

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

From these statutes we gather that the Legislature allowed up to 2,000 pounds over the gross weights established to offset the increases in weight, by whatever cause, if unintentional, and did not contemplate that a person should be immune when the weight exceeded the gross weight plus tolerance.

It is difficult for us to give any other interpretation to the words in question, and such an opinion is consistent with the knowledge that heavy loads injure the highways, whether those loads be placed deliberately upon the vehicle, or gather upon the vehicle in transit.

In further substantiation of this position we point out the last sentence of paragraph 5, Section 19:

“But no vehicle shall be operated on ways or bridges, either loaded or without load, that exceeds the limits prescribed in section 109 or is contrary to the provisions of any other section of this chapter, or any other statute pertaining thereto.”

The words “either loaded or unloaded” show the clear intent to set maximum weights, regardless of the source of the weight, because of the damage that can be done to our roads and bridges by overweight vehicles.

JAMES GLYNN FROST
Deputy Attorney General

February 6, 1958

To John R. Rand, State Geologist, Economic Development

Re: Necessity for Recording Claims to Acquire Possessory Rights

In regard to your memorandum of January 31, 1958, concerning the necessity for recording claims to acquire possessory rights, the problem presented to us is as follows:

A case has arisen wherein a locator has staked and recorded a claim in a Great Pond and during the staking noted that another locator had staked the same area previously, but had not recorded his location. The question then arises—Has the first locator priority rights for thirty days under Section 4 of the Maine Mining Law?

Assuming that the first locator has properly set out the location of his claim, it is my opinion that the first locator has a valid claim for the 30-day period which he is afforded under the statute in which to record his location.

“Under some statutes the location certificate may be filed at any time before an intervening location. The locator is entitled to the full time allowed by the statute or rule, and, if he files within such time, another cannot gain precedence over him by initiating and completing a location and recording his claim. Even though he does not file his certificate within the prescribed time, unless the statute provides that the claim shall be forfeited, if it is filed before any adverse rights have accrued, or if the delay is excusable.”

58 C.J.S. 109, Sec. 55

In the *Big Three Mining and Milling Co. v. Hamilton*, 107, P. 301 the following dicta is found:

“If a person locates on a mining claim under the law of 1897 (St. 1897, P. 214, C. 159) and erects an initial monument at the place required by such law and posts the required notices thereon and remains in possession, no other person can make a valid entry thereon for the purpose of making another location until the first person locating the claim is in default, and within the 20 days allowed by the law of 1897 for recordation the claim of the locator is valid, and no other entry can be made as the basis for claim of title.”

The underlying principle is that the location vests the estate and that the recording is an act which is used to prove the locator's right.

GEORGE A. WATHEN
Assistant Attorney General

February 19, 1958

To: R. W. MacDonald, Chief Engineer of Water Improvement Commission

Re: Powers of the Water Improvement Commission

We have your recent request for opinions on the following questions:

The Water Improvement Commission wishes to know if under the powers given them by Chapter 79, R. S. of 1954, as amended they can:

1. Refuse to issue a license to discharge sewage or industrial waste to an applicant.
2. Refuse to issue a license to discharge sewage or industrial waste to a riparian owner.
3. Refuse to issue a license to discharge sewage or industrial waste to a riparian owner who has a specified right to the use of water, such as the right to water to generate power, when this right does not specifically relate to waste discharge.
4. Does the commission have the right to review licenses once granted and alter conditions thereof in the light of changing circumstances?

Your questions, particularly the third, are so general in nature that no doubt our answer will be as difficult to apply to any single actual situation, as it is difficult to phrase an answer based on the questions presented.

Answers:

1. Yes, a license may be refused where the refusal is based upon statutory grounds.
2. Same as above.
3. The absence of any express right to waste discharge in the authority granting the right to a riparian owner to generate power, should not, in and by such absence, be the sole reason why a license should not be granted.
4. A license once granted does not give to the licensee the right to excessively discharge waste. The rights accompanying the license are subject to diminution or expansion according to the will of the Legislature, and accord-