five years or less as will eventually result in the terms of the membership expiring one in each year.

JOHN S. S. FESSENDEN
Deputy Attorney General

July 17, 1950

To Marion E. Martin, Commissioner of Labor and Industry
Re: Elevator Inspection Frequency

I acknowledge receipt of your memo of July 14th, in which you call my attention to Section 99-H of Chapter 374, P. L. 1949, the second paragraph, which you quote as follows: "to maintain a certificate in force either a State elevator inspector or an authorized elevator inspector shall inspect every passenger elevator every 6th calendar month, and every freight elevator, every 12th calendar month . . ."

You state in the second paragraph of your memo that the Board feels that such infrequent inspection cannot assure the safety which the law is designed to provide, and has therefore adopted a rule that passenger elevators shall be inspected 4 times a year and freight elevators twice a year.

You further state that the members realize that they could not revoke a certificate under these conditions, but if an elevator was in such a state of disrepair that it was unsafe and created a menace, under the fourth paragraph of this section the conveyance could be taken out of service immediately and a condemnation card posted.

Upon this statement of law and fact you raise the question: "Does the Board have the authority to adopt such a rule and, if adopted, can we require inspection in conformity to the rule?"

In reply to your question I will say that in my opinion the Board can require inspection at any time it may deem necessary. It appears to me from the language of the statute which you quoted in paragraph one of your memo that it is mandatory that passenger elevators be inspected twice a year and freight elevators once a year. This statute makes it mandatory that elevators be inspected as often as prescribed therein, but it does not prevent the Board from having more frequent inspections, if deemed necessary to protect the public.

RALPH W. FARRIS
Attorney General

July 20, 1950

To Nathan H. Whitten, Chairman,
Maine Running Horse Race Commission

I have your letter of July 18th, calling my attention to Chapter 289 of the Public Laws of 1949, amending Chapter 77 of the Revised Statutes, as it relates to minors being allowed within any pari-mutuel enclosure.

Section 18 of Chapter 289, P. L. 1949, provides that no minor shall be permitted to participate in any pari-mutuel pool or to enter any pari-mutuel enclosure. It is my opinion that minors should not be allowed, even when accompanied by parents, to enter the clubhouse when the betting ring is closed, and that minors should not be allowed within the race track enclosure, regardless of whether or not the clubhouse betting ring is closed.

RALPH W. FARRIS
Attorney General

July 20, 1950

To Bernard C. Brown, Secretary
Trustees of Lucia Kimball Deering Hospital Fund, Saco, Maine

I have your letter of July 18th, stating that a question has arisen as to the statutory requirements relating to the investment of the fund of the Lucia Kimball Deering Hospital Fund. You state that this is a City fund, and you would appreciate a statement as to what type of security is legal for purchase by this fund. . . .

I call your attention to Chapter 80 of the Public Laws of 1945, which regulates trust investments. This is an addition to Chapter 147 of the Revised Statutes of Maine. This statute requires that a trustee in investing trust funds exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

There is an exception to this in Chapter 80, providing that nothing in the act shall be construed as authorizing any departure from, or variation of, the express terms or limitations set forth in any will, agreement, court order or other instrument creating or defining the fiduciary's duties and powers, but the terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument, shall be taken to mean any investment which is permitted by the terms of Section 17-A, which is the ordinary prudence section. . . .

RALPH W. FARRIS
Attorney General

July 25, 1950

To Norman U. Greenlaw, Commissioner of Institutional Service
Re: Out-of-State Incarceration of Offenders

I acknowledge receipt of your memo of July 21st, enclosing material from The Council of State Governments, relating to out-of-state incarceration of offenders, and I note that you intend to attend the meeting scheduled to be held at the Hotel Roosevelt in New York on August 8th and would like my comments and advice on this material by August 5th.

On July 20th I also received a letter from Mr. Crihfield, Eastern Representative of The Council of State Governments, calling my attention to a meeting of the administrators of the Compact for the Supervision of Parolees and Probationers, to discuss these matters in detail, giving the date and place as in his letter to you.

I note by the postscript of his letter to you that he has read the final report of the institutional cooperation committee from Maine, New Hampshire and Vermont, and that while the subject matter of the material which he was enclosing was somewhat different, he thought it might be useful in working out the machinery for the institutional care project.

Mr. Crihfield informed me in his letter to me that members of the Institution Cooperation Committee of Maine, New Hampshire and Vermont have been invited to attend this meeting in New York, and that he had talked with Attorney General Tiffany of New Hampshire, who planned to attend. He hoped that Attorney General Parker and I could attend also, but I regret to have to advise him that I am unable to attend this meeting on August 8th. I shall assure him, however, that as far as the interests of this State are concerned, they will be in good hands, as you plan to attend.

Mr. Crihfield sent me the same enclosures as he did you, and I herewith return yours. I have no comments to make except that if we do draft a bill along the lines suggested by Professors Wendell and Zimmermann and the uniform bill which they enclosed, we shall have to fit same in with our State laws, with the incoming legislature. In other words, we should be careful not to commit ourselves to any particular form of legislation until we have taken it up with members of the legislature who will have the matter under consideration.

I will say in passing that in Maine we do not use detainers. We do not have a detainer statute. When a person is held in one of our penal institutions, serving a sentence for violation of our criminal statutes, upon notice from a State that holds another warrant against such person for a crime committed in that State, the head of the institution always notifies such other State of the time when the sentence expires, so that they may have extradition papers made out or come to Maine and have the subject picked up on a bench warrant from a municipal court. In other words we are using extradition papers and bench warrants instead of detainers in cases of this kind.

As this matter will come before either the Judiciary or the Legal Affairs Committee, there is some question in my mind whether or not they would be in favor of having a detainer law on our statute books. That is, we must sell the detainer system to our legislators before we go very far with it.

I note the amendment on page 2 of Professors Wendell and Zimmermann especially provides for re-incarceration of parolees and authorizes the prisoner to be kept by the receiving State on a contract basis; and again I am doubtful whether or not we could work this out with our legal committees of the incoming legislature. Perhaps the possible alternative form on page 3 could be worked out. Having been a member of the Interstate Cooperation Committee when I was in the Senate, and being at present a member of the Executive Committee of the National Association of Attorneys General, I have found that many of the legal profession serving on legislative committees resent any ready-made legislation for their consideration.

These are the best suggestions I have for you to take up at the conference on August 8th.

I note in the membership of the Joint Committee on Detainers, that all three Attorneys General named to represent the National Association of Attorneys General, have not been in that office in their respective States of New Hampshire, Utah and Ohio, since January 1, 1949, but it is possible that they will serve on this committee and they are able lawyers. They formerly served with me on committees of the National Association of Attorneys General.

RALPH W. FARRIS
Attorney General

July 26, 1950

To David B. Soule, Insurance Commissioner
Re: Method of Placing Insurance

Under date of July 21, 1950, you submitted a memorandum to this office in which you detailed the administrative procedure which has been followed in connection with the placing of insurance on State property. In your memorandum you inquire as to whether or not it would be possible, under the provisions either of existing Council Orders or of a Council Order to be drafted, to eliminate the necessity for final approval of insurance matters by the Governor and Council. Presumably, this would be through the medium of the alternative of delegating the responsibility of final approval to some department head.

Chapter 11 of the Revised Statutes of 1944 specifically sets forth certain duties of the Executive Department which, though by no means covering all the duties of that department, are so clearly set forth as to constitute these duties as among the primary duties of that department. Section 12 of Chapter 11 states in part that insurance upon public buildings and other property belonging to the State shall be placed thereon by the several department heads "subject to the approval of the governor and council, or by the governor and council."

In view of the fact that the statute gives the authority to the Governor and Council to place insurance on State property, whether or not the head of a department has so recommended, it appears clear that this is a legislative mandate of a duty imposed upon the Executive Department, which duty cannot be delegated.

If it is desirable to relieve the Governor and Council of the responsibility of giving final approval to the placing of insurance, it appears to this office that this can be accomplished only by amendatory legislation.

JOHN S. S. FESSENDEN
Deputy Attorney General

July 26, 1950

To H. M. Orr, Purchasing Agent
Re: Rode-Rite Asphalt

I have your memo of July 24th, in which you state that on July 19, 1950, your office opened a bid covering one million gallons of Rode-Rite treated cut-back inverted emulsified asphalt. The Maine Bituminous Corporation bid a low price, but scratched out "Rode-Rite" and admitted that they were not bidding on that product. You state that it was your understanding that the treatment which they proposed to use was claimed to be just as good, but they could not furnish samples or show the Highway officials any of this material in use.

You further state that the specifications on the bid were drawn up by the Highway Commission, and that it was their desire to purchase the Rode-Rite treated asphalt, apparently for the reason that they were satisfied with this proven product.

You state in the second paragraph of your memo that Mr. Philip Corey, who represents the Maine Bituminous Corporation, has requested that the matter be referred to this office for an opinion as to the legality of asking for bids for a trade-named article without leaving it open for bidders to submit a bid on a similar material claimed to be equal, and you would appreciate it if I would give you an opinion on this point as soon as possible, as the Highway Department is anxious to apply this material.

Under the provisions of Chapter 20 of the Revised Statutes the Highway Commission has wide discretion in making purchases; and if they decide that they want a certain material, which has a trade name, they have a right to put out bids for the trade-named article which they have used and which has proven satisfactory to them.

Anyone who strikes out any part of a bid and makes a bid on a product which has not been tried out by the Highway Commission is not entitled to consideration, and the bid should be thrown out, as the bid was not on the product which was called for by the State Highway Commission.

RALPH W. FARRIS
Attorney General

July 26, 1950

To Ernest H. Johnson, State Tax Assessor

Re: Taxation of Property Deeded to the United States Government with Reservation for a Life Estate to the Grantor

I acknowledge receipt of your memo, dated July 11th, stating that the Town of Bar Harbor had inquired relating to the taxation of certain real estate there which had been deeded to the Federal Government by a conveyance reserving a life estate in the grantor, Eleanor Morgan Satterlee, and enclosing a copy of this conveyance and also a copy of a letter from you to the chairman of the board of assessors, Bar Harbor, in which you suggested that an assessment could be made against the life tenant. In the last paragraph of your letter you stated, "However, in our opinion, the property is assessable to the life tenant even though on her death outright title goes to the United States Government."

Before giving my opinion, I want to comment on this part of your letter, for upon examination of the deed from Eleanor Morgan Satterlee to the United States of America, I find that title and fee passed from Mrs. Satterlee to the United States of America with reservation in the deed that she would have a right to live on the premises during the remainder of her natural life, but that reservation was followed by eight restrictions which, in my opinion, nullify the effect of a life estate.

There are two classes of life estates which, generally speaking, are still in existence. The first type of life estate was, and is, known as a "conventional life estate." It was and is created by acts of the parties by deed, will, or contract. The second type of life estate is known generally as "legal life estate," and includes the various kinds of interest for life which come into existence by operation of law. Life estates are freehold estates, not of inheritance, and are the right to enjoy property for life, or for the life of some named person.

The reservation and exception in this deed from Mrs. Satterlee to the United States of America makes her only a life tenant, and she has no freehold in the estate which would be taxable in my opinion by the Town of Bar Harbor. In other words, the title is not in Mrs. Satterlee, but in the United States Government, and is exempt from taxation. After reserving the life estate for the natural life of Mrs. Satterlee, the Government then proceeds to lay down restrictions and exceptions, so that the Government has full control over the premises and leaves Mrs. Satterlee only the right to reside on the premises as a life tenant, having no supervision over the property, as she has delegated that right to the United States Government for the purpose of establishing this land as a part of the Acadia National Park. A life tenant in such a case as outlined in this deed, with the restrictions added thereto, cannot be taxed, because there is no way of arriving at an appraisal of the value of a life estate on real estate over which the so-called life tenant has no control.

The United States Government has the right to enter upon and construct, maintain, and operate roads, trails, paths, bridges, automobile parking spaces, toilet houses, and electric, telephone, telegraph, water and sewer lines over the land, the use of which is reserved in the deed in Exception #6, and shall

have the further right to remove fire-killed or damaged timber and to take such other measures as may be necessary and desirable to conserve the scenery, etc. Then in Exception #7 of the deed, Mrs. Satterlee agrees that the westerly half of the sand beach may be used by the public for swimming and picnicking under the supervision of the Superintendent of the Park or other duly authorized representative of the United States.

Section 8 of the Exceptions, in my opinion, nullifies the effect of a life estate and deprives Mrs. Satterlee of a freehold estate which would be taxable. This section reads as follows:

"Subject to the foregoing terms and conditions, the party of the first part reserves to herself generally and without manner of limitation, the full use and occupancy of the premises hereby conveyed for her life, without impeachment of waste and without liability for any loss or damage whatsoever thereupon occurring during her life."

For the reasons above stated, the United States Government has title in fee, has full control over the premises, subject to a life tenancy by Mrs. Satterlee, which is not, in my opinion, a conventional life estate such as would be taxable.

I herewith return the copy of the deed from Mrs. Satterlee to the Government.

RALPH W. FARRIS
Attorney General

July 27, 1950

To David H. Stevens, Member, Sanitary Water Board
Re: Permit under Section 6, Chapter 72, R. S., as amended

I acknowledge receipt of your memo of July 25th in which you state that a number of persons having applied for permits to empty sawdust, shavings or other fibrous materials created in the manufacture of lumber or other wood products under the provisions of Section 6 of Chapter 72, R. S. 1944, as amended by Chapter 266, P. L. 1947 and Section 3 of Chapter 332, P. L. 1949, it becomes necessary for the Board to ascertain if the permit authorized under this section is synonymous with or a substitute for the license prescribed in Section 4 of said Chapter 72, R. S., as enacted by Chapter 345, P. L. 1945; and you request me to advise the Board if the permits now requested by various corporations shall be issued only after the payment of the sum of $50 as prescribed by said Section 4 of Chapter 72, R. S. 1944, for the license required by said section.

Chapter 72, R. S., was amended by Chapter 345, P. L. 1945, which provided that no person . . . should discharge into any stream, river, pond or lake or into tidal waters any waste, refuse, or effluent from any manufacturing, processing or industrial plant, etc., and that if such person, corporation or plant should pollute such waters, they should first apply for a license under Section 4 of said chapter, and after hearing, the Board in its discretion can issue a license to the applicant on the payment of $50; and that if any person is aggrieved by any order or decision of the Board, he can apply to the Superior Court.

Under the provisions of Chapter 266, P. L. 1947, the legislature repealed Section 57 of Chapter 33, R. S., which was a part of the Fish and Game Laws, relating to deposits of slabs, edgings, sawdust, etc., in streams. Then in Section 2 of said Chapter 266, they renumbered Sections 6, 7, and 8 of Chapter 72, R. S., as enacted by Chapter 345, P. L. 1945, so that the sections are now numbered 7, 8 and 8-A, respectively; and then in Section 3 of Chapter 266, P. L. 1947, they amended Chapter 72 of the Revised Statutes, as amended by Chapter 345, P. L. 1945, by adding thereto a new section to be numbered 6, to which section your memorandum applies.

In this new Section 6 of Chapter 72, R. S., it is provided that no person shall deposit in the inland waters of the State or on the banks thereof or in tidal waters (by amendment in 1949) any slabs, edgings, etc., or fibrous materials created in the manufacture of lumber or other wood products, etc.; and if any person believes it to be necessary to the operation of his business to deposit these fibrous materials in streams or inland waters, he should make application to the Sanitary Water Board and have a hearing and the Board shall have authority to issue an order thereon, granting such permit as it deems advisable, or denying the application. Provision is then made for an appeal as outlined in Section 5 of Chapter 72, R. S.

Therefore it is my considered opinion that Section 6 deals with fibrous materials and Sections 3 and 4 of Chapter 345, P. L. 1945, deal with effluents discharged into any stream, river, pond, etc.; and therefore it is my opinion that there should be no charge to an applicant for a permit under Section 6, such as is prescribed for an applicant for a license under Section 4 to discharge an effluent into any stream, lake, or tidal waters.

RALPH W. FARRIS
Attorney General

July 27, 1950

To E. K. Sawyer, Supervising Inspector of Elevators
Department of Labor and Industry
Re: Tiering and piling machines, P. L. 1949, Chapter 374, § 99-B

Your memo of July 19th received, stating that in the last few lines of the paragraph defining elevators, there is a definition of tiering, piling, feeding or other machines operating within only one story. You state that you have a question whether or not an ordinary elevator with a lift of only a few feet would come under this classification and be exempt. You state that it has been your understanding that only tiering and other similar machines were in this classification, and you ask my interpretation as to whether the definition of a freight elevator would be changed or whether there would be any minimum lift which would exclude it from the freight elevator class.

It seems to me that an elevator with a short lift that does not go a complete story would be exempt under the elevator law. However, if you care to come to my office at a convenient time, I would be glad to discuss this matter with you.

RALPH W. FARRIS
Attorney General

August 2, 1950

To Honorable Frederick G. Payne, Governor of Maine
Re: Letter from Former Inmate, State Prison

Pursuant to your request, I talked with Postmaster Weeks of the Augusta Post Office relative to postal regulations dealing with delivery of registered or insured mail to inmates of prisons. The only regulation Mr. Weeks could find was a regulation to the following effect, that if the sender does not restrict the delivery of registered or insured matter to the inmate of a prison, the officer in charge of the prison or some officer delegated to handle the mail may sign for the material. He was unable to find any regulation pertaining to delivery where the sender restricted delivery to the addressee only.

Following this conversation I talked with the Deputy Warden, Robbins, to inquire as to the procedure followed at the prison. Mr. Robbins is sending me a memorandum covering the subject, which I should receive in the very near future.

In the meantime I am told that if delivery is restricted by the sender to the addressee only, the mail is rejected at the prison and is returned to the sender.

All mail is read, which is a rather obvious precaution against improper material entering the prison or information relative to escape plans, etc.

No prisoner is permitted to correspond with a former inmate or with an inmate in any other penal institution. Mail received for a prisoner from a former inmate is not destroyed, but is held at the prison to be delivered to the inmate at the time of his release.

With respect to the writer of the letter to you, you are informed that he is a perpetual and habitual law violator, his record going back to the serving of time for a law violation as early as 1902. It is true that he has served three terms in our prison at Thomaston, having been released the last time in December of 1949. He has served a prison term in a Federal penitentiary for violation of postal laws. He has served several terms for breaking and entering, several terms for forging and uttering, and many, many terms for sex offenses. His record is such that it is amazing that having been out of prison for eight months he is still at large. He has written threatening letters to the Warden of the prison and to the Deputy Warden. The mail which he attempts to get into the prison at the present time is in the nature of endearing letters to friends whom he knew while he was in the prison. This type of letter is never delivered to an inmate. I confirmed the foregoing information with Mr. Gerald Murch, who went on to say that he hoped we never had the man back in Maine. Whether or not his letter to you constitutes a threat which would amount to a violation of postal regulations I do not know, as that would be a matter for Federal authorities. If you think it desirable we could send the letter to Mr. Tennyson Jefferson, Inspector in Charge, P. O. Department, Boston, Mass.

JOHN S. S. FESSENDEN
Deputy Attorney General

August 17, 1950

To Fred L. Kenney, Director of Finance, Department of Education
Re: Water Testing Law

I have your memo of August 11th, enclosing a copy of a letter which you wrote to Paul A. Smith Co. under date of February 13, 1948. You state that at the time Chapter 305, P. L. 1947, was enacted, the question arose as to whether the charges for water testing billed by the State Department of Health should be paid from municipal school accounts or from incidental or contingent funds. On February 12, 1948, Mr. Ladd, Deputy Commissioners Libby and Bailey, Deputy State Auditor Douglas and Chief Municipal Auditor Singer held a conference and concluded that the municipal officers should pay these bills from their incidental or contingent funds. As said Chapter 305, P. L. 1947, amended Chapter 22, R. S., the health chapter, not Chapter 37, the educational chapter, it seemed a very simple conclusion to make and superintendents have been advised accordingly since that date. However, you further state in your memo that several superintendents of schools are reluctant to ask the municipal officers to pay these bills from the incidental funds, and you would like a memo from me in support of your conclusion.

It seems to me that this is a matter of administration; but it is my opinion that as the amendment was to the health laws, the bills should properly be paid by the municipal officers from the incidental or contingent fund. This is a health measure and not an educational measure. That it happens to affect a group of children and teachers does not necessarily put the burden on the school funds to pay the cost of water testing under this amendment.

RALPH W. FARRIS
Attorney General

August 18, 1950

To. J. W. Randlette, Chairman, County Commissioners' Court
Re: Mileage of County Attorney

Your letter of August 5th duly received, stating that the County Commissioners have asked for a ruling on the matter of travel mileage of your County Attorney, and quoting Chapter 79, Section 130, R. S., which states that the salaries of the county attorneys shall be paid by the state and no other fees, costs or emoluments shall be allowed them. Then you quote Section 131 of Chapter 79, which provides for duties in civil proceedings, compensation. This allows them actual expenses.

It is my opinion that mileage is an actual expense under this section, and my interpretation of Section 130 is that fees are not expenses, nor are costs expenses, nor emoluments, so that in my opinion a County Attorney, when performing his duty in the County of Sagadahoc, or anywhere in the State, is entitled to his actual expenses for mileage, hotels, and meals. He should receive the same mileage as deputy sheriffs.

While the County Attorney is paid by the State, he is elected by the voters of the county and is attorney for the State within the county where he is elected. He prosecutes for the State, receives a salary from the State, and is under the direction of the Attorney General. As the County Commissioners have charge of the business and financial affairs of the county, they must estimate his annual expenses and provide for the payment of law enforcement officers.

It does not appear to me that it will strain the county treasury very much to pay mileage of the County Attorney for trips to Richmond to attend the Trial Justice Court which you hold in that town. The State Auditor has recognized and approved mileage for the County Attorneys of other counties in the course of their official duties.

Of course, by the same token, the County Attorneys have no authority to contract bills outside of their actual expenses incurred without first taking it up with the County Commissioners.

RALPH W. FARRIS
Attorney General

August 28, 1950

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Contributions of Missing Person

I have your memo of August 24th relating to a former employee of the City of Portland, who was a member of the State Retirement System through the Local District of Portland and has been missing since September 9, 1949. You have been advised by the officials of the City of Portland that his body has never been recovered and you ask my opinion as to what disposition, if any, can be made of contributions which this man paid into the System, nominating his wife as his beneficiary in this connection.

The statute provides that should a member die, the amount of his contributions shall be paid to such persons as he designates as the beneficiaries. In this case, where a man has disappeared and you have no proof of his death, it might not be safe to pay this money over to the beneficiary without a bond from the beneficiary that in case the employee appears and is not dead, the money will be returned to the Board. Our statute provides that when a man's disappearance is followed by a continued absence for a period of not less than seven years from the date of his disappearance and during that period he is unheard from, he is presumed to be civilly dead and petition for probate of his will or petition for administration of his estate may be filed with any probate court in the county where he last resided. Therefore it is my advice, if the beneficiary does not want to give bond to protect the State from any liability in case the employee should return, that the funds should be held by the Retirement System until he has been declared to be civilly dead, by a court, after seven years have elapsed since his disappearance.

RALPH W. FARRIS
Attorney General

August 28, 1950

To Ernest H. Johnson, State Tax Assessor
Re: Sale of Criehaven Schoolhouse

I have your memo of August 25th, stating that the Commissioner of Education has requested you in your official capacity to transfer a schoolhouse located in Criehaven, Ragged Island township, to the Maine Seacoast Missionary Society. You state in your memo that you propose to submit this to the Governor and Council for approval and you ask the following question,

"In your opinion is there any objection to including the conditions stated in the Order in a deed conveying this property?"

In answer I will say that there would be no objection to including any condition in the deed, as you have statutory authority for conveying this property, under the provisions of Chapter 182 of the Public Laws of 1945. As the statute provides only for the written permission of the Commissioner of Education, it is not necessary to have a Council Order, Criehaven having been deorganized by Chapter 10 of the Private and Special Laws of 1925. This schoolhouse became the property of the State in consequence of deorganization, under the provisions of Section 153 of Chapter 37, R. S.

RALPH W. FARRIS
Attorney General

September 5, 1950

Mildred I. Lenz, R. N., Educational Secretary,
Board of Registration of Nurses

In your letter of August 31, 1950, you inquire as to the scope of the words, ". . . to carry on the work of the board, which shall include the promotion of nursing education and standards of nursing care in this state," these words appearing in Section 2 of Chapter 63, R. S. 1944. You state that you are particularly interested as to whether these words would include the holding of institutes and workshops and the securing of qualified out-of-state speakers as a part of an educational benefit program.

It is my opinion that the statute contemplates that the promotion of nursing education is a responsibility of the Board of Registration of Nurses and that when the board has determined that a particular program for educational purposes is desirable, the program, if in fact educational, is within the scope of the statute and by act of the board the cost incident thereto would be a proper charge against the funds under the control of the board.

JOHN S. S. FESSENDEN
Deputy Attorney General

September 5, 1950

To Ermo H. Scott, Deputy Commissioner of Education
Re: Liability of instructors at the Teachers Colleges and Normal Schools and of teachers employed under the Division of Unorganized Townships and Plantations

In reply to your memorandum of August 25, 1950, relative to the above subject you are advised that there is nothing that I can add to the paper which I delivered in 1949 to the State Convention of Superintendents on the subject of the liability of teachers for injuries to pupils. All I can do is to refer you to the case which I there analyzed, namely that of *Brooks v. Jacobs*, appearing in 139 Maine at page 371, particularly to these words appearing at the top of page 380:

> "We believe that when one accepts responsibility of due care towards those under his direction and control he must exercise that care not only as to what he himself actually does in its observance but as to what he fails to do, which in the exercise of due care he should have done."

