

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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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:

"Class IIB was established for Aroostook County some ten years ago after hearing and investigation in Aroostook County and is still in force there. May this IIB be established in additional marketing areas without prior hearing in the areas?"

"Also the Augusta, Brunswick, Lewiston-Auburn and Waterville markets have a bulk clause in their schedules to the effect that dealers supplying a person who buys 200 or more quarts per day on a year round basis may sell at 1c per quart less than the scheduled wholesale price. This was established after prior hearing and investigation. May this bulk clause be added in additional marketing areas without prior hearing and investigation?"

In my opinion the answer to both of the questions is in the negative. Section 4, Chapter 33 authorizes the Commission

". . . to establish and change after investigation and public hearing minimum prices. . .".

Paragraph VI of Section 4 vests the Commission authority to specify prices and make classification after investigation and public hearing. It is further stated that minimum prices in any market which shall apply to the various classifications may vary in the several market areas.

It would thus appear that in viewing the intent of Section 4 in its entirety, that several factors must be considered in price fixing and classification, which may vary in different market areas. Therefore, it would be necessary to investigate and hold public hearings for two reasons — a statutory requirement and the practical necessity for facts to arrive at a determination.

GEORGE A. WATHEN
Assistant Attorney General

June 16, 1959

To: Lloyd K. Allen, Manager of Industrial Building Authority

Re: Office Buildings

I have your request for an opinion on the following fact situation: A corporation has three manufacturing plants in the state in different towns. None of these plants are insured by the Maine Industrial Building Authority. This corporation now wishes to construct an office building in a town apart from where the manufacturing plants are located.

Is an office building eligible for mortgage insurance under Chapter 38-B, Revised Statutes of 1954?

Section 3 of Chapter 38-B authorizes the Authority to insure the payment of mortgage loans secured by industrial projects. The term "industrial project" is defined in paragraph III, section 5, as "any building or other real estate improvement and, if a part thereof, the land upon which they may be located, and all real properties deemed necessary to their use by any industry for the manufacturing, processing or assembling of raw materials or manufactured products."

An office building is not a building or real property necessary for manufacturing or processing and therefore does not fit within the definition