

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

Federal Government to cross public lots in the laying of a pipe line from Searsport to Limestone in this State.

You are advised that it is the policy of the Executive Department of the State Government to cooperate fully with Federal authorities in a matter of this nature, since it is one involving military preparation and national defense.

It is my opinion that, as Forest Commissioner having complete administrative control over the public lots, you have authority as such Commissioner, especially when coupled with the authority of the Governor and Council as provided in Section 8 of Chapter 1, R. S. 1944, to grant such permits upon such terms as may be agreed upon.

In entering upon the final transaction whereby the permit or license is actually granted, you should first have the authority of a council order passed by the Governor and Council, expressing the terms upon which the permit or license is granted.

JOHN S. S. FESSENDEN
Deputy Attorney General

May 31, 1951

To W. E. Bradbury, Acting Deputy Commissioner of Inland Fisheries and Game

Re: Revocation of a Guide's License

As I read the provisions of section 29 of Chapter 33, relative to guides' licenses, I find no provision whatsoever to the effect that guides' licenses are divisible as to fishing on the one hand and hunting on the other. Such licenses, it appears, are licenses to guide for all purposes, under the regulation of the Inland Fish and Game Laws.

It is therefore my opinion that the Commissioner does not have authority to issue a guide's license limited to fishing only or hunting only.

JOHN S. S. FESSENDEN
Deputy Attorney General

May 31, 1951

To General Spaulding Bisbee, Director of Civil Defense

Re: Powers of Arrest

I am returning herewith Frederick P. O'Connell's letter of May 2, 1951, in which he asks for an opinion as to whether or not an auxiliary policeman of Town A, upon being sent into Town B under the mutual-aid clause of the Civil Defense Act, carries with him the necessary police power to operate in Town B by virtue of the fact that he was sworn in in Town A, or whether it would be necessary to deputize him in Town B.

As I understand the plans of the Civil Defense Department, all law enforcement officials operating outside their own jurisdictions for which they were sworn to enforce the laws are to be attached to police sections of mobile

reserve battalions. This was clarified by Chapter 273 of the Public Laws of 1951, which was the Act which revised the State Civil Defense Law, and provided specifically for the power of arrest, by amending Section 7 of the Civil Defense Law. I would answer, therefore, that if the auxiliary policeman was a member of a police section of a mobile reserve battalion, he would have the authority without being deputized in Town B; otherwise he would not have the authority.

JOHN S. S. FESSENDEN
Deputy Attorney General

May 31, 1951

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Right of Access to Great Ponds

Reference is made to your memorandum of May 18, 1951, in which you requested an opinion on the subject of the public's right of access to "great ponds".

It would not be feasible for the Attorney General's office to write an opinion on the subject of the public's right of access to great ponds since such an opinion would necessarily be of an extended length. While the opinion might be entirely adequate as to the law, the important thing in each case would be the facts, and the application of the law to the facts would be controlling in each case.

The law has been adequately and completely expressed in the Opinion of the Justices found at 118 Maine 503, which Opinion of the Justices in part affirms the decision in the case of *Barrows v. McDermott*, 73 Maine 441. The actual rule of law, very briefly stated, is as follows:

"Any person has the right to go to a great pond on foot through unenclosed woodlands belonging to another and to take fish there; but the privilege must be exercised in the light of the authority by which it is conferred, in that he must see to it that he does not trespass on any man's corn or meadow, tillage or woodland."

JOHN S. S. FESSENDEN
Deputy Attorney General

June 4, 1951

To the Maine Real Estate Commission
Re: Irrevocable Consent

With reference to your memo of May 22, 1951, in which you inquire whether or not a new irrevocable consent from out-of-state brokers should be required every six years, it is our opinion that such a practice, while not absolutely necessary, is one which is probably the safest for all concerned.

It is also recommended that when an out-of-state broker has failed to renew his license and is required by the Commission to file a new application, then in such instance that out-of-state broker should be required to file a new