I would also call your attention to the principles stated on page 381, which I will paraphrase as follows:

The teacher would be liable for any act of negligence proximately causing injury to a pupil under his supervision or control, whether his negligence was due to an affirmative act upon his, the teacher's, part, or a failure by the teacher to do that which a reasonably prudent person would have done under like circumstances.

JOHN S. S. FESSENDEN
Deputy Attorney General

September 6, 1950

To Harland A. Ladd, Commissioner of Education
Re: Berry Library in Buxton

I herewith enclose a copy of a letter which I this day addressed to George Jack, superintendent of schools in the union of which the Town of Buxton is part.

It seems to me that if it is necessary for the town to use the public library for school purposes, an agreement should be worked out between the citizens, provided this is a temporary arrangement.

If all the citizens agree to use the library, without complaint, no action on this matter will be taken by my department.

I presume this move to use the library for school purposes has been voted on by the town. However, the town has no right to divert trust funds for any purpose other than those for which the town accepted the gift under the will, without first going to the court and asking for construction of that clause of the will making the bequest and devise.

RALPH W. FARRIS
Attorney General

September 11, 1950

Norman Weed, Budget Director
State Highway Commission

I have your memo of September 7th, relating to tolls collected from the Augusta Bridge as to the cash collected which the Highway Commission would like to transfer to Highway Funds.

You state that the money for the bridge was paid from the Highway Loan Fund, Appropriation 9095, and you feel that the money should be paid back to the appropriation from which it was spent rather than to the General Highway Fund Surplus, and you request my opinion on this matter.

In view of the fact that the Highway Loan Fund, Appropriation 9095, was set up under the statute with the approval of the Governor and Council, the revenue received from tolls on the Augusta Bridge should be transferred to the General Highway Fund Surplus and, in case a further Highway Loan Fund appropriation is necessary, the matter can be presented to the Governor and Council asking authority to set up another Highway Loan Fund or supplement the present appropriation Number 9095.

RALPH W. FARRIS
Attorney General

September 20, 1950

To George J. Stobie, Commissioner of Inland Fisheries and Game
Re: Qualifications of the State of Maine to participate under the Dingell-Johnson Federal Aid to Fisheries Act of August 9, 1950

Reference is made to the letter dated September 6, 1950, addressed to you by Mr. Albert M. Day, Director of the Federal Fish and Wildlife Service, about which you and I conferred on the afternoon of September 19, 1950.

The first paragraph appearing on page 2 of this letter reads in part as follows:

"It is possible that, while assent legislation is mandatory, your existing State laws provide prohibitions against the diversion of license fees and no additional legislation in that regard is necessary. On the other hand, it is possible that your State will have to qualify through the assent of your Governor, until assent legislation can be enacted. In either event, you are requested to secure and forward an opinion from your Attorney General, with appropriate reference to State laws covering the question of your State qualifying for this program. Such opinion will be requisite to approval of your State for participation in the program."

The referenced portion of the letter of September 6, 1950, quoted above, presents two questions as to this State's ability to qualify immediately for participation under the Dingell-Johnson Act: 1) Provisions of law with respect to the disposition of license fees collected by the Fish and Game Department; and 2) The right or authorization to qualify immediately without additional legislation.

With respect to the first question you are advised that subsection X of Section 63 of Chapter 33 of the Revised Statutes of 1944, as amended by the Public Laws of 1945, 1947, and 1949, which for reference purposes is known as the Tenth Biennial Revision of the Inland Fisheries and Game Law, printed at the back of the Laws of Maine for 1949, reads as follows:

"All funds derived from the sale of licenses under the provisions of this chapter shall be used for the propagation and protection of all bird life, animal life and fish life and other expenses incident for the administration of these functions.

"Provided, further, that if any of such funds are not expended during the year in which they were collected the unexpended balance shall not lapse, but shall be carried as a continuing account available for the purposes herein specified, until expended."

In addition to the foregoing section of law, Section 110 of the same chapter provides that all fines, fees and penalties for violations of said chapter recovered in any court action shall also accrue to the credit of the Department of Inland Fisheries and Game for similar purposes, and that these funds, so collected, if unexpended, shall not lapse, but shall be carried as a continuing account available for such purposes.

In view of the foregoing cited sections of law, it is my opinion that no additional legislation is needed in the State of Maine to meet the provisions of Section 1 of the Dingell-Johnson Act with respect to prohibition against the diversion of license fees paid by fishermen for any other purpose than the administration of the State Fish and Game Department.

With respect to the second question presented, you are advised that Section 14 of Chapter 11 of the Revised Statutes reads as follows:

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

This section of law is clearly sufficient authority for the participation of the State of Maine in the benefits of the Dingell-Johnson Act by and through the Department of Inland Fisheries and Game upon the approval of the Governor with the advice and consent of his Council.

It is therefore my opinion that both questions presented are clearly resolved in favor of the State's present ability to participate in the benefits of the Dingell-Johnson Act upon the basis of existing State legislation.

In view of the contents of Section 1 of the Dingell-Johnson Act, particularly that part thereof which would require a legislature to "have assented to the provisions of this Act * * * except that, until the final adjournment

of the first regular session of the legislature held after passage of this Act, the assent of the governor of the State shall be sufficient," you are requested to inquire from appropriate Federal authority whether or not additional State legislation will be required. It is possible that, in view of the broad powers already enacted by the Maine legislature and cited above, additional legislation might not be necessary. However, if such additional legislation is required, we should receive notification thereof in ample time to present a bill to that effect to our session of the legislature which will convene on the first Wednesday in January, 1951.

JOHN S. S. FESSENDEN
Deputy Attorney General

September 28, 1950

To the Honorable Frederick G. Payne, Governor of Maine
Re: Pollen and Fungus Survey

I have your memo of September 27th stating that your office has been asked if the pollen and fungus survey can be extended to December, 1951, as it cannot be completed by the summer of 1951 and there are sufficient funds to take care of this activity, if so extended.

Chapter 140 of the Resolves of 1949 makes this activity a carrying account, and it is my opinion that if it cannot be finished in the summer of 1951, the survey can be extended into December of 1951.

RALPH W. FARRIS
Attorney General

September 29, 1950

To Ernest H. Johnson, State Tax Assessor
Re: Fertilizer Tax Law, Chapter 378, P. L. 1949

I have your memo of September 28, 1950, relating to the tax on commercial fertilizer prescribed by Chapter 378 of the Public Laws of 1949, in which you ask the question:

"Under the law imposing a tax on commercial fertilizer (P. L. 1949, Chapter 378) is a corporation selling mixed fertilizer to the Federal Government in this state required to pay the fee of 1c per ton on such fertilizer?"

Answer. After a careful reading of the statute it is my opinion that there is no exemption to a manufacturer, distributor or transporter of commercial fertilizer from the tax on sales of such fertilizer and that it makes no difference in this regard whether the sale is to the Federal Government or to a private corporation. It would seem that it was the intent of the legislature that the fee be applicable to the manufacturer or shipper, regardless of the status of the purchaser.

RALPH W. FARRIS
Attorney General

October 4, 1950

To Marion E. Martin, Commissioner of Labor and Industry
Re: Sections 41 and 44 of Chapter 121, R. S. 1944

I have your memo of October 2nd, enclosing a letter dated September 30, 1950, which you had received from Norman E. Fowler of Gardiner, Maine, and also a copy of Section 41, in part, and Section 44 of Chapter 121, R. S. of Maine.

In suggesting an answer to Mr. Fowler's letter I wish to advise that your department has no active set-up to check on violations of the law on Sunday moving pictures, which were legalized in 1939, and public outdoor sports which were legalized in 1933.

Section 44 of Chapter 121 has to do with prosecutions under Sections 37, 39, 40 and 43. Section 37 has to do with rude behavior in a house of worship or religious assembly. Section 39 has to do with business, traveling, and recreation on the Lord's Day, which is known as the "Sunday Blue Law." Section 40 has to do with Sunday sports, which are controlled by local option. Section 43 forbids innholders and victuallers to allow gambling, etc., on their premises on Sunday.

There is no intent of the legislature in Chapter 25 or Chapter 121 apparent that the last part of Section 41 should be enforced by the Department of Labor and Industry, and there is no official ruling from the office of the Attorney General relating to this matter. You must keep in mind that this is a local-option statute and that Sunday movies cannot be exhibited until the voters of the city or town so vote at a regular election. When a city or town votes to allow Sunday moving pictures, the vote remains in force until repealed in the same manner as provided for their adoption. This statute does not relate to every moving picture corporation; it relates to the operation of a moving picture show on Sunday and prohibits any such operator to permit any employee of said person, firm or corporation to work more than 6 days in any 1 week.

If there is a violation of this statute, complaint can be taken out in the local municipal court upon sufficient evidence that this statute is being violated. Therefore the person being worked 7 days a week would be the one to make the complaint. I do not believe that anyone working in a theatre is compelled to labor 7 days a week. The law permits anyone to work 6 days a week. If Mr. Fowler is not satisfied with the law as it is, he can come to the legislature in 1951 and seek an amendment in regard to this provision.

With this information you can answer his letter in your own way, telling him that the only way to get jurisdiction of the moving pictures is to amend the statute, giving you full control of the movies and the moving picture industry in Maine. . .

RALPH W. FARRIS
Attorney General

October 4, 1950

To Lester E. Brown, Chief Warden, Inland Fisheries and Game
Re: Moosehorn Migratory Bird Refuge—Jurisdiction

I have your memo of October 4, 1950, calling my attention to Chapter 85 of the Resolves of 1937 by which the State Legislature ceded to the United States of America certain land in Washington County lying within the exterior boundary of the Moosehorn Migratory Bird Refuge area, "reserving to the State of Maine and the people thereof all civil and criminal jurisdiction over said lands and waters, not inconsistent with the use, control, and regulation, by the United States of America, of said lands and waters as a part of said refuge."

You call my attention especially to the fact that the area ceded is described as a migratory bird refuge area. In view of this fact and in view of the reservation of jurisdiction to the State of Maine and the people thereof, you ask my opinion as to whether or not the trapping of beaver, muskrat and other fur-bearing animals and the hunting of deer in this area would be under the jurisdiction of the State of Maine.

I have no background for giving an opinion as we have no copy of regulations for use and control of the area by the United States of America; but it is my offhand opinion that the legislature reserved to the State and the people thereof all civil and criminal jurisdiction over said lands and waters as stated in the Resolve. If that is so, any trapping, hunting and fishing should be subject to the jurisdiction of the Inland Fisheries and Game Commissioner, if it is not inconsistent with use, control and regulation by the United States of America. Now that is the rub, because it is a question of fact as to whether or not the situation about which you talked with me yesterday, namely the presence of beaver in this area, would be inconsistent with the use and control of the area as a bird refuge by the United States of America.

RALPH W. FARRIS
Attorney General

October 11, 1950

To Honorable Frederick G. Payne, Governor of Maine
Re: Sunday Stock Car Racing

In your memorandum of October 10, 1950, you make inquiry as to the legality of Sunday operation of stock car racing.

Generally speaking, stock car racing, as it is conducted in Maine, is in the field of "amateur sports." While there may be some professional stock car racing in Maine now or in the future, up to the present time I know only of amateur stock car racing.

Several of those engaged in this "sport" have organized corporations under the provisions of Chapter 50 of the Revised Statutes of Maine as non-profit corporations engaged in a social and recreational activity. Consequently, those who operate stock car racing on Sunday within the limits of such charters and who operate on an amateur basis would come within the provisions

of Section 40 of Chapter 121, R. S. 1944, which is the section of the law which provides for local option and legalized Sunday sports. The only recreational or competitive amateur sports or games prohibited on Sunday in this section are boxing, horse racing, air circuses, and wrestling.

Under date of September 7, 1949, the Attorney General advised the Chief of the Maine State Police that in towns or cities which had accepted by local option the Sunday amateur sports law, amateur stock car racing would be legal when the races are conducted before 7 p.m.

JOHN S. S. FESSENDEN
Deputy Attorney General

October 17, 1950

To Francis G. Buzzell, Chief, Division of Animal Industry,
Department of Agriculture

Re: Chapter 429, P. L. 1949, Part C thereof

Under date of October 10, 1950, you submitted a memorandum to this office reading as follows:

"We are in doubt as to whether we can force farmers with reactor cattle to slaughter them under Section 73A of Chapter 27. It is our understanding that all we can do is to place these cattle under quarantine and then take action if they violate any of the later provisions of the Section. Can we compel such farmers to slaughter their reactors?"

Chapter 429 of the Public Laws of 1949 amended Chapter 27 of the Revised Statutes of 1944 by adding thereto a new section to be numbered 73-A, which section contains legislative authority for three alternative plans pertaining to the eradication of Bang's disease. As I understand your question, as confirmed by a conversation with you, you are interested solely in whether or not cattle held under the provisions of Plan C may be slaughtered.

You will note that in the last paragraph of Section 73-A it is stated that "the owner shall continue with this plan or one of the other official plans ***" Since you have stated that you are interested only in Plan C, it must be assumed that you are not concerned with any case in which an owner has continued, or brought himself within, some other official plan. Confining our answer, then, solely to the procedure to be followed under Plan C, it would appear that each and every requirement of Plan C must apply to an owner operating thereunder and that it is a condition precedent to the right to remove his cattle and cause the same to be slaughtered that the department be able to prove affirmatively that the owner of the cattle, operating under Plan C, has violated one or more of the conditions specifically set forth in the statute.

I notice in your question that you use the words, "Can we compel such farmers to slaughter their reactors?" The statute makes no reference to compelling the farmer to slaughter his reactors. On the contrary, the statute states, "if the owner does not so continue, the department of agriculture or its duly authorized agent is authorized to remove and cause to be slaughtered the reactor animals without payment of the indemnity."

JOHN S. S. FESSENDEN
Deputy Attorney General

October 20, 1950

To E. L. Newdick, Chief, Division of Plant Industry, Agriculture
Re: Certified Seed

I have your letter of October 19th asking for an opinion as to whether or not the Department of Agriculture has the right to certify seed grain under Chapter 27, R. S. 1944, Sections 124-129, as amended by the Public Laws of 1945.

The definition of certified seed, as used in Chapter 27, is that it shall be deemed to mean potatoes or such vegetable seeds as shall have been grown and prepared for sale in accordance with regulations laid down by the commissioner and for which a certificate or tag has been issued as provided in section 127; and of course the commissioner has authority to make all reasonable rules and regulations under this chapter.

It is my opinion that oats would not come within the meaning of this definition of vegetable, but would be classed as a cereal, with barley, rye, etc. However, beans might come within the meaning of vegetable seeds. To be safe, I would prepare an amendment to Section 124, if it is desirable to take on seed grains such as barley, oats, rye, etc.

RALPH W. FARRIS
Attorney General

October 19, 1950

To Norman U. Greenlaw, Commissioner of Institutional Service
Re: Legal Protection of Patients

I have your memo of October 2nd, enclosing copy of memo also dated October 2nd to you from Dr. Harold A. Pooler, Superintendent of the Bangor State Hospital, to which he attached an excerpt from the Waterville Sentinel relating to the trial in the action of Edward Hunter of Skowhegan against Zoe Goodness Dore of Skowhegan and the Skowhegan Savings Bank, Trustee, that opened on Wednesday afternoon of that particular week.

When an action is brought against a patient or an inmate of any of our State institutions, the case is not properly before the court until notice has been given by service on the patient or the superintendent of the institution where said patient or inmate is confined; and when these papers are served, either on the patient or the superintendent, they should be forwarded immediately to the Commissioner of Institutional Service who in turn should refer them to the Attorney General's office. The Attorney General enters his appearance or provides counsel for the patient and sees that the State's interest is protected, when such papers are referred to him.

I cannot see how the case in question could have been heard in the Superior Court in Skowhegan if proper service was not made on the patient in the Bangor State Hospital, who was the principal defendant. The Skowhegan Savings Bank was trustee in this action because it held the funds on deposit. It is possible that the trustee provided counsel for Mrs. Dore.

In all services of papers the hospital authorities should make a notation on the patient's record in the office that certain papers were served on the patient or the superintendent of the hospital, the nature of the legal documents, and reference of same to the Commissioner of Institutional Service with the dates. The Commissioner in turn will refer the papers to the Attorney General or his Deputy.

The appointment of a guardian is sometimes given by publication and the patients are not served, but the superintendent of the institution or this office is usually advised by the attorney who petitions for such appointment.

I do not believe that any Superior Court Judge in this State would hear a divorce without the return of the officer that service had been made upon a patient confined in either of the State Hospitals. I have had several divorce papers forwarded to my office by Dr. Tyson since I have been Attorney General.

You may advise Dr. Pooler that insanity is not a cause for divorce in this State and that the statutory causes for divorce alleged must be proven before the court.

During my experience no judge has ever heard a divorce case without proper legal service having been endorsed on the writ by the deputy sheriff.

Of course we could have a statute enacted at this coming legislature that the heads of all institutions shall make a record of all papers served on patients committed to their care and shall refer all papers served upon patients or upon heads of institutions to the Attorney General who is attorney for the institutions under the statute.

If a guardian has not already been appointed for Zoe Goodness Dore of Skowhegan, who is now an inmate of the Bangor State Hospital, it would be proper for Dr. Pooler to have an attorney apply for his appointment as guardian of her estate and then the money now in the Skowhegan Savings Bank will be transferred to the name of the guardian. In that way these relatives and friends cannot get it away from her, and the State's interest will be protected.

I am sorry I have been late in answering your memo, but I have been pressed with court cases and have been absent from the State House since your memo arrived.

RALPH W. FARRIS
Attorney General

October 26, 1950

To the State Highway Commission
Subject: Traffic Survey

Pursuant to the request of the Governor and Council, I have studied the laws of the State relative to the right of the State Highway Commission to undertake to cause a traffic survey to be made for future highway purposes between the city of Portland, Maine, and the city of Bangor, Maine.

It is understood that the purpose of such traffic survey is to assist in determining the feasibility of extending the Maine Turnpike beyond its present terminal at Portland, Maine, to points to be determined as a result of the survey, or, if the survey so indicates, to plan for or provide for other highway construction between the two mentioned points.

Chapter 69 of the Private & Special Laws of 1941, which is the Act creating the Maine Turnpike Authority, contemplates that the State Highway Commission shall perform and shall have authority over a number of the phases of the activities assigned to the Maine Turnpike Authority and in some instances shall act in cooperation with such Authority. Specific authority is given in paragraph (d) of Section 3 for the State Highway Commission to undertake, among other things, traffic surveys, and any expense connected therewith which is in connection with the construction of the turnpike shall be regarded as a part of the cost of the turnpike and such expense shall be reimbursed to the State Highway Commission out of the proceeds of the turnpike revenue bonds which are issued in connection with such construction.

Chapter 208 of the Private & Special Laws of 1949 is the Act which makes allocations from the general highway fund for the fiscal years ending June 30, 1950 and June 30, 1951. Paragraph V of Section 2 thereof authorizes expenditures from the unappropriated general highway fund surplus, with the approval of the Governor and Council, for extra administrative costs not anticipated in the budget of any department or agency receiving allocations from the general highway fund. It is apparent that in the operation of any large transportation network the cost of making traffic surveys is an administrative expense, which of course has been heretofore recognized in connection with previous surveys conducted by the State Highway Commission. It follows therefore that if there are funds available the State Highway Commission has the authority, if it so desires, to cause the proposed traffic survey to be made with the approval of the Governor and Council.

JOHN S. S. FESSENDEN
Deputy Attorney General

October 30, 1950

To Everett F. Greaton, Executive Director, Maine Development Commission
Re: Research Fellowship

I have your letter of October 26th in which you state that in the fiscal year 1948-49 the Potato Tax Advisory Committee set up in their budget the amount of $1700 to be spent for a Research Fellowship at the University of Maine. This sum was not spent in that year and was carried over into the fiscal year 1950-51.

You state that there are students at the University of Maine now working on this Fellowship and that some expense has been incurred against this account, but that the Controller's office has raised a question whether an item of this kind comes within the scope of the Potato Tax Law. You therefore ask my opinion on this item.

Section 215 of the Potato Tax Act provides, under subsection 4, that funds remaining over after taking care of the first three subsections of said section may be expended by the Commission to carry out the purposes outlined in said subsections, as it may determine. If this account is spent for a research fellowship at the University to determine better methods of production and merchandising of potatoes, etc., it would be a legitimate item of expense and would come within the scope of the Potato Tax Law.

RALPH W. FARRIS
Attorney General

November 7, 1950

To Harland A. Ladd, Commissioner of Education
Re: Hyde Memorial Home—Subsidies

You have asked this office for an opinion as to whether or not, under the provisions of Sections 180-A to 180-I, inclusive, of Chapter 37 of the Revised Statutes, as amended by Chapter 149 of the Laws of 1945, the State Department of Education can grant subsidies on an individual pupil basis for the education of physically handicapped children confined in and being treated in the Hyde Memorial Home, an institution for the treatment of crippled, cerebral palsied, and otherwise physically handicapped children.

I am informed that this institution currently maintains, and has for some time in the past, a school meeting the qualifications and standards of the State Department of Education for elementary school children and that the school is under the direction of a teacher qualified and certified by the State Department of Education, having specialized training and qualifications for the instruction of physically handicapped children not required of the ordinary classroom teacher.

I am further informed that all the required reports as to attendance of pupils are required from this school and are furnished by this school, and that it is under the regular supervision of the State Department of Education by and through its Division of Special Education.

The question involved is whether, under the provisions of the last sentence of Section 180-D, such subsidies may be made directly to the institution or whether the subsidies may only be made under the provisions of Sections 180-E and 180-G, setting forth the procedure with respect to the reimbursement of towns for the costs of such services for physically handicapped children.

As I read Sections 180-E and 180-G, it is my opinion that these sections apply strictly to those towns which, pursuant to the request of parents therein of five or more physically handicapped children, have instituted town programs for the education of such children as a part of the towns' regular school programs.

The last sentence of Section 180-D authorizes subsidies to institutions in which there are maintained Department of Education approved schools providing educational programs for physically handicapped children, not as a part of a town-maintained school program, so that under rules and regulations established by the Department's Division of Special Education the State subsidies may be made directly to the approved institutions.

This opinion should not be construed as relieving any town from its obligation to pay its per capita cost charged for the school services provided for a child chargeable to that town while such child is attending school in the approved institution.

RALPH W. FARRIS
Attorney General

November 9, 1950

To Howard L. Bowen, Associate Deputy Commissioner of Education
Re: Procedure to be followed when a child is taken from a school

In your memorandum of November 7, 1950, you state that the department is in receipt of a letter from the Rockland school committee in which inquiry is to be made as to the procedure to be followed when a child is taken from a school. This inquiry arises from conflicting opinions in the City of Rockland as to the procedure to be followed when the police and authorities desire to take a child from school for questioning. You state in substance that it is the opinion of the superintending school committee that the child's parents should be notified and that it is the opinion either of the police or of the city council that the child's parents should not be notified. The Attorney General is requested to render his opinion in order to resolve the issue.

You are advised that the Attorney General has neither the right nor the duty by statute or otherwise to act as an arbiter with respect to local matters. The situation presented by your memorandum is entirely a local matter involving local procedure to be followed in the conduct of local affairs, namely, the administration of the school department and the administration of the law enforcement agency. In view of this situation, in all fairness to all parties concerned, the Attorney General cannot and should not give any opinion, since any opinion expressed would carry no official weight whatsoever.

I might point out, in the event that the point has been overlooked, that the Supreme Judicial Court of Maine has held that the relationship between a teacher and a pupil is known at law as that of "in loco parentis." Since the court has so held, it follows that the teacher standing in the place of the parent should act accordingly.

JOHN S. S. FESSENDEN
Deputy Attorney General

November 6, 1950

To Harland A. Ladd, Commissioner of Education
Re: Section 165 of Chapter 37 with respect to Academies, when read in conjunction with Section 201 of Chapter 37, both sections as amended.

In your memorandum of November 3, 1950, you inquire as to the amount of the allocation per teaching position to be made to Traip Academy in Kittery, Maine, pursuant to the provisions of Section 165 of Chapter 37, R. S. 1944, as amended. You state that the department, in its administrative policy, believes that under the provisions of this section $600 is the amount to which an academy is entitled and that in this particular case Traip Academy claims that it should receive the amount of $850, that being the amount of the allocation that would be made per position to the Town of Kittery.

The entitlement of an academy to any allocation at all, within the limits of the question asked by you depends strictly upon the provisions of Section 154, which places academies on an equal footing with schools with respect to instruction in agriculture, industrial arts, or home economics. The maxi-

mum limit in Section 165 is $600, provided that sum is greater than the amount to be allocated under the provisions of Section 201, Chapter 37, R. S. 1944, as amended. Subsection II of Section 201 provides for a sum of $400 to $450 for teaching positions when certain standards are met and in addition thereto provides for towns an increased amount in units of $90 each "based on the effort made by the town to support its school program as determined by the school tax rate."

It is the opinion of this office that this feature of the statute, being an incentive feature, applies only to public schools and not to academies which happen to be located within the limits of any given town. Presumably, the students in attendance at any particular academy may come from various and sundry towns, so that any incentive formula to be applied to the academy would of necessity have to be worked out separately for each town with which the academy had a contract to receive students. It does not seem to us that this complication is within the contemplation of the statute as it now reads and we are therefore of the opinion that in applying the above cited sections of the statute the maximum limit to be allocated to an academy would be $600.

