

MAINE STATE LEGISLATURE

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February 2, 1960

Mr. Paul W. Nutter
P.O. Box 192
Milo, Maine

Dear Mr. Nutter:

We have your letter of January 30, 1960, in which you set forth your thoughts with respect to the dangers involved in the proposed methods of subduing the spruce budworm, and in which you state that the Attorney General, being so alerted to the dangers, should enjoin all concerned to desist from the proposed violation of the public statutes of Maine.

Your letter points out that the Attorney General should see that our statutes are not violated - and the falling of the spray used in controlling the spruce budworm into classified waters would be in violation of the water improvement law.

The Attorney General must, of course, uphold the statutes and constitution. In fact, before he can assume his duties as such, the Attorney General must take an oath that he will uphold the statutes and constitution of the State.

But the spruce budworm is also a statutory problem. Chapter 376, Public Laws 1959, established a tax to be used for spruce budworm control, and Chapter 129, Resolves 1959, appropriated funds for budworm control purposes. Thus the Legislature, in two separate laws, recognized the spruce budworm as having created an immediate emergency, and dealt with the problem.

Problems such as this, where two statutes appear to be in conflict, have been considered time and again by our courts, and from these cases a rule has evolved: Where two statutes are in conflict, that passed most recently has affect over the prior law. Thus, the laws relating to budworm amend by implication any prior or existing law which would tend to prohibit such control. We cannot assume, nor does the court assume, that the Legislature cannot today enact a law different from one passed by a prior legislature. Nor can we assume that the Legislature's hands are tied from taking steps to remedy a situation which that Legislature deems should be taken in the interest of the State.

February 1, 1960

The above discussion is based on an assumption that originally the restraints in the Water Improvement law applied to the State. However, our courts have held that -

"It is a well settled rule of construction, that the government is not bound by a statute tending to restrain, or diminish any powers, rights or interests, unless it is named therein, as to be bound."
Cape Elizabeth v. Skillin, 79 Me. 593.

While the above case deals with municipalities, the principle applies even more strongly in the case of the State. State v. Gromatt, 151 Me. 188.

Under this principle, the contemplated spraying would not be a violation of the Water Improvement law. Nowhere in that restraining law are there express words prohibiting the State from acts which are prohibited to a "person, firm, corporation or municipality or agency thereof."

For the above reasons we must advise not only that we cannot comply with your request, but we must recognize and uphold the legislative mandate with respect to spruce budworm control.

We would add, that we are advised by the Forest Commissioner that the Commissioner of Inland Fisheries and Game, his biologists, and other personnel, support the spray program and the legislature was so advised.

Very truly yours,

James Glynn Frost
Deputy Attorney General

JGF:CBH