

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

“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-

ingly such changing conditions might call for reevaluation of the licensee's activities.

JAMES GLYNN FROST
Deputy Attorney General

February 19, 1958

To: A. D. Nutting, Commissioner Forest Service

Re: Slash Removal—Reimbursement of Use of Fire Equipment—
Fire Warden's duty to take violator to Court

Recently you left with this office six questions concerning which you desired the opinion of the Attorney General. During a discussion between us, you decided that only three of the questions need be answered.

"1. Chap. 36, Sec. 83, Par. 1

Slash removal is required within '50 feet of the nearer side of the wrought portion of any state highway.' How is the 'wrought portion' determined or of what does it consist?"

The ordinary meaning of "wrought" is worked up, elaborated, worked into shape, labored, managed; not rough or crude. With respect to a highway the wrought portion of the road is that compact section devoted to the travel of motor vehicles and would not include, in our opinion, those portions commonly designated as shoulders.

"3. Chap. 97, Sec. 60

Fire equipment owned by a village corporation is used on a forest fire outside of corporation limits. Can the State reimburse the town for costs incurred by use of the corporation's equipment?

If the corporation uses its equipment on a forest fire within the corporation limits can the state reimburse the corporation for use of this equipment? Could the corporation bill the town for this equipment use and the state then reimburse the town?"

With respect to this question we understand that the village corporation involved received its legislative charter for the express purpose of being a self-sufficient corporation with respect to fire control. Where the fire equipment of the village corporation is used on a forest fire outside of the corporation limits of the village corporation, the state would not reimburse the town for costs incurred by use of the corporation's equipment. We believe that in all respects the village corporation incorporated for the purpose of granting fire protection within its confines should be treated by you as if it were a municipality. Thus, if the corporation were to use its equipment on a fire within its own limits, the state would not reimburse for such use of equipment.

"5. Must a fire warden take a violator to a court in the county where the offense was committed?"

The answer is "Yes."

JAMES GLYNN FROST
Deputy Attorney General