JOHN S. S. FESSENDEN
Deputy Attorney General

November 9, 1950

To Harold J. Dyer, Director of State Parks
Re: Deed

I am returning herewith the sample deed which you transmitted to this office, which deed, if executed, would run from the City of Presque Isle to the Maine State Park Commission, purporting to cover land which would become a part of Aroostook State Park.

When, as, and if any such deed is executed by the City of Presque Isle, this office would probably be disposed to approve the same as to form for the purpose of its reception by any State Department or agency, since the proposed deed is the standard form of municipal quitclaim deed commonly known as a tax deed.

The approval of this office as to form, however, must not be construed to mean that we in any way approve the title or the adequacy of the description of the property involved, or the adequacy of the votes taken by the municipality to make the conveyance, or the propriety of the State Park Commission's accepting the same. Such approval as to form also should not be construed as expressing the approval of this office as to the validity of a municipality's making a gift to a State agency of property taken for taxes in lieu of selling the same for taxes.

JOHN S. S. FESSENDEN
Deputy Attorney General

November 17, 1950

To Norman U. Greenlaw, Commissioner of Institutional Service
Re: Maine State Prison Dairy Farm—Fire

I acknowledge receipt of your memo of November 14th, stating that a member of the board of selectmen of the Town of Warren contacted you with regard to a problem connected with the fire at the Prison Dairy Farm. The Town of Warren has presented bills for damage to fire fighting equipment and hose, services of the fire departments of Thomaston and Rockland, and Merrill Payson for the use of his auxiliary fire pump.

As I understand it, the prison farm buildings are located in the Town of Warren and the fire department of Warren is supposed to protect State property as well as private property. An agency of the State has no legal obligation to pay any bills for extinguishing fires within the town limits. I would suggest that they present a bill to this legislature, putting in their claim for damages.

If they did not call the City of Rockland or the Town of Thomaston or Mr. Payson, I do not see how Rockland, Thomaston, or Mr. Payson can collect from Warren.

As I recall it, the hose now belonging to the Town of Warren was furnished by the State at the time of the bog fires between Warren and Rockland. Perhaps they expect the State to replace it.

Section 2 of Chapter 85 provides that when a fire breaks out in any town, the fire wards shall immediately attend at the place, etc., and that during the continuance of said fire they may require assistance in extinguishing the fire, removing merchandise and furniture, appoint guards to secure the same and to aid in pulling down or demolishing buildings and suppressing disorder and tumult, and generally may direct all operations to prevent further destruction or damage. There is no provision for your department to pay damages to towns and cities. This being an emergency, it might be handled through Council Order through the contingent fund; but before doing that, this bill should be screened, to see if the Town of Warren is liable for bills submitted by Rockland, Thomaston, and Mr. Merrill Payson.

Your question is how towns can be reimbursed under the statutes, and my answer is that it can be done only through the legislature or through Council Order.

RALPH W. FARRIS
Attorney General

November 22, 1950

To Spaulding Bisbee, Director, Civil Defense and Public Safety

With reference to the letter dated November 20, 1950, addressed to you by Mr. Harold L. Dow, chairman of the board of selectmen of the Town of Eliot, the present State law with respect to Civil Defense, I find, has no provision relative to compensation for the death or injury of an individual performing Civil Defense duties in a local organization. Any protection for

such individuals should be accomplished under Section 8 of the law by the local political subdivision, through its authority to appropriate funds for Civil Defense purposes.

I assume that the protection which is afforded to mobile battalions by the State is predicated upon the assumption that mobile battalions will operate under the direct control of the State and therefore become the responsibility of the State, whereas the units of political subdivisions are the direct responsibility of the particular subdivisions. . . .

JOHN S. S. FESSENDEN
Deputy Attorney General

December 4, 1950

To R. W. Carter, Supervising Accountant Auditor
Re: Council Order No. 356

I received your memo of November 30th with attached Council Order No. 356, dated September 21, 1950, asking my opinion as to the intent of same with respect to the actual location of the expenditures.

In reply I will advise that the language in the Council Order controls. The statement of facts is only for information of the Governor and Council before passing the Order and is no part of the Council Order.

The Order transfers $15,000 from the General Highway Fund Unappropriated Surplus to Administration to provide urgently needed office and drafting room space. In the administration of the expenditure of this fund for needed office and drafting room space, the State Highway Commission under Chapter 20 has wide administrative discretion so long as the Council Order has transferred the money. Vouchers for the expenses of providing office and drafting room space for the State Highway Department are proper in drawing upon this fund.

RALPH W. FARRIS
Attorney General

December 5, 1950

To Scott K. Higgins, Director, Aeronautics Commission
Re: Section 13, Uniform State Aeronautics Commission Act; Chapter 389, Public Laws of 1949, paragraph I of Subsection I of Chapter 15

In your memorandum of December 4, 1950, you raise the basic question as to whether or not it is valid in Maine for the legislature to enact a statute establishing federal regulations as a standard by reference.

You are advised that it has been held invalid in Maine to enact legislation adopting standards which may change from time to time by the action of some agency not within the control and direction of our own legislature. To the extent that any such legislation contemplates that the law may change from time to time without further action of the Maine legislature, such a statute in Maine is definitely unconstitutional. You will note, however,

that in the Uniform Act as well as in the State law, the standards are not definitely imposed, but on the contrary it is merely stated that "the court * * * shall consider the standards * *." Whether or not the fact that the court is directed to give consideration to standards set up by a foreign agency would render the legislation invalid is a question that I am unable to answer, as it is a matter that would have to be determined by the Supreme Judicial Court of Maine in a case properly before that court.

JOHN S. S. FESSENDEN
Deputy Attorney General

December 7, 1950

To Fred M. Berry, State Auditor
Re: Chapter 290, P. L. 1947, Witness Fees; Police Officers' Fees

I have your memo of December 5th, relating to Chapter 290, P. L. 1947, which you quote in full. You will note the language of the statute is: "to be paid after recovery by the county treasurer upon approval of the county commissioners to the municipality employing such police officer or constable."

Therefore it is my opinion that the county does not have to pay the municipality unless the costs taxed for the complainant are recovered.

This does not apply to State Police in highway matters. It refers only to cities, towns, and plantations.

In view of the fact that this statute refers to police officers and constables who are paid a salary or are on a per diem basis by the city, town or plantation, it is not the intent of the legislature for counties to pay to municipalities costs which they never recovered. That is the reason why this language was inserted: "to be paid after recovery."

RALPH W. FARRIS
Attorney General

December 7, 1950

To James T. Ross, Chairman, Board of Registration, Old Town

I have your letter of December 6th in reply to mine of December 1st, relating to the questions of residents of Indian Island voting in Old Town city elections. You enclosed a copy of a letter to the former board of registration dated March 29, 1921, written by R. W. Shaw, then Attorney General, in which he referred to Section 74 of Chapter 7. You state that, to your knowledge, there has been no change in the status of Indian Island since that time.

In reply I wish to state that the section of law mentioned by former Attorney General Shaw in the Revised Statutes of 1916 was included in the Revision of 1930 as Section 76 of Chapter 8, and that the legislature in 1937 repealed part of this act under the provisions of Chapter 209 of the Public Laws of 1937, which was entitled, "An Act to Extend Suffrage to Qualified Voters in Unorganized Territory." You will find this Act now, as amended, in Section 64 of Chapter 5 of the Revised Statutes of 1944, which cites the

1937 law, the 1941 law and the 1943 law. This section was amended by the Public Laws of 1947, Chapter 83, and again by Chapter 349, Section 1, of the Public Laws of 1949, which repealed Section 64 of Chapter 5 of the Revised Statutes and enacted a new section in place thereof.

Section 5 of said Chapter 349, P. L. 1949, also provides that a poll tax shall be assessed annually on or as of April 1 on all residents in unorganized territory who are required by law to pay a poll tax, and the tax shall be paid to the State tax assessor, who shall give a receipt therefor. Poll taxes assessed and collected from electors in unorganized territory who register in a town as voters shall be paid by him to such town for any year in which such electors actually vote therein, provided the State tax assessor receives from the officials thereof a certification of such registration and act of voting by June 1st of the following year, and such payment shall be considered as an assessment on such electors by such town officials. The remainder of the poll taxes collected, if any, shall be paid to the Treasurer of State.

Now going back to the last word on the subject, Section 1 of Chapter 349, P. L. 1949, this provides that persons having legal residence in unorganized territory and having the legal qualifications of voters, may vote in all county, state and national elections if such town is in the same county; if not so situated, then only in state and national elections.

In view of the many changes in the law since 1921 when Attorney General Shaw made a ruling to your board of registration, and in view of the plain language in the 1949 Act, Mr. Poolaw can vote only in county, state and national elections. The statute is silent on municipal elections. I am sending him a copy of this letter, so that he will know upon what law my decision is based.

RALPH W. FARRIS
Attorney General

December 19, 1950

To Brig. Gen. George M. Carter, The Adjutant General
Re: Question of Authority of the Governor of the State of Maine to Extend Regular enlistments of Members of the Military Forces of the State

I acknowledge receipt of your memo of December 14th relating to the above-entitled subject matter. You call my attention to the fact that on July 27, 1950, the 81st Congress of the United States passed Public Law 624 which gives extensive powers to the President of the United States with respect to the Armed Forces of the nation and in general to promote the overall security of the nation.

You further state in your memo that on the same date there was published from the Executive Department of the United States Government Executive Order 10145 implementing the provisions of Public Law 624 which extended enlistments of all members of the Armed Forces for a period not to exceed twelve months. You further note that under the terms of Section I of P. L. 624 this authority granted to the President would expire on July 9, 1951.

You further state in your memo of the 14th that by directive of the Department of Defense the National Guard Bureau notified the States that the

extension of enlistments directive affecting Army personnel also applied to the National Guard of the United States and the several States. You further call my attention to the fact that at the State level several different interpretations have been placed on this directive. The Attorney General of Ohio has ruled that "Section I of the Act of 27 July 1950, P. L. 624, 81st Congress, does not apply to a member of the Ohio National Guard." You further state that several other State Attorneys General have rendered similar opinions, while some other jurisdictions, including New York, New Jersey, Hawaii and Puerto Rico, where the language of their military codes permitted, have extended their enlistments; but that most States up to this time have taken no action, feeling that they had no legal authority to do so under their State statutes.

Upon the basis of the foregoing you request a review of this point by the Attorney General and an opinion from him as to whether or not any of the State statutes granting powers and quoting duties of the Chief Executive do give him the authority to extend the enlistments of currently enlisted personnel of the National Guard.

In reply I wish to advise that Section 33 of Chapter 12, R. S. 1944, provides in part as follows:

> "The organization of the national guard of Maine, including enlistments, appointments, promotions, discharges, equipment, uniforms, reductions, and warrants of non-commissioned officers, instruction and training, armament, discipline, and elimination and disposition of officers, shall be the same as that which *is now or may hereafter be prescribed* or provided by the laws and regulations of the United States for the national guard; and the commander-in-chief (meaning the Chief Executive) *is authorized, and it shall be his duty,* to issue and prescribe from time to time such orders and regulations, and to adopt such other means of administration as shall maintain the prescribed standard of organization, armament, and discipline; . . ."

Construing this section in connection with Section 90 of Chapter 12, R. S. 1944, as amended by Chapter 326, Section 33, P. L. 1949, it is my opinion that the Governor has power under our National Guard Statute to follow out the directive issued by the Commander-in-Chief of the Army and Navy of the United States and of the militia of the several States and to issue a regulation extending the enlistments of all members of the National Guard in conformity with Executive Order No. 10145 authorized under the provisions of P. L. 624 of the 81st Congress.

RALPH W. FARRIS
Attorney General

December 21, 1950

To Ernest H. Johnson, State Tax Assessor
Re: Taxation of Insurance Companies

Your memo of December 19th received, asking if an insurance company located outside the State of Maine and having no agents within the State, but dealing directly by mail in issuing policies and collecting premiums on

Maine risks, is subject either to the insurance premium tax under R. S. Chapter 14, Section 133, or the fire investigation tax under R. S. Chapter 85, Section 29.

After reading these sections I am of the opinion that these companies are doing an interstate commerce business and that the statutes which you quote would not apply in either case, provided that these insurance companies are not registered as foreign corporations and, as you set forth, have no agents in this State. They would be doing business in the States of their home offices, as the contracts are made and the premiums received at their home offices outside the State of Maine.

RALPH W. FARRIS
Attorney General

Statistics for the Years 1949-1950

MAINE CRIMINAL STATISTICS FOR THE YEARS BEGINNING NOVEMBER 1, 1948 AND ENDING NOVEMBER 1, 1950

The following pages contain the criminal statistics for the years beginning November 1, 1948 and ending November 1, 1950.

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 of 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."

1949

1949 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)					
All Crimes	2657	1014	54	1247	84	50	357	501	423	258
Murders	2	—	2*	—	—	—	—	—		—
Manslaughter	24	8	2	10	2	—	2	1	9	2
Rape	30	5	2	15	7	1	1	2	18	1
Arson	16	4	1	9	—	—	4	—	5	2
Robbery	30	13	1	14	2	—	4	—	12	—
Felonious Assault	58	38	1	16	1	—	1	2	14	2
Assault and Battery	142	65	3	55	9	3	23	22	16	10
Breaking, Entering and Larceny	395	150	3	207	5	11	103	—	98	30
Forgery	144	53	1	70	3	6	38	—	29	13
Larceny	389	145	7	184	10	3	83	19	89	47
Sex Offenses	149	51	5	74	6	4	32	4	40	13
Non-Support	16	6	—	6	—	—	3	1	2	4
Liquor	80	28	5	34	2	—	20	12	4	11
Drunken Driving	427	107	12	235	20	11	10	206	28	53
Intoxication	150	57	1	75	7	2	12	36	32	10
Motor Vehicle	248	120	2	94	2	1	2	89	4	30
Juvenile Delinquency	5	3	—	2	—	—	1	—	1	—
Miscellaneous	352	161	6	147	8	8	18	107	22	30

1949 MURDER — INDICTMENTS AND APPEALS

Totals	2	—	2*	—	—	—	—	—	—	—
Knox	1	—	1	—	—	—	—	—	—	—
Penobscot	1	—	1	—	—	—	—	—	—	—

*By reason of insanity

1949 MANSLAUGHTER — INDICTMENTS AND APPEALS

Totals	24	8	3	10	2	—	2	1	9	1
Aroostook	7	2	—	2	2	—	—	—	4	1
Cumberland	3	1	—	2	—	—	—	—	2	—
Hancock	1	1	—	—	—	—	—	—	—	—
Knox	1	—	—	1	—	—	1	—	—	—
Penobscot	4	—	2	2	—	—	—	1	1	—
Sagadahoc	4	2	—	2	—	—	—	—	2	—
Somerset	2	2	—	—	—	—	—	—	—	—
Waldo	1	—	1	—	—	—	—	—	—	—
Washington	1	—	—	1	—	—	1	—	—	—

1949 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	30	5	2	15	7	1	1	2	18	1
Androscoggin	1	1	—	—	—	—	—	—	—	—
Aroostook	8	2	1	4	1	1	—	2	2	—
Cumberland	6	—	—	—	5	—	—	—	5	—
Kennebec	2	1	—	1	—	—	—	—	1	—
Lincoln	1	—	—	1	—	—	—	—	1	—
Oxford	1	—	—	1	—	—	—	—	1	—
Penobscot	6	—	—	6	—	—	—	—	6	—
Piscataquis	1	—	—	—	1	—	—	—	1	—
Sagadahoc	1	—	—	1	—	—	1	—	—	—
Waldo	1	—	1	—	—	—	—	—	—	—
Washington	1	1	—	—	—	—	—	—	—	—
York	1	—	—	1	—	—	—	—	1	—

1949 ARSON — INDICTMENTS AND APPEALS

Totals	16	4	1	9	—	—	4	—	5	2
Cumberland	2	2	—	—	—	—	—	—	—	—
Hancock	1	—	—	1	—	—	—	—	1	—
Kennebec	3	—	—	3	—	—	1	—	2	—
Lincoln	1	—	—	1	—	—	1	—	—	—
Oxford	2	1	—	1	—	—	—	—	1	—
Somerset	2	1	—	1	—	—	—	—	1	—
Waldo	3	—	—	1	—	—	1	—	—	2
Washington	1	—	—	1	—	—	1	—	—	—
York	1	—	1*	—	—	—	—	—	—	—

1949 ROBBERY — INDICTMENTS AND APPEALS

Totals	30	13	1	14	2	—	4	—	12	—
Androscoggin	1	1	—	—	—	—	—	—	—	—
Aroostook	2	—	—	2	—	—	2	—	—	—
Cumberland	18	11	—	7	—	—	1	—	6	—
Kennebec	3	—	—	2	1	—	1	—	2	—
Penobscot	4	1	1	1	1	—	—	—	2	—
York	2	—	—	2	—	—	—	—	2	—

*By reason of insanity

1949 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	58	38	1	16	1	—	1	2	14	2
Androscoggin	1	1	—	—	—	—	—	—	—	—
Aroostook	1	—	1	—	—	—	—	—	—	—
Cumberland	41	30	—	9	1	—	—	1	9	1
Franklin	2	1	—	1	—	—	—	—	1	—
Knox	6	4	—	1	—	—	—	1	—	1
Oxford	2	1	—	1	—	—	—	—	1	—
Penobscot	1	—	—	1	—	—	—	—	1	—
Piscataquis	2	1	—	1	—	—	—	—	1	—
Somerset	1	—	—	1	—	—	1	—	—	—
York	1	—	—	1	—	—	—	—	1	—

1949 ASSAULT AND BATTERY — INDICTMENTS AND APPEALS

Totals	142	65	3	55	9	3	23	22	16	10
Androscoggin	18	13	—	4	—	—	3	—	1	1
Aroostook	31	10	2	13	4	—	5	9	3	2
Cumberland	12	5	—	6	1	3	2	1	1	—
Franklin	6	2	—	1	1	—	—	1	1	2
Kennebec	18	10	1	6	1	—	4	—	3	—
Knox	11	6	—	5	—	—	2	3	—	—
Lincoln	3	2	—	1	—	—	1	—	—	—
Oxford	2	2	—	—	—	—	—	—	—	—
Penobscot	13	4	—	9	—	—	4	2	3	—
Piscataquis	1	—	—	—	—	—	—	—	—	1
Sagadahoc	1	1	—	—	—	—	—	—	—	—
Somerset	2	—	—	1	1	—	1	—	1	—
Waldo	6	1	—	2	—	—	—	—	2	3
Washington	6	2	—	3	1	—	1	3	—	—
York	12	7	—	4	—	—	—	3	1	1

1949 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	395	150	3	207	5	11	103	—	98	30
Androscoggin	23	11	1	10	—	—	4	—	6	1
Aroostook	60	27	1	30	2	4	15	—	13	—
Cumberland	61	15	—	37	—	5	22	—	10	9
Franklin	12	1	—	11	—	1	—	—	10	—
Hancock	9	3	—	6	—	—	6	—	—	—
Kennebec	28	7	—	12	1	1	8	—	4	8
Knox	40	22	—	13	1	—	4	—	10	4
Lincoln	1	1	—	—	—	—	—	—	—	—
Oxford	14	6	1	6	—	—	—	—	6	1
Penobscot	50	9	—	39	—	—	25	—	14	2
Piscataquis	13	7	—	2	—	—	2	—	—	4
Sagadahoc	17	17	—	—	—	—	—	—	—	—
Somerset	7	1	—	6	—	—	3	—	3	—
Waldo	10	—	—	9	—	—	4	—	5	1
Washington	19	4	—	15	—	—	10	—	5	—
York	31	19	—	11	1	—	—	—	12	—

1949 FORGERY — INDICTMENTS AND APPEALS

Totals	144	57	1	70	3	6	38	—	29	13
Androscoggin	9	6	—	1	—	—	—	—	1	2
Aroostook	32	17	—	14	—	2	10	—	2	1
Cumberland	25	7	—	17	—	4	9	—	4	1
Franklin	5	—	—	—	—	—	—	—	—	5
Hancock	2	—	—	2	—	—	2	—	—	—
Kennebec	13	2	—	10	—	—	6	—	4	1
Lincoln	1	—	—	—	1	—	—	—	1	—
Oxford	11	4	—	6	—	—	—	—	6	1
Penobscot	25	11	—	14	—	—	7	—	7	—
Sagadahoc	2	—	—	2	—	—	2	—	—	—
Somerset	6	4	—	1	1	—	—	—	2	—
Waldo	5	1	—	1	1	—	2	—	—	2
York	8	5	1	2	—	—	—	—	2	—

1949 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	389	141	7	184	10	3	83	19	89	47
Androscoggin	41	16	—	20	1	—	16	—	5	4
Aroostook	58	16	1	37	1	3	11	11	13	3
Cumberland	58	17	—	32	3	—	19	—	16	6
Franklin	6	1	—	5	—	—	1	2	2	—
Hancock	10	6	—	1	—	—	—	1	—	3
Kennebec	38	13	—	21	—	—	11	—	10	4
Knox	4	3	—	1	—	—	—	—	1	—
Lincoln	2	1	—	—	—	—	—	—	—	1
Oxford	27	13	—	9	—	—	5	—	4	5
Penobscot	49	16	3	25	—	—	9	1	15	5
Piscataquis	1	—	1	—	—	—	—	—	—	—
Sagadahoc	2	—	—	2	—	—	2	—	—	—
Somerset	28	9	1	13	3	—	1	3	12	2
Waldo	8	1	—	5	—	—	1	—	4	2
Washington	17	6	—	9	—	—	7	—	2	2
York	40	23	1	4	2	—	—	1	5	10

1949 SEX OFFENSES — INDICTMENTS AND APPEALS

Totals	149	51	5	74	6	4	32	4	40	13
Androscoggin	12	6	—	6	—	—	4	—	2	—
Aroostook	23	7	1*	15	—	2	5	2	6	—
Cumberland	17	4	1	7	1	—	3	—	5	4
Franklin	6	4	—	1	—	—	—	—	1	1
Kennebec	13	6	—	7	—	—	—	2	5	—
Knox	2	2	—	—	—	—	—	—	—	—
Lincoln	2	—	—	2	—	—	1	—	1	—
Oxford	9	3	—	2	—	—	—	—	2	4
Penobscot	21	3	—	15	2	—	13	—	4	1
Piscataquis	2	—	1	—	—	—	—	—	—	1
Sagadahoc	2	—	—	2	—	—	2	—	—	—
Somerset	7	3	1	1	1	—	1	—	1	1
Waldo	4	—	—	4	—	2	—	—	2	—
Washington	14	7	—	7	—	—	3	—	4	—
York	15	6	1	5	2	—	—	—	7	1

*By reason of insanity.

1949 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	16	6	—	6	—	—	3	1	2	4
Androscoggin	3	1	—	—	—	—	—	—	—	2
Aroostook	3	1	—	1	—	—	—	1	—	1
Cumberland	1	—	—	1	—	—	—	—	1	—
Franklin	1	1	—	—	—	—	—	—	—	—
Kennebec	2	—	—	2	—	—	2	—	—	—
Knox	2	1	—	—	—	—	—	—	—	1
Oxford	1	—	—	1	—	—	—	—	1	—
Penobscot	1	—	—	1	—	—	1	—	—	—
Somerset	1	1	—	—	—	—	—	—	—	—
Washington	1	1	—	—	—	—	—	—	—	—

1949 LIQUOR — INDICTMENTS AND APPEALS

Totals	80	28	5	34	2	—	20	12	4	11
Androscoggin	3	—	—	3	—	—	—	3	—	—
Aroostook	33	17	3	13	—	—	11	—	2	—
Cumberland	6	3	—	2	1	—	—	3	—	—
Franklin	2	1	—	1	—	—	—	1	—	—
Hancock	1	—	—	—	1	—	1	—	—	—
Knox	1	—	—	—	—	—	—	—	—	1
Oxford	11	1	1	7	—	—	5	—	2	2
Penobscot	3	2	—	1	—	—	1	—	—	—
Piscataquis	10	2	1	2	—	—	2	—	—	5
Somerset	4	—	—	4	—	—	—	4	—	—
York	6	2	—	1	—	—	—	4	—	3

1949 DRUNKEN DRIVING — INDICTMENTS AND APPEALS

Totals	427	107	12	235	20	11	10	206	28	53
Androscoggin	69	20	—	32	1	—	1	28	4	16
Aroostook	119	30	4	71	5	1	2	67	6	9
Cumberland	58	16	1	38	—	10	3	23	2	3
Franklin	8	—	—	6	1	—	—	5	2	1
Hancock	4	1	—	2	1	—	—	3	—	—
Kennebec	22	3	—	14	—	—	1	11	2	5
Knox	17	7	1	7	—	—	—	6	1	2
Lincoln	1	—	—	1	—	—	1	—	—	—
Oxford	15	4	—	6	1	—	—	5	2	4
Penobscot	55	6	4	39	2	—	2	35	4	4
Piscataquis	1	—	—	—	1	—	—	1	—	—
Sagadahoc	7	2	1	2	1	—	—	3	—	1
Somerset	15	2	—	7	2	—	—	8	1	4
Waldo	11	2	—	6	2	—	—	6	2	1
Washington	10	5	1	1	3	—	—	2	2	—
York	15	9	—	3	—	—	—	3	—	3

