

MAINE STATE LEGISLATURE

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May 26, 1948

To Lester E. Brown, Chief Warden, Inland Fisheries and Game
Re: Basin Pond, Fayette

Your letter of May 24th received, requesting a ruling on the constitutionality of the rule and regulation that limits fishing in Basin Pond in the town of Fayette, County of Kennebec, to fly fishing only.

I find in your pamphlet of Inland Fish and Game Laws, 1948, page 30, the following: "Basin Pond, Fayette. Fly fishing only; bag limit, 4 trout per person."

Section 5 of Chapter 33, R.S., as re-enacted by the Public Laws of 1947, to be found in the back of the Laws of 1947, provides that petitions can be addressed to the Commissioner by a majority of the municipal officers or 25 citizens, and a hearing will be held in the county affected and notice of the hearing published once a week for two successive weeks prior to the hearing in a newspaper in the county where the hearing is to be held, and after hearing, the Commissioner with the advice and approval of the advisory council shall make such regulations as shall be deemed remedial of any adverse conditions proven to exist at the time of the hearing. Such regulations to become effective January 1st for the next year following the date of the petition. The Commissioner shall cause the regulations to be reduced to writing and publish the same once a week for two successive weeks in a newspaper published in the county where the waters are situated. A certified copy of the regulations is filed with the Secretary of State and with the Clerk of the Superior Court of the county in which the waters affected are situated.

If this statute has been complied with, it is my opinion that this rule and regulation, which limits fishing in Basin Pond to fly fishing only, is legal.

You ask for a ruling on the constitutionality of the rule and regulation. The rule and regulation is not provided for in the Constitution of Maine. Therefore the question would be whether or not the statute authorizing the rule and regulation is constitutional.

It is my opinion that any statute passed by the legislature is constitutional until declared not to be by the Supreme Court of our State. My opinion is that Section 5 of Chapter 33, as revised in the 1947 Public Laws, is constitutional.

Ralph W. Farris
Attorney General

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