

MAINE STATE LEGISLATURE

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March 9, 1948

To Edwin R. Smith, Esq.
County Attorney, Hancock

I have your letter of March 3d, relating to Rule No. 50 of the Sea and Shore Fisheries, promulgated March 27, 1947. You ask me if it is a valid, enforceable regulation, etc., and call my attention to the fact that the Resolves of 1935, by Chapter 91, authorize such regulation, but failed to specify "at such time and for such time" the regulation takes effect, as required by P. L. 1933, Chapter 2, Section 3.

The provisions of Chapter 2, Section 3, P. L. 1933, are no longer effective, the act having been revised by Chapter 34, R. S. 1944, and the entire chapter repealed and replaced by Chapter 332, P. L. 1947. Therefore this rule must have been promulgated under the provisions of Section 3 of Chapter 34, R. S. 1944. However, Chapter 90 of the Resolves of 1935 is still in effect. These Rules and Regulations promulgated by the Commissioner are based on Legislative Resolves, and he can issue without notice or hearing any rule or regulation which the legislature by its Resolve shall direct.

However, the Resolve which you quoted, Chapter 91, 1935, does not specify the time or the length of time that the regulation shall be effective. For that reason I can see the point which you raise. Far be it from me, as Attorney General, to make any ruling that the legislature in its Resolve failed to comply with the general statutory requirements or to confer power on the Commissioner to issue regulations thereunder.

My reason for making this statement is that the inhabitants of Mount Desert Island came to the legislature and asked for this legislation in the interests of conservation of the clams on the island. It should be enforced until it is passed upon by the courts, not by this office.

My advice to you is not to not pros the appeal. It is not for you to tell the wardens not to enforce any rule which has the force of law on its face, but to go through with the case and let the attorneys for the respondent raise the question and let the court decide. Our Supreme Court has held that the legislature can provide that rules and regulations in the interests of conservation, based on legislative Resolves, can be issued, affecting local communities, without notice or hearing. This Resolve was passed by the legislature in 1935 and did not become effective until ninety days after the legislature adjourned in 1935, so that citizens of Mount Desert had ample notice of this regulation which the legislature directed the Commissioner to issue and also provided a penalty.

This new regulation of 1947 was issued to take the place of the old regulation, the statute for which was not complied with by former Commissioners; and it is probable that a new regulation will be promulgated under the new Revision of 1947.

We must be careful not to usurp the function of the courts in declaring laws invalid or unconstitutional.

Ralph W. Farris
Attorney General

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