

MAINE STATE LEGISLATURE

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February 29, 1960

Austin H. Wilkins, Commissioner

Forestry

James G. Frost, Deputy Atty. Gen.

Attorney General

Gap Filler Site P-80-B, Bridgewater, Maine, Tract No. 101E,
State of Maine, Vendor

We have reviewed, at your request, the letter of 28 January, 1960, addressed to you as State of Maine Forest Commissioner, from J. M. Geoghegan, Chief, Real Estate Division, U.S. Army Engineer Division, in which it is requested that our deed to the United States dated November 4, 1959, be amended.

Mr. Geoghegan requests that the description of the grant of rights be amended to conform with the terms of the option executed on May 25, 1959, so that the amended paragraph would read substantially as follows:

"The easements and rights granted are for a right of way in, upon, under, over, and across the above described land, and consist of the right to construct, maintain, operate, patrol, replace, and/or remove an access road, including but not limited to ingress and egress; the right to construct, maintain, repair, operate, patrol, replace, and/or remove underground water and sewerage lines, overhead pole lines, and other utilities; together with the right to trim, cut, fell and remove therefrom all trees and underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right of way and adjacent thereto as is necessary to provide adequate clearance and to eliminate interference with, or hazards to the structures, access road, or utilities placed or constructed on, over, or under said right of way." (The new matter underlined)

In effect, the deed would then purport to convey rights not only in the soil, but to the trees, grass, etc., growing upon the soil.

There is no doubt that the tenor of the option indicates the State has such title as would permit the desired amendment.

We would point out, however, for the following reasons, that the State may convey only the interest set forth in its original deed.

Our statutes today, as well as years ago, permit the State to sell the timber and grass on public lots. On January 7, 1857, the Land Agent (predecessor of the Forest Commissioner) conveyed to James Madigan, his heirs, executors, administrators and assigns, the right to cut and carry away all timber and grass on several townships, including Township D, Range 2, until such time as said township or tract shall be incorporated or organized for plantation purposes.

Thus, the further rights requested to be included in our deed to the United States have been previously conveyed.

While this situation of soil being owned by the State and timber and grass being owned by another party may appear unusual, it is, as you know, not uncommon in this State.

We would advise that the ownership of such timber and grass appears to be presently in the same parties with whom the Federal officials have dealt in regard to other tracts, Madigan and Pierce (James M. Pierce).

Any rights granted by our deed to the Federal Government are rights as to the soil, as distinguished from the timber and grass on that soil. It therefore appears to us that the total rights to the land in question would have to be obtained from two parties -- the State with respect to the soil, and Madigan and Pierce with respect to the timber and grass.

James Glynn Frost
Deputy Attorney General

JGF:H