

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)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

December 26, 1956

To David H. Stevens, Chairman, Highway Commission
Re: Methods of Enforcement of Outdoor Advertising Law

. . . I can find no specific language in the statutes that covers these violations. The various nuisance sections are not broad enough or specific enough to include the type of sign we encounter, which on the face of it may be very attractive.

It is true that Equity has jurisdiction of cases where "there is not a plain, adequate and complete remedy at law." However, I believe that the Court would find that there is an adequate remedy at law except perhaps in the cases of signs painted on buildings.

In cases involving the pike, it appears that the Commission can treat these cases under the regular sections. If they do not have a license, they are violating Section 138. The law does not mention "roadside" advertising anywhere. It speaks of outdoor advertising. A sign on Mount Katahdin comes within this act, as Section 143 gives the Commission power

"to order and cause the removal of any outdoor advertising structure, device or display erected or maintained in violation hereof, (or which in its judgment endangers the safety of persons using the highways) and for said purpose to enter upon private property!"

Section 144 partially confuses the issue. It provides for a hearing and sets forth the procedure. However, this refers to cases where a permit has been issued.

It seems to me that the language in Section 143 is definite and clear. It gives the Commission the right to enter on property and remove signs in violation of Sections 137 to 148.

Section 144 sets up a procedure for the cases where permits have been issued, and the question of public safety arises. It would seem that Section 144 is for a special purpose and covers part only of the subject matter in Section 143.

It might be argued that the Commission should not remove a sign until a Court has found the sign in violation of the law. On the other hand, the Commission certainly knows when it has not issued a permit! It knows that the sign is in violation. Moreover, in Section 144, where a hearing is provided for cases where permits have been issued, but the subject of public safety has been raised, there is no provision for appeal. The Commission is the final judge and in a case where judgment is involved.

These things give weight to the argument that the language in Section 143 means what it says in clear language. If the sign is in violation of any of the provisions of Sections 137 to 148, or if no

permit has been given for a sign that "in its judgment endangers the safety of persons using the highways", the Commission may "order and cause the removal," etc.

There seems to be a complete and adequate remedy at law except for the expense angle, except in the cases of signs painted on a barn.

It might be that the Court would take jurisdiction in such cases to order the owner to paint the sign out. To date, I have found no case in point. There may be one.

My argument would be based on the plain legislative intent to give the Commission authority to abate these signs, and the obvious inadequacy of its powers to deal with a sign painted on a barn.

Of course, the State can prosecute under Section 148. The statute says that "the display of each sign shall constitute a separate offense,".

This may not be broad enough to mean "each display of a sign". Criminal statutes are strictly construed. I recommend that we try to amend this wording by adding another sentence to read as follows:

"It shall be an additional offense if the offender does not remove the said advertising sign, billboard or structure, or obtain a permit for the same, within seven days after conviction hereunder, and this provision shall continue to apply until the removal or obtaining of a permit has been accomplished."

Such a provision would permit us to hit them in the pocketbook, and probably save us the nuisance and expense of physically removing the sign.

L. Smith Dunnack
Assistant Attorney General

LSD/ek