

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

May 4, 1954

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

This is in response to your memo of recent date in which you ask:

"1. When land is posted, 'No Trespassing', or 'No Hunting', is it effective under civil law, or is it something which hunters can disregard?

"2. This question came from the meeting Friday with the Androscoggin Fish and Game Association, when they asked me if a fisherman can cross posted land to get to a great pond, where there is no public right of way? We have one of these situations in York County, and another one at Pleasant Pond, in Androscoggin County, where the entire land around the lake is under private ownership, and the general public is excluded."

In answer to Question No. 1, we are of the opinion that the State of Maine has not as yet deprived its citizens of the rights which accompany the possession of property. Other than the law surrounding great ponds, a citizen has the right not to have his property trespassed upon without his permission. Posting private property does seem in some cases under our statutes to make the trespass more grievous.

In answer to Question No. 2, under the old Colonial Ordinance as interpreted by our court, persons have the right to pass over land which is not cultivated to reach a great pond, for the purposes enumerated in the Ordinance.

JAMES GLYNN FROST
Deputy Attorney General

May 4, 1954

To John C. Burnham, Director of Special Service, Highway
Re: Permits for out-of-state Trailers

You have sent me three applications for overlength trailers and requested my opinion as to your powers in regard to restrictions, etc., in these permits.

Section 89 of chapter 19 of the Revised Statutes grants the Highway Commission power to grant "emergency permits" for the moving of objects of overlength, width, height, or weight. The modest fee from \$2.00 to \$10.00 is based on the overweight, etc.

The second paragraph in this section reads in part as follows:

" . . . Said permits shall be issued to cover the emergency or purpose stated in the application and shall be limited as to the particular objects to be moved and the particular ways and bridges which may be used, . . ."

This section qualifies the word "emergency" by adding the words "or purpose". It is obvious that this further defines the meaning of the word "emergency". It has long been the interpretation of the Attorney General's Department that the words "emergency or purpose" mean a particular need on the part of the person requesting the permit. It should be noted that the permits are limited to the particular objects and the particular ways and bridges. This

definitely shows that the legislature had in mind the impossibility of legislating as to what could, or could not, be moved, and granted to the Commission the duty of deciding what objects could be safely moved and where they should go.

Although it can be argued that these permits should cover a definite itinerary it is reasonable to argue that the major purpose of the permit is to allow the moving of the otherwise illegal object in the least hazardous manner possible.

If, in the discretion of the Commission (or its duly qualified agents) it is deemed that the movement of a trailer from A to B on certain specified roads, or types of roads, should be allowed, it would not matter whether the trip was made in one continuous drive or with a dozen stopovers. The important item would be the danger to the road or danger to traffic. It is my opinion that these permits, by the restrictions put therein, could safeguard against the hazards in the particular instance. It would seem that the time element would enter the picture only as a matter of the degree of danger. Obviously some structures may be too dangerous to permit on the highway without police escort. It is probable that some objects should be moved only at specified times (as at such times as traffic is not too dense). Certainly certain weights and widths could not safely be allowed on certain roads.

It is my opinion that these permits should be, and can be, issued for such times and places as would, in the judgment of the Department, minimize the danger. I believe it is proper to consider the relative profit or loss to the State in the individual case presented. It is certainly the intent of the act that the emergent need of the petitioner in the case of a one-trip permit should receive fair consideration.

L. SMITH DUNNACK
Assistant Attorney General

May 7, 1954

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Packed Trout

We have your memo stating that the Willard Daggett Fish Company of Portland has received a shipment of Danish trout, the trout coming in packages of 22 fish each. The question is asked if, when on sale at A&P stores, the package can be opened and the fish sold separately.

It would appear that your question is based on the provisions of Section 41 of Chapter 33 of the Revised Statutes, which section reads in part as follows:

"Such fish, whether commercially grown within the state or imported from without the state, shall be packaged at the original source which said package shall bear the name and address of the source printed on the outside thereof and the fish *shall not be removed from the original package except by the ultimate purchaser.*"

It appears clear from this wording that the ultimate purchaser only can remove the fish from the original package, and therefore packages could not be opened and the fish sold separately.