

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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December 31, 1959

Honorable James P. Archibald
Justice, Superior Court
Aroostook County Court House
Houlton, Maine

Re: Grant to the United States of Easement on Public Lot in Township D.
Range 2, W.E.L.S., Aroostook

Dear Judge Archibald:

I am sorry that this letter has not been written to you sooner but I wanted to get the consensus of the office before it was sent.

I have examined the above deed and related papers for the purpose of determining the necessity or propriety of including in that deed a clause which might recognize the rights of other people, particularly the owners of the timber and grass rights on such lot, to use the easement therein conveyed in common with the United States Government.

The deed has been recorded in the land office and sent to the United States Government on November 5, 1959. It is our understanding that in order for the Federal Government to deed the property back to us, in order that a correction would be made, would take an act of Congress. At any rate, the instrument is now in the hands of the United States and it would take quite a process to have it returned.

Despite the above, we feel that the present deed safeguards the rights of any person desiring to use that road.

Under the reservation clause of the deed, the Grantor State reserves
"to the Grantor, its employees, servants, agents, permittees, lessees, successors and assigns, the right to use said access road in common with the United States and its assigns."

While no person is particularly named as having such right, we think the clause is sufficient for the State to permit anyone to use the road in common with the United States.

Mr. Leonard Pierce had suggested the following language to take care of the situation:

"Provided, however, that the owners of any timberland, the growth on which when cut might conveniently be conveyed to the railroad or elsewhere over the above described strip of land and any road now or hereafter constructed thereon shall have the right to utilize said strip of land as an easement in common with the United States of America for any purpose normally incident to lumbering or pulpwood operations on such timberland."

It is our thought that such language would grant to persons a right which was not heretofore theirs, and would be in conflict with section 12 of Chapter 36, Revised Statutes of 1954.

"Sec. 12. Granting rights to cut timber; leasing camp sites and mill privileges; preference to Maine people. The Commissioner, under the direction of the Governor and Council, shall sell at public or private sale and grant rights to cut timber and grass belonging to the State, and may lease camp sites, mill privileges,

dam sites, flowage rights, the right to set poles and maintain utility service lines and the right to construct and maintain roads, on lands belonging to the State, on such terms as they direct; also the right to cut timber and grass and lease camp sites, mill privileges, dam sites, flowage rights, the right to set poles and maintain utility service lines and the right to construct and maintain roads, on public reserved lots in any township or tract of land until the same is incorporated, on such terms as they direct. Preference in such sales or leases shall be given to persons, firms or corporations of this State."

Chapter 51, Resolves of 1959, authorizing the Forest Commissioner to make the initial grant "under such terms and conditions as can be mutually agreed upon by the State and the United States" does not, in our opinion, amend section 12 to the extent that by the deed the Commissioner could grant wholesale licenses to many unnamed people. That would be the effect of Leonard Pierce's suggested amendment.

To get to your immediate question, we are advised by the Forestry Department that Mr. Pierce has never been granted any rights with respect to the road. It appears that accompanying Mr. Pierce's right to timber and grass is the right to use a small bulldozer — in other words, to remove the timber via the "Twitch" road with which we are familiar. His request that he, or he and others similarly situated, be granted rights in this deed, appears to be outside the intent or authority of the Act authorizing the transfer, and in conflict with section 12. A statement in the deed that such persons already had rights, subject to which the Government would use the road, would be erroneous, according to the facts that have been revealed to me.

I have this suggestion — we would be happy, by an appropriate Council Order, to grant a permit to Mr. Pierce to use that road. In such a case we believe Mr. Pierce would have a right equal to that of the State to use the road in question. Please let me know, and I'll see that the order is prepared.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

December 31, 1959

To: Fred L. Kenney, Director of Administrative Services, Education

Re: Tuition of

I have your request for an opinion regarding the liability for the Town of China for tuition of . Based on the facts presented, the court has awarded custody of the child to Mr. and Mrs. of China.

Section 44, Chapter 41, Revised Statutes of 1954, provides that residence for school purposes "shall be the administrative unit where the person having custody of the child maintains his or her home".