

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1957 - 1958**

March 19, 1958

To John R. Rand, State Geologist

Re: Title to Minerals beneath Tidal Areas

In response to your memo of March 6, 1958, it is our opinion that the Mining Bureau should, at this time, consider that the State of Maine claims title to minerals which lie beneath tidal waters seaward to a line three geographical miles from its coast line. The coast line means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea.

This opinion is not to be construed in any way as limiting such claims as the State may have which are saved by the provisions of Public Law 31, 83rd Congress, 1st Session, C. 65.

JAMES GLYNN FROST  
Deputy Attorney General

March 20, 1958

To Ernest H. Johnson, State Tax Assessor

Re: Gasoline Road Tax on Motor Vehicles, R. S., Ch. 16, Secs. 188-199

In answer to your memorandum inquiring as to the liability of motor carriers under the Gasoline Road Tax for gasoline consumed in travel over the private ways within Maine, it is my opinion that motor carriers are liable for gasoline consumed while traveling both private and public ways within the State.

The resolution of the above question is based on the interpretation to be placed on the words in Section 188 of Chapter 16, "on any way in this state."

Webster's Dictionary describes a "way" as ". . . a passage, road, street, track or path of any kind."

*Words and Phrases* describe a "way" as ". . . generally, the right of one person to travel over the land of another."

The term "way" is derived from the Saxon and means a right of use for passengers. It may be private or public, *Wild v. Deig*, 43 Ind. 455.

No Maine case was found directly in point to include both public ways and private ways within the term "way." However, in *York v. Parker*, 109 Me. 414, the court used the word "way" as a generic term to include both public and private ways.

There is some evidence in Chapter 16 of the Revised Statutes of Maine that the legislature intended to include travel on both public and private ways when it referred to operation of a vehicle "on any way in this state." In Section 170 of the Use Fuel Tax Law, a "user" is described as

"any person who uses and consumes fuel within the state. . . . to propel vehicles of any kind or character on the public highways of this state . . ."

The legislature then goes on to describe public highways. However, under Sections 188 through 199 of the Gasoline Road Tax, the legislature has deigned not to incorporate the definition of public highways as used under the Use Fuel Tax nor include in the Gasoline Road Tax the words "public highways," but uses the terms "on any way in this state" and "within this state." It would

seem that this was an omission with the intention of giving the broadest meaning to the words, "on any way in this state."

RICHARD A. FOLEY  
Assistant Attorney General

March 25, 1958

To Doris M. St. Pierre, Secretary, Real Estate Commission

Re: Change of Designated Broker

You have requested an opinion on the following fact situation: Mr. S. holds a valid license as a real estate broker. A. Corporation has designated W. to hold the broker's license for the corporation. W. has now made an application for an individual license and A. Corporation wishes to designate S. as its representative to hold a broker's license.

Is it necessary for A. Corporation to procure a new license with S. as its designated broker?

Section 7 of Chapter 84 of the Revised Statutes of 1954 provides that a license granted to a corporation entitles the corporation to designate one of its members without any further payment of broker's fees to perform the acts of a real estate broker. It states:

"If, in any case, the person designated by a real estate broker shall be refused a license by the commission, or in case such person ceases to be connected with such real estate broker, said broker shall have the right to designate another person who shall make application as in the first instance."

Therefore it is my opinion that A. Corporation, if it wishes to designate Mr. W. as its new broker, will have to procure a new license.

GEORGE A. WATHEN  
Assistant Attorney General

March 27, 1958

To Kermit S. Nickerson, Deputy Commissioner of Education

Re: Price of School Milk

This is in response to your memorandum of February 7, 1958, in which you ask the following question:

"Whether or not the minimum price paid to dealers in Maine for school milk comes under the jurisdiction of the Maine Milk Control Board?"

Answer: Yes. Prior to the 1957 Legislature it was the opinion of this office that because of the construction of the Maine Milk Control Law, school milk did not come under the jurisdiction of the Maine Milk Control Board. However, in 1957 Section 1, C. 33, R. S. 1954 (Definitions) was amended as follows: