

MAINE STATE LEGISLATURE

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STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1910.

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OFFICE OF THE ATTORNEY GENERAL.

Waterville, Me., July 15, 1910.

Subject: R. S. Chap. 32, Sec. 40—Screening Outlets of Ponds or Lakes—Payment of Expense—From what Source.

Hon. J. W. Brackett, Augusta, Maine.

SIR:—In your letter of July 6th you call attention to the provisions found in the last two sentences of Sec. 40, Chap. 32 of the Revised Statutes relating to the power of the Commissioners to screen outlets of lakes or ponds, and you inquire if the Commissioners, under that section, have a right to build screens and pay for the same out of the appropriation for fish hatcheries, feeding stations and for the protection of fish.

It is my opinion that the present condition of our statutes and appropriation resolves do not authorize commissioners to screen the outlets of lakes and ponds and pay for such expense out of the appropriation for purposes of operating fish hatcheries and feeding stations for fish and for the protection of fish. The last named appropriation is found in Chap. 145 of the Resolves of 1909. The reasons which lead me to this view are as follows: R. S. Chap. 2, Sec. 20 clearly provides that all appropriations of money for expenditure in the public service shall be applied solely to the object for which the appropriation is made. A reasonably strict construction of this rule should be applied. Chap. 145 of the Resolves of 1909, just referred to, makes an appropriation of \$47,500 for the year 1909, and a similar appropriation for 1910, and designates that this appropriation is "for the purpose of operating the fish hatcheries and feeding stations for fish in the state and for the protection of fish." Nothing is herein said about using any of the money for erecting screens at the outlet of lakes or ponds.

I am constrained to believe that the legislature never intended that any part of this large appropriation should be used for the erection of screens, except where the power had been especially given so to do. You will observe that the legislature of 1909, Chap. 215 of the Resolves authorizes the expenditure of \$300 out of the appropriation of which we have been speaking, for the purpose of screening Taylor Lake, so-called, in the city of Auburn, but the authority to do this was conditioned

upon the raising of a certain sum of money by the citizens of Androscoggin County, and also required a vote of the city of Auburn that it would assume all liability for keeping said screen at all times free from sticks, leaves, etc., so that the same would not become clogged and prevent the free running of water through the same. Eight other instances are to be found with similar provisions—namely, screening of Biscay Pond, of China Lake, of Estes Lake, of Messalonskee Lake, of Spring River lake, of Squa Pan Lake, of Toddy Pond and Worthley Pond. If the legislature had understood that any part of the appropriation of \$47,500, which we have been speaking of, could be used for screening outlets of lakes and ponds at the discretion of the commissioners, why did they take the trouble to give special authority in these nine cases?

The answer to the question seems irresistably to suggest to my mind the questions which I have indicated above. It might be argued that here is a plain provision of the statute in Chap. 32, Sec. 40, giving the commissioners certain powers, but those who have been close students of statute law, have oftentimes discovered that an authority is given to do a thing and no money provided with which to do it.

It seems to me therefore, quite plain, in view of the special resolves for screening, that the legislature never intended that there should be such a liberal construction of Chap. 145 of the Resolves of 1909 as to authorize the commissioners to use any part of that appropriation for screening ponds or lakes.

Respectfully yours,

WARREN C. PHILBROOK,
Attorney General.

OFFICE OF THE ATTORNEY GENERAL.

Waterville, Me., August 3, 1910.

Subject: Fish Ways, R. S. Chap. 32, Sec. 41.

Hon. J. W. Brackett, Augusta, Maine.

SIR:—I am in receipt of your recent favor in which you desire my views as to whether the commissioners of inland fisheries and game are obliged in every instance to order fish ways to be built when requested so to do, or whether this requirement is wholly in the discretion of the commissioners.