1949 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	150	57	1	75	7	2	12	36	32	10
Androscoggin	7	6	—	1	—	—	1	—	—	—
Aroostook	59	27	1	24	1	—	—	18	7	6
Cumberland	13	3	—	10	—	1	3	—	6	—
Franklin	2	1	—	1	—	—	—	—	1	—
Hancock	2	2	—	—	—	—	—	—	—	—
Kennebec	3	1	—	2	—	—	1	—	1	—
Lincoln	3	1	—	2	—	—	2	—	—	—
Penobscot	42	12	—	23	4	—	4	13	10	3
Sagadahoc	4	1	—	3	—	—	—	—	3	—
Somerset	4	1	—	2	—	—	1	1	—	1
Waldo	4	—	—	3	1	—	—	2	2	—
Washington	4	2	—	2	—	—	—	1	1	—
York	3	—	—	2	1	1	—	1	1	—

1949 MOTOR VEHICLE — INDICTMENTS AND APPEALS

Totals	248	120	2	94	2	1	2	89	4	30
Androscoggin	46	33	—	9	—	—	1	6	2	4
Aroostook	42	16	2	17	—	—	—	15	2	7
Cumberland	22	11	—	8	—	1	—	7	—	3
Franklin	8	—	—	7	—	—	—	7	—	1
Hancock	5	3	—	2	—	—	—	2	—	—
Kennebec	13	6	—	3	1	—	—	4	—	3
Knox	5	3	—	2	—	—	—	2	—	—
Lincoln	1	1	—	—	—	—	—	—	—	—
Oxford	2	1	—	—	—	—	—	—	—	1
Penobscot	45	13	—	28	—	—	1	27	—	4
Piscataquis	1	—	—	—	1	—	—	1	—	—
Sagadahoc	4	1	—	2	—	—	—	2	—	1
Somerset	5	2	—	3	—	—	—	3	—	—
Waldo	3	2	—	—	—	—	—	—	—	1
Washington	13	6	—	7	—	—	—	7	—	—
York	33	22	—	6	—	—	—	6	—	5

1949 JUVENILE DELINQUENCY — INDICTMENTS AND APPEALS

Totals	5	3	—	2	—	—	1	—	1	—
Androscoggin	2	2	—	—	—	—	—	—	—	—
Aroostook	2	1	—	1	—	—	1	—	—	—
Penobscot	1	—	—	1	—	—	—	—	1	—

1949 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	352	161	6	147	8	8	18	107	22	30
Androscoggin	14	3	1	3	—	—	1	2	—	7
Aroostook	72	34	—	31	3	8	1	24	1	4
Cumberland	41	13	—	20	—	—	4	13	3	8
Franklin	10	4	2	4	—	—	—	1	3	—
Hancock	13	10	—	1	—	—	—	1	—	2
Kennebec	30	22	—	7	—	—	1	3	3	1
Knox	23	10	—	11	—	—	1	3	7	2
Lincoln	3	1	—	2	—	—	2	—	—	—
Oxford	10	2	—	7	—	—	1	6	—	1
Penobscot	52	12	—	33	5	—	3	32	3	2
Piscataquis	6	2	1	3	—	—	—	3	—	—
Sagadahoc	26	20	1	5	—	—	—	5	—	—
Somerset	16	5	—	11	—	—	1	8	2	—
Waldo	3	1	—	1	—	—	—	1	—	1
Washington	25	16	1	7	—	—	3	4	—	1
York	8	6	—	1	—	—	—	1	—	1

1949 BAIL

COUNTIES	Bail Called, Cases and Amounts		Scire Facias Begun		Scire Facias Continued for Judgment		Scire Facias Cases Closed		Scire Facias Cases Pending at End of Year		Cash Bail Collected	Bail Collected by Co. Atty.
Aroostook	14	$2,400.00	14	$2,400.00	9	$1,900.00	–	——	9	$1,900.00	$400.00	$99.27
Franklin	1	——	–	——	–	——	–	——	–	——	——	——
Hancock	–	——	1	100.00	–	——	1	100.00	–	——	——	——
Penobscot	11	1,400.00	–	——	2	150.00	2	300.00	2	800.00	——	——
Piscataquis	1	300.00	2	600.00	–	——	–	——	2	600.00	——	——
York	2	550.00	1	500.00	1	500.00	1	100.00	–	——	50.00	——
Totals	29	$4,650.00	18	$3,600.00	12	$2,550.00	4	$500.00	13	$3,300.00	$450.00	$99.27

1949 LAW COURT CASES

County	Name of Case	Outcome
Aroostook	Norman Mitchell	Judgment for State
	Carl Peterson	Pending
Cumberland	Carmine Cartonio	Judgment for State
Kennebec	Raymond C. Hume	Pending
Oxford	William W. Mann	Exceptions overruled
	Anthony Koliche	Judgment for State
Somerset	Rodney L. Robinson	Pending
Waldo	Edwin Johnson	Pending

FINANCIAL STATISTICS, YEAR ENDING NOVEMBER 1, 1949

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	$16,924.68	$26,013.03	$1,741.44	$6,107.64	$ 4,288.84	$ 3,923.14
Aroostook	3,500.84	20,114.69	1,411.20	5,939.19	16,124.07	15,879.35
Cumberland	35,187.03	71,971.93	1,307.88	4,274.76	———	62,018.15
Franklin	1,818.62	5,202.01	470.32	1,107.84	1,628.80	1,472.10
Hancock	871.67	3,104.42	538.16	1,894.62	1,005.08	1,005.08
Kennebec	3,497.99	20,603.22	1,489.20	4,152.00	4,819.38	4,819.38
Knox	1,072.45	5,698.88	459.84	684.00	2,200.74	2,200.74
Lincoln	870.66	1,567.21	633.64	92.85	34.20	34.20
Oxford	1,719.61	3,248.33	887.28	2,523.90	2,837.43	2,260.23
Penobscot	8,080.41	23,268.00	1,251.24	4,713.12	9,697.27	9,791.73
Piscataquis	863.35	2,248.32	263.52	687.12	522.32	385.52
Sagadahoc	644.63	4,278.22	575.24	2,220.12	389.52	389.52
Somerset	1,238.91	13,854.93	1,047.00	3,638.52	3,185.39	2,635.39
Waldo	779.63	11,009.33	543.50	2,028.59	1,088.48	1,088.48
Washington	8,154.52	12,772.43	1,109.92	2,426.64	2,600.27	2,668.38
York	———	19,419.83*	1,392.00	5,611.20	2,615.07	1,196.57
Totals	$85,225.00	$244,374.78	$15,121.38	$48,102.11	$53,036.86	$111,767.96

*January 1, 1949 to November 1, 1949.

1950

1950 ALL COUNTIES—TOTAL INDICTMENTS AND APPEALS

Dispositions	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)				
Totals	2742	1105	44	1258	88	357	534	455	247
Murder	3	—	—	1	2	—	—	3	—
Manslaughter	35	9	2	18	3	4	11	6	3
Rape	26	13	1	8	1	3	—	6	3
Arson	16	5	—	9	—	6	3	—	2
Robbery	38	14	—	24	—	1	—	23	—
Felonious Assault	81	43	2	28	5	10	7	16	3
Assault and Battery	136	65	1	56	9	19	27	19	5
Breaking, Entering and Larceny	438	181	—	228	6	115	2	117	23
Forgery	162	72	—	74	4	32	—	46	12
Larceny	368	145	5	171	16	81	18	88	31
Sex Offenses	170	60	1	88	11	33	8	58	10
Non-Support	21	9	—	6	—	4	—	2	6
Liquor	47	21	3	16	6	5	11	6	1
Drunken Driving	461	121	18	227	17	7	209	28	78
Intoxication	169	72	—	85	1	20	48	18	11
Motor Vehicle	258	123	3	105	2	1	102	4	25
Miscellaneous	313	152	8	114	5	16	88	15	34

1950 MURDER — INDICTMENTS AND APPEALS

Totals	3	—	—	1	2	—	—	3	—
Aroostook	1	—	—	—	1	—	—	1	—
York	2	—	—	1	1	—	—	2	—

1950 MANSLAUGHTER — INDICTMENTS AND APPEALS

Totals	35	9	2	18	3	4	11	6	3
Androscoggin	3	—	1	2	—	2	—	—	—
Aroostook	5	2	1	2	—	—	—	2	—
Cumberland	3	—	—	1	2	—	—	3	—
Hancock	1	1	—	—	—	—	—	—	—
Kennebec	2	—	—	2	—	—	2	—	—
Lincoln	1	—	—	1	—	1	—	—	—
Oxford	3	—	—	2	—	1	1	—	1
Penobscot	5	2	—	2	—	—	2	—	1
Piscataquis	4	2	—	2	—	—	1	1	—
Sagadahoc	2	—	—	1	—	—	1	—	1
Waldo	1	—	—	—	1	—	1	—	—
Washington	5	2	—	3	—	—	3	—	—

1950 RAPE — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)				
Totals	26	13	1	8	1	3	—	6	3
Androscoggin	1	—	—	1	—	1	—	—	—
Aroostook	1	—	—	1	—	—	—	1	—
Cumberland	3	2	—	1	—	1	—	—	—
Kennebec	2	1	—	1	—	—	—	1	—
Knox	1	1	—	—	—	—	—	—	—
Oxford	2	1	1	—	—	—	—	—	—
Penobscot	5	2	—	2	1	1	—	2	—
Piscataquis	1	—	—	—	—	—	—	—	1
Somerset	3	2	—	1	—	—	—	1	—
Waldo	1	—	—	1	—	—	—	1	—
Washington	2	2	—	—	—	—	—	—	—
York	4	2	—	—	—	—	—	—	2

1950 ARSON — INDICTMENTS AND APPEALS

Totals	16	5	—	9	—	6	3	—	2
Androscoggin	1	—	—	—	—	—	—	—	1
Cumberland	1	—	—	1	—	1	—	—	—
Hancock	1	—	—	1	—	1	—	—	—
Kennebec	1	—	—	—	—	—	—	—	1
Penobscot	1	—	—	1	—	1	—	—	—
Somerset	1	—	—	1	—	1	—	—	—
Washington	10	5	—	5	—	2	3	—	—

1950 ROBBERY — INDICTMENTS AND APPEALS

Totals	38	14	-	24	—	1	—	23	—
Androscoggin	3	3	—	—	—	—	—	—	—
Cumberland	19	10	—	9	—	1	—	8	—
Kennebec	3	—	—	3	—	—	—	3	—
Knox	2	—	—	2	—	—	—	2	—
Oxford	1	—	—	1	—	—	—	1	—
Penobscot	1	—	—	1	—	—	—	1	—
Sagadahoc	1	—	—	1	—	—	—	1	—
York	8	1	—	7	—	—	—	7	—

1950 FELONIOUS ASSAULT — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)				
Totals	81	43	2	28	5	10	7	16	3
Androscoggin	2	—	—	2	—	1	—	1	—
Aroostook	4	1	—	2	1	1	—	2	—
Cumberland	34	21	1	9	1	4	—	6	2
Kennebec	2	—	—	2	—	1	—	1	—
Knox	9	8	—	1	—	—	—	1	—
Lincoln	4	1	1	—	2	—	1	1	—
Oxford	8	7	—	1	—	—	—	1	—
Sagadahoc	2	—	—	1	1	—	1	1	—
Somerset	3	—	—	3	—	—	2	1	—
Waldo	2	—	—	2	—	—	1	1	—
Washington	7	2	—	5	—	3	2	—	—
York	4	3	—	—	—	—	—	—	1

1950 ASSAULT AND BATTERY — INDICTMENTS AND APPEALS

Totals	136	65	1	56	9	19	27	19	5
Androscoggin	10	5	—	4	—	2	1	1	1
Aroostook	19	9	—	8	2	2	4	4	—
Cumberland	16	6	—	9	—	5	1	3	1
Franklin	7	7	—	—	—	—	—	—	—
Hancock	5	3	—	2	—	—	2	—	—
Kennebec	15	6	—	7	2	4	—	5	—
Knox	9	6	—	3	—	1	—	2	—
Oxford	6	3	—	3	—	—	3	—	—
Penobscot	20	9	—	6	4	—	9	1	1
Piscataquis	1	1	—	—	—	—	—	—	—
Sagadahoc	1	—	—	1	—	1	—	—	—
Somerset	10	1	—	7	1	4	2	2	1
Waldo	2	—	—	2	—	—	1	1	—
Washington	7	6	—	1	—	—	1	—	—
York	8	3	1	3	—	—	3	—	1

