

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

August 26, 1958

To Gray H. Curtis, Executive Director, Vocational Rehabilitation

Re: Funds

We have your letter of August 25, 1958, in which you ask for an opinion on our laws relating to Vocational Rehabilitation, Chapter 465, Section 199, Public Laws of 1955.

You state that you are advised that the said act was an enabling act, and if for any reason Federal funds were withheld, or not available, your program would be inoperative, even though State funds were available. You ask if we feel that this is the case.

It is our opinion that the withholding of Federal funds would not make inoperative the laws generally relating to Vocational Rehabilitation. While, no doubt, a great part of the program was founded on Federal funds, withholding of which would seriously handicap activities in this field, we do not believe that such withholding of funds would vitiate the program. Section 200 of Chapter 41, R. S., contemplates legislative appropriation for vocational rehabilitation services and such sums would be available for the purpose stated, even though Federal funds were not available.

It is not stated in your letter which specific provision gave rise to the thought that the program would be inoperative upon the withholding of Federal funds. It may be that Section 202-C would mislead some one into such a belief. However, we would point out that the cost of administering the act in said section refers to 202-A and that fund alone.

JAMES GLYNN FROST
Deputy Attorney General

September 16, 1958

To W. H. Bradford, Right of Way Engineer, Highway Department

Re: "Floating Billboards" off the Shore

I have been requested to give my opinion as to the authority of the Commission to regulate billboards that are attached to floats and anchored off-shore on the coast. It is necessary first to examine the law relating to the Colonial Ordinance of 1641-7, which was the original law affecting off-shore rights.

Whittlesey in his treatise, "Laws of the Seashore, Tidewaters and Great Ponds", says—"As far as tidal bays, coves, rivers and shore waters are concerned, the public rights of navigation, passing and repassing on foot, fishing and fowling, confirmed by the Ordinance, have not been extended by custom, usage or judicial sanction in this commonwealth to include other privileges." (108 Mass. 436; 195 Mass. 79; 202 Mass. 422 and 207 Mass. 174).

In Maine, however, the courts have extended the public privileges on flats and navigable rivers to include (subject to the paramount right of navigation) cutting and removing ice, riding, skating and travelling thereon, walking upon the flats and resting vessels, discharging ferry passengers and unloading cargo thereon. (124 Me. 361; 93 Me. 532; 86 Me. 319; 79 Me. 456; 25 Me. 51, and 18 Me. 433).

“The proprietor of the upland on the sea or salt water owns to low water mark.” (129 Me. 407; 124 Me. 361 and 365; 114 Me. 242; 105 Me. 76; 102 Me. 431; 100 Me. 410; 97 Me. 356 and 461 and 96 Me. 458).

It would, therefore, appear that as far as case law is concerned, the common law rights of the public in the use of off-shore waters has not been extended to the use of the waters for advertising purposes.

The State has jurisdiction of the off-shore waters (at least to the extent of three miles) subject to the federal laws on navigation.

The question then is: “Does the language in sections 137 and 138 of Chapter 23 of the Revised Statutes cover these floating billboards?” Technically, it does! Section 137 reads as follows:

“Sec. 137. License; fee.—No person, firm or corporation shall engage or continue in the business of outdoor advertising or erect, maintain or display any painted bulletins, poster panels or other outdoor advertising devices upon property not their own or not occupied by them as a place for carrying on business other than outdoor advertising until such person, firm or corporation shall have secured from the state highway commission, hereinafter called the ‘commission’, a license to engage in the business of outdoor advertising. The fee for such license shall be the sum of \$100 per year for any person, firm or corporation engaging or continuing in the business of outdoor advertising for direct profit through rentals or compensation for the erection, maintenance or display of painted bulletins, poster panels or other outdoor advertising devices upon real property; \$25 per year for any person, firm or corporation erecting or maintaining, not for direct profit through rentals or compensation, displays of painted bulletins, poster panels or other outdoor advertising devices upon property not their own or not occupied by them as a place for carrying on business other than outdoor advertising; except that the license fee for not exceeding 5 signs, none of which is more than 20 square feet in area, shall be \$5 per year. All fees for such licenses shall be payable annually in advance.”

In the first place, the fact that the structure is anchored only, and, therefore, not affixed to the land, does not change the fact that it is *maintained* upon property not the property of the person, etc., maintaining it! There is land under the water, and it is still real property.

If the sign was anchored inside the low water mark, it would be on property of the abutting owner. Outside the low water mark, it is on property of the State of Maine.

Signs anchored outside of the low water mark are in the same legal status as a sign on the State House lawn. Individual citizens have no common law or statutory right to use State property for advertising private business, unless in the indirect manner permitted by use of directional signs.

L. SMITH DUNNACK
Assistant Attorney General