

MAINE STATE LEGISLATURE

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STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1910.

AUGUSTA

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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.

In reply I beg leave to say that it does not appear to me to be a question of discretion for the commissioners so far as that question relates to ordering the construction of fish ways. The statute in plain and positive terms requires the owner or occupant of every dam or every artificial obstruction in any river or stream frequented by salmon, shad, alewives, or landlocked salmon to provide said dam or artificial construction with a durable and efficient fish way. This is a positive requirement of law, and as I have said, there does not seem to me to be any element of discretion on the part of the commissioners of inland fisheries and game whereby the owner or occupant just referred to may be relieved from the duty required by law. On the other hand, the judgment of the commissioners of inland fisheries and game, in the first instance, is to be taken as to the form, capacity and location of the fish way. Of course, it must be observed in passing, that the river or stream in question must be frequented by the fish above named, otherwise there is no obligation resting upon any one to build a fish way. It may be, therefore, that the judgment of the commissioners of inland fisheries and game may be an important element in determining whether the river or stream is frequented by the above named fish. It is my view that those commissioners must be well satisfied that the river or stream is, as a matter of fact, frequented by these fish before any movement is taken to require the building of a fish way, and in this connection, it is my view that the word "frequented" would be construed to mean *habitually* frequenting; an isolated case or even a few rare cases where a salmon, shad, alewife or landlocked salmon might be found in a river or stream, would hardly seem to be sufficient cause for invoking the machinery of the act under consideration.

If, however, the commissioners are satisfied that the river or stream is frequented in the way I have just described and by the fish referred to, then there would seem to be no excuse for the owner or occupant of any dam or artificial construction whereby he might be relieved from building the fish way required by the act.

The next step then would be as to the location, form and capacity of the fish way, and here the judgment of the commissioners must obtain in the first instance. You will notice that

in case of a disagreement between the commissioners and the owner or occupant of any dam as to the propriety and safety of the plan submitted, that there is an appeal, but the appeal is only as to the propriety and safety of the plan, not as the necessity of constructing a fish way. And later in the act, you will find that the decision upon the appeal "shall be final as to the plan and location appealed from," again emphasizing the fact that the decision of the commissioners from which the appeal is taken is as to the plan and location and not upon the prior question as to whether any fish way must be located and constructed.

Summarizing, therefore, the situation appears to me to be this: If a river or stream is habitually frequented by salmon, shad, alewives, or landlocked salmon, the owner or occupant of any dam or other artificial construction upon that river or stream, must provide a durable and efficient fish way; as to the form, capacity and location of the fish way, the question is to be passed upon by the commissioners of inland fisheries and game, but they cannot excuse the owner or occupant of the dam or other artificial construction from complying with the law as to the provision of the fish way.

Respectfully yours,

WARREN C. PHILBROOK,
Attorney General.

OFFICE OF THE ATTORNEY GENERAL.

WATERVILLE, ME., NOV. 11, 1910.

Subject: License to corporation to buy, sell and tan
deer skins and other valuable skins.

Hon. J. W. Brackett, Augusta, Me.

DEAR SIR:—Some time ago your department submitted questions relating to R. S., Chap. 32, Sec. 30, as amended by Chap. 226 of the P. L. of 1907 relating to the issuance of licenses to buy and sell or tan deer skins and other valuable skins.

The question or questions submitted by your department were (1) "Can more than one person buy deer skins and the skins of otter, sable and fisher under one license"; (2) "Can a corporation send out more than one of its regular employees