1950 BREAKING, ENTERING AND LARCENY — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)				
Totals	438	181	—	228	6	115	2	117	23
Androscoggin	11	1	—	8	1	6	—	3	1
Aroostook	40	16	—	24	—	20	1	3	—
Cumberland	89	33	—	52	1	22	—	31	3
Franklin	2	1	—	1	—	1	—	—	—
Hancock	11	6	—	5	—	3	—	2	—
Kennebec	28	6	—	19	—	12	—	7	3
Knox	22	9	—	9	—	6	—	3	4
Lincoln	1	1	—	—	—	—	—	—	—
Oxford	38	14	—	20	—	14	1	5	4
Penobscot	74	38	—	33	—	18	—	15	3
Piscataquis	23	13	—	5	—	3	—	2	5
Sagadahoc	5	—	—	5	—	4	—	1	—
Somerset	25	10	—	15	—	2	—	13	—
Waldo	9	1	—	7	1	—	—	8	—
Washington	18	6	—	10	2	4	—	8	—
York	42	26	—	15	1	—	—	16	—

1950 FORGERY — INDICTMENTS AND APPEALS

Totals	162	72	—	74	4	32	—	46	12
Androscoggin	12	8	—	4	—	3	—	1	—
Aroostook	24	8	—	14	—	10	—	4	2
Cumberland	32	15	—	17	—	7	—	10	—
Franklin	5	4	—	1	—	—	—	1	—
Hancock	2	—	—	2	—	2	—	—	—
Kennebec	8	4	—	4	—	—	—	4	—
Knox	1	—	—	1	—	1	—	—	—
Lincoln	2	—	—	1	1	1	—	1	—
Oxford	21	16	—	5	—	1	—	4	—
Penobscot	21	6	—	7	—	1	—	6	8
Piscataquis	1	—	—	1	—	1	—	—	—
Sagadahoc	5	—	—	3	—	1	—	2	2
Somerset	20	8	—	9	3	3	—	9	—
Waldo	1	—	—	1	—	1	—	—	—
Washington	3	2	—	1	—	—	—	1	—
York	4	1	—	3	—	—	—	3	—

1950 LARCENY — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)				
Totals	368	145	5	171	16	81	18	88	31
Androscoggin	25	8	1	11	—	10	—	1	5
Aroostook	26	11	1	12	2	4	6	4	—
Cumberland	80	29	—	40	1	18	—	23	10
Franklin	15	7	—	7	—	4	—	3	1
Hancock	14	8	—	6	—	5	—	1	—
Kennebec	23	8	—	10	5	5	1	9	—
Knox	11	7	—	4	—	—	1	3	—
Lincoln	6	1	—	—	5	2	—	3	—
Oxford	47	26	1	15	—	3	6	6	5
Penobscot	50	16	—	23	2	13	2	10	9
Piscataquis	1	—	—	1	—	—	—	1	—
Sagadahoc	2	—	—	2	—	1	—	1	—
Somerset	23	7	2	13	1	7	—	7	—
Waldo	7	2	—	5	—	1	—	4	—
Washington	18	6	—	11	—	8	2	1	1
York	20	9	—	11	—	—	—	11	—

1950 SEX OFFENSES — INDICTMENTS AND APPEALS

Totals	170	60	1	88	11	33	8	58	10
Androscoggin	12	2	—	5	—	5	—	—	5
Aroostook	23	14	—	8	1	3	1	5	—
Cumberland	38	14	—	22	—	7	1	14	2
Franklin	7	4	—	2	1	1	—	2	—
Hancock	1	1	—	—	—	—	—	—	—
Kennebec	9	4	—	4	—	—	—	4	1
Knox	1	1	—	—	—	—	—	—	—
Lincoln	1	—	—	1	—	1	—	—	—
Oxford	8	3	—	1	4	—	—	5	—
Penobscot	26	3	1*	20	—	10	3	7	2
Piscataquis	3	1	—	2	—	2	—	—	—
Sagadahoc	4	—	—	4	—	2	—	2	—
Somerset	11	2	—	8	1	2	—	7	—
Waldo	11	3	—	7	1	—	3	5	—
Washington	8	5	—	2	1	—	—	3	—
York	7	3	—	2	2	—	—	4	—

*By reason of insanity

1950 NON-SUPPORT — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)				
Totals	21	9	—	6	—	4	—	2	6
Androscoggin	9	4	—	2	—	2	—	—	3
Aroostook	1	—	—	1	—	—	—	1	—
Cumberland	5	1	—	3	—	2	—	1	1
Hancock	1	—	—	—	—	—	—	—	1
Kennebec	2	2	—	—	—	—	—	—	—
Knox	1	1	—	—	—	—	—	—	—
Lincoln	1	1	—	—	—	—	—	—	1
Sagadahoc	1	—	—	—	—	—	—	—	—

1950 LIQUOR — INDICTMENTS AND APPEALS

Totals	47	21	3	16	6	5	11	6	1
Aroostook	9	4	1	2	2	2	—	2	—
Cumberland	8	5	—	3	—	—	3	—	—
Kennebec	8	—	1	4	3	2	2	3	—
Knox	1	—	—	1	—	—	1	—	—
Oxford	2	1	—	—	—	—	—	—	1
Penobscot	8	5	—	3	—	1	2	—	—
Piscataquis	6	3	1	1	1	—	2	—	—
Waldo	2	—	—	2	—	—	1	1	—
York	3	3	—	—	—	—	—	—	—

1950 DRUNKEN DRIVING — INDICTMENTS AND APPEALS

Totals	461	121	18	227	17	7	209	28	78
Androscoggin	62	22	—	21	4	1	20	4	15
Aroostook	85	43	3	34	4	—	37	1	1
Cumberland	92	11	4	47	—	1	41	5	30
Franklin	7	—	1	4	2	—	3	3	—
Hancock	5	—	—	1	—	—	1	—	4
Kennebec	41	5	1	26	1	1	22	4	8
Knox	16	5	6	5	—	—	5	—	—
Lincoln	5	2	—	2	1	1	2	—	—
Oxford	12	4	—	8	—	1	6	1	—
Penobscot	63	10	—	44	1	1	40	4	8
Piscataquis	7	1	1	3	1	—	3	1	1
Sagadahoc	3	—	—	2	—	1	—	1	1
Somerset	11	—	1	6	3	—	8	1	1
Waldo	21	4	1	14	—	—	12	2	2
Washington	13	7	—	5	—	—	4	1	1
York	18	7	—	5	—	—	5	—	6

1950 INTOXICATION — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)				
Totals	169	72	—	85	1	20	48	18	11
Androscoggin	11	9	—	—	—	—	—	—	2
Aroostook	20	8	—	11	—	5	4	2	1
Cumberland	32	12	—	17	—	4	7	6	3
Franklin	5	3	—	1	—	1	—	—	1
Kennebec	4	1	—	3	—	2	—	1	—
Knox	5	4	—	1	—	—	1	—	—
Lincoln	4	2	—	2	—	1	1	—	—
Oxford	3	2	—	1	—	—	—	1	—
Penobscot	50	15	—	31	—	3	22	6	4
Piscataquis	3	2	—	1	—	—	1	—	—
Sagadahoc	1	—	—	—	1	—	1	—	—
Somerset	5	2	—	3	—	—	3	—	—
Waldo	8	—	—	8	—	2	4	2	—
Washington	10	4	—	6	—	2	4	—	—
York	8	8	—	—	—	—	—	—	—

1950 MOTOR VEHICLE — INDICTMENTS AND APPEALS

Totals	258	123	3	105	2	1	102	4	25
Androscoggin	26	17	1	3	—	—	3	—	5
Aroostook	40	25	—	15	—	—	14	1	—
Cumberland	40	19	1	15	—	—	15	—	5
Franklin	16	3	—	12	1	1	12	—	—
Hancock	5	2	—	3	—	—	3	—	—
Kennebec	18	10	—	5	—	—	5	—	3
Knox	4	1	—	3	—	—	3	—	—
Lincoln	2	1	—	1	—	—	1	—	—
Oxford	2	—	—	1	—	—	1	—	1
Penobscot	56	18	1	32	1	—	32	1	4
Piscataquis	6	3	—	2	—	—	2	—	1
Sagadahoc	4	1	—	—	—	—	—	—	3
Somerset	11	5	—	5	—	—	3	2	1
Waldo	5	2	—	3	—	—	3	—	—
Washington	9	6	—	2	—	—	2	—	1
York	14	10	—	3	—	—	3	—	1

1950 MISCELLANEOUS — INDICTMENTS AND APPEALS

Counties	Total (a)	Nol pross. etc. (b)	Acquitted	Convicted		Probation (e)	Fine (f)	Imprisonment (g)	Pending at end of year (h)
				Plea guilty	Plea not guilty (c)				
Totals	313	152	8	114	5	16	88	15	34
Androscoggin	18	14	—	4	—	1	3	—	—
Aroostook	55	15	—	36	2	2	36	—	2
Cumberland	50	24	—	17	—	4	9	4	9
Franklin	7	4	—	3	—	—	3	—	—
Hancock	10	5	—	3	—	2	—	1	2
Kennebec	4	3	—	1	—	—	—	1	—
Knox	35	15	—	16	—	—	12	4	4
Lincoln	8	6	—	2	—	—	1	1	—
Oxford	20	15	—	3	—	—	2	1	2
Penobscot	39	17	7	10	2	2	8	2	3
Piscataquis	7	3	—	2	—	—	2	—	2
Sagadahoc	10	2	—	1	1	—	2	—	6
Somerset	11	1	1	8	—	3	5	—	1
Waldo	4	1	—	3	—	1	1	1	—
Washington	21	15	—	5	—	1	4	—	1
York	14	12	—	—	—	—	—	—	2

1950 BAIL

COUNTIES	Bail Called, Cases and Amounts		Scire Facias Begun		Scire Facias Continued for Judgment		Scire Facias Cases Closed		Scire Facias Cases Pending at End of Year		Cash Bail Collected
Aroostook	3	$ 600.00	–	——	–	——	–	——	–	——	$ 600.00
Hancock	1	100.00	1	$100.00	–	——	–	——	1	——	——
Kannebec	3	100.00	–	——	–	——	–	——	–	——	100.00
Oxford	1	500.00	1	500.00	–	——	1	——	–	——	——
Penobscot	20	6,650.00	–	——	2	$150.00	1	$700.00	1	$100.00	1,000.00
Piscataquis	–	——	–	——	–	——	–	——	2	—	——
Washington	1	100.00	–	——	–	——	–	——	–	——	——
York	1	1,000.00	2	——	2	——	–	——	–	——	5,750.00
Totals	30	$9,050.00	4	$600.00	4	$150.00	2	$700.00	4	$100.00	$7,450.00

1950 LAW COURT CASES

County	Name of Case	Outcome
Androscoggin . .	Stanley W. Beane, Aplt.	Pending
	Walter R. Newcomb	"
Aroostook	State v. Peterson	New trial
	State v. Nally	Objections overruled
	State v. Raydon Corey	New trial
	State v. Turmel	Pending
Cumberland . . .	State v. Kaye	Verdict for State
	" " "	" " "
	State v. Wade	Ruled against State
Hancock.	State v. Schleaefer	Pending
Kennebec.	State v. Hume	Pending
	State v. McClay	"
Oxford.	State v. Townsend	Judgment for State
	" " "	" " "
Penobscot	State v. Austin	Pending
	" " "	"
Piscataquis	Knowlton v. John Hancock Mutual Life Insurance Company	Pending
	State v. Clukey	"
Somerset	State v. Robinson	Judgment for State

FINANCIAL STATISTICS, YEAR ENDING NOVEMBER 1, 1950

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	$20,291.05	$27,281.75	$1,611.28	$7,707.52	$4,611.86	$21,712.66
Aroostook	3,444.95	14,502.79	1,245.60	7,700.20	8,764.06	74,899.40
Cumberland	37,329.14	62,008.40	1,514.76	5,772.16	9,803.44	74,608.69
Franklin	1,410.18	5,255.95	269.28	1,003.44	536.70	10,042.52
Hancock	646.88	4,232.42	633.22	1,207.28	269.00	15,339.75
Kennebec	5,283.77	19,312.16	947.72	4,370.76	4,882.43	38,678.19
Knox	709.18	4,235.99	393.24	774.00	879.28	9,782.26
Lincoln	1,193.97	1,084.29	826.56	949.92	437.80	437.80
Oxford	8,248.58	3,204.64	851.04	2,632.56	1,936.44	15,077.09
Penobscot	3,222.64	22,108.77	1,282.80	4,130.46	10,469.55	70,466.98
Piscataquis	2,201.24	3,501.69	382.02	909.72	1,974.64	9,367.98
Sagadahoc	629.48	7,147.14	501.60	1,788.04	1,165.18	9,845.98
Somerset	2,029.12	13,576,58	1,333.20	3,861.84	2,494.87	23,465.53
Waldo	713.40	14,023.71	563.32	2,256.12	3,197.14	14,803.21
Washington	5,310.62	12,538.51	904.44	1,740.60	2,385.28	28,069.17
York	3,684.75	22,519.20	1,395.00	3,901.20	879.60	41,451.88
Totals	$96,348.95	$236,533.99	$14,655.08	$50,705.82	$54,687.27	$458,049.09

INDEX TO OPINIONS