

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1959 - 1960**

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June 11, 1959

To: Honorable Frank M. Pierce  
Senate Chamber  
State House  
Augusta, Maine

Dear Senator Pierce:

I have your letter of May 28, 1959, in which you request my opinion on Chapter 36, section 84 and Chapter 97, section 38, Revised Statutes of 1954.

Chapter 36, section 84 was first enacted in 1949 by Chapter 363, section 2, Public Laws 1949, and reads as follows:

“Slash and brush burning permits. — It shall be unlawful for any person to kindle a fire for purposes of clearing land or burning logs, stumps, roots, brush, slash, fields of dry grass, pasture and blueberry lands, except when the ground is covered with snow, without first obtaining a written permit. Requests for permits to burn under provisions of this section may be obtained from state forest fire wardens within the state and from town forest fire wardens outside of the limits of the Maine forestry district. For this purpose the commissioner shall prepare and cause to be furnished to all such state and town forest fire wardens blank permits signed by him. They shall have authority to countersign and grant such permits signed by the commissioner but shall not delegate such authority to subordinates except by written approval of the commissioner. State forest fire wardens working in the incorporated sections of the state shall have authority to countersign and grant such permits signed by the commissioner for any deorganized town or plantation not a part of the Maine forestry district and for state parks. The provisions of this section shall not exempt any person from securing a permit to burn on his own land. Moisture, wind, time of day, length of burning period needed, sufficient force and equipment and any other condition deemed necessary for granting such permits for burning shall be at the discretion of state and town forest fire wardens. Whenever possible town forest fire wardens of towns and plantations outside the limits of the Maine forestry district shall notify their state forest fire warden of any permit issued and particularly of any special burning job. Whenever in the opinion of the commissioner there is a serious forest fire hazard, due to dry weather conditions, he may prohibit all burning under the provisions of this section and in such periods state and town forest fire wardens shall refuse all requests to burn and declare void all permits already issued. Any person to whom a burning permit is granted is in no way relieved of legal responsibility if the fire is allowed to escape or causes damage to property of another. Nothing herein contained shall limit restrictions of any town or plantation ordinance regulating burning of refuse or debris. This section shall not apply to the rights of state forest fire wardens to set a backfire for the purpose of stopping a forest

fire actually burning. This section shall not conflict with the laws on kindling fires on land of another.

“Whoever violates any of the provisions of this section shall on conviction be punished by a fine not exceeding \$100, or by imprisonment for not more than 30 days, or by both such fine and imprisonment.”

Chapter 97, section 38, is a statute of much older origin, having its first appearance in Chapter 132, section 3, Public Laws 1855. Chapter 26, section 16, Revised Statutes 1857, was written exactly as the law is today.

“When lawful fires kindled. — Whoever for a lawful purpose kindles a fire on his own land shall do so at a suitable time and in a careful and prudent manner; and is liable, in an action on the case, to any person injured by his failure to comply with this provision.”

If two statutes are in conflict with each other, then the latest expression of the legislative will prevails; thus, the statutes passed latest in time, would prevail over a prior statute when the two are in conflict. However, if the two statutes can be harmoniously read together so as to give effect to each of the acts, then that should be done.

Both statutes involve the same subject matter — the kindling of fires and conditions to be complied with before such fires are kindled. “All statutes on one subject are to be viewed as one and such a construction should be made as will as nearly as possible make all the statutes dealing with the one subject consistent and harmonious.” *Turner v. Lewiston* 135 Maine 430.

Referring to the statutes in question, we are of the opinion that Chapter 36, section 84, embraces all lands within the categories mentioned, whether forest lands or private property situated in a municipality.

Chapter 97, section 38, appears to give to one injured a cause of action, action on the case, in addition to any common law right to an action he may have had for damages caused by one’s failure to comply with the terms of section 38 in setting a fire on his own land.

Read together, no man may kindle a fire on his own land if the fire is of the nature described in Chapter 36, section 84, unless he first obtains the permit therein mentioned. Chapter 97, section 38, grants to a party injured by a fire not prudently or carefully kindled on one’s own land, a special cause of action which he may not have had at common law.

See Chapter 97, section 59, for authority of Forest Commissioner to appoint forest fire wardens in each organized town, city, and plantation within the State outside the limits of the Maine Forestry District.

Very truly yours,

FRANK E. HANCOCK  
Attorney General

June 12, 1959

To: Walter B. Steele, Jr., Executive Secretary of Maine Milk Commission  
Re: Establishment of Milk Prices and Classifications

I have your request for an opinion on the following questions: