

MAINE STATE LEGISLATURE

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April 11, 1923

To Clarence F. Kendall, M. S., Commissioner of Health
Re: Pollution, Van Buren

. . . The only interest the State can have in this matter is, of course, relative to the health of the community and the law is pretty plain that anyone responsible for serious conditions which menace the public health is liable to prosecution for maintaining or allowing such conditions to exist on his property. It would seem as if the question between the different owners of the property there and their rights and liabilities between each other and possibly against the town are matters in which your department is not interested, and which can be settled by the owners of the property in civil actions.

Relative to the right to control surface water, the rule in this State is that the proprietor of land may control the flow of surface water over his premises according to his own interest without obligation to others. He may prevent it from going on to his land from the highway or other land and may prevent its passing away, and may erect structures for such purposes as high as he pleases, but he may not artificially collect and discharge it where it would not naturally fall.

Municipalities are not liable for draining surface water on the abutter. Unless the condition at Van Buren is such that the public health is seriously threatened, we think it would be about as well to let the town and the inhabitants interested fight this matter out among themselves. If, of course, conditions become such that the public health is seriously threatened, steps might properly be taken by your department to prosecute those maintaining the nuisance, or proper steps to have it abated. It would seem as if the town was at fault in the matter, but to undertake to compel the town to build a sewer or even to repair the existing one would entail a good deal of work and probably take a long time to accomplish any result. . .

William H. Fisher
Deputy Attorney General