

# MAINE STATE LEGISLATURE

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April 2, 1956

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To Austin Wilkins, Deputy Forest Commissioner  
Re: Fire Prevention

Reference is made to your memo in which you ask numerous questions for the benefit of wardens in your department who are charged with enforcing the fire prevention laws.

A great majority of your questions, we believe, should be answered by County Attorneys in whose jurisdiction violations have been committed. There has been no amount of case law involving ~~indictments~~ <sup>pleas</sup>, and it is for this reason that we feel that the several County Attorneys should be approached when there are any questions with respect to the preparation of complaints or indictments.

There follow answers to those questions which we think our office can appropriately handle.

1. (a) Where a partnership or association other than a corporation is involved in a violation of the laws, the names of the persons comprising the partnership or association should be stated, and the name under which they are carrying on their business, such as "A. and B., doing business as A. and B. Realty Company".

(b) If a corporation, then that corporation should be described by its exact corporate name as given in its charter or certificate of organization and should be alleged to be a corporation, thus, "The Maine Central Railroad Company, a corporation duly existing by law".

2. In every case a municipal court judge or a trial justice is supposed to be able to determine whether his court has jurisdiction of the case. We might add that if the offense comes within the jurisdiction of a trial justice, then the case must be presented to that trial justice closest to the location of the offense. A trial justice may not be by-passed.

3. With respect to offenses of the slash law as they apply to CCC roads or roads maintained by the U. S. Forest Service, it may be said that offenses committed by Federal employees or personnel on Federal property should be presented to the U.S. District Attorney for consideration. It may be that some CCC roads have been taken over by towns. In all cases it must be definitely ascertained under whose jurisdiction the roads fall before action of any kind can be taken.

4. As State wardens are paid per diem and travel for their services we are of the opinion that they may not add costs of travel and time to serve a warrant as part of the costs of court. Our attention has not been drawn to any statute authorizing such a procedure, nor can we find such a statute. It is our opinion that the judge himself should enter costs of court.

5. As stated above, we are not attempting to draw specifications for the offenses you list in Question 5. The requirements of a complaint or indictment, in so far as they are required to be drawn in such a manner that the respondent can thereafter avail himself of the defense of prior acquittal or conviction, must in most cases be quite complete in detail that relates to the specific offense. We feel that in each instance the facts surrounding the violation should be presented to the court or county attorney by the drawing of the complaint or indictment.

We would add that with respect to the fourth paragraph of Question 5 we feel that bulldozing of brush would, in all probability, constitute a violation, if slash is not disposed of according to law.

With respect to the second and third paragraphs preceding the last paragraph of Question 5, we are of the opinion that the statute is not intended to permit the prosecution of two different people for the same violation, but rather is intended to permit the actual violator to be prosecuted.

Corporations, generally, are regarded as indictable for malfeasance as well as non-feasance respecting duties of a public nature plainly enjoined by the legislature for the benefit of the public. Where, under this principle, it is proper to indict a town, we think the offense would be of such gravity that the County Attorney should be notified immediately. In such a case the indictment would read, "The City of X, a municipal corporation duly existing by law," or, "The Town of X, a municipal corporation duly existing by law".

We are returning to you the manual supplied to the wardens of the Department of Inland Fisheries and Game.

James Glynn Frost  
Deputy Attorney General

JGF:c