

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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August 2, 1960

To: Roderic C. O'Connor, Manager of Industrial Building Authority

Re: Cost of Special Purpose Buildings

I have your request for an opinion regarding the inclusion of certain features in buildings which the Maine Industrial Building Authority will insure. You have requested a rule of thumb to guide you in determining the cost of the project when dealing with special purpose buildings.

Subsection III, Section 5, Chapter 38-B states:

““Industrial project” shall mean 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.”

As a general rule those parts of a building which are an integral part for the use and enjoyment thereof and which are annexed are considered real property. Insulation is a part of the real estate as opposed to freezers which may or may not be a part of the realty. Built in features such as waste disposal systems, water and storage tanks and pumps, and built in freezers would be a part of the realty.

In regard to fixtures, our court has enunciated the following rule: A chattel is not emerged in the realty unless (1) Physically annexed at least by juxtaposition, to the realty or some appurtenance thereof, (2) adapted to and usable with that part of the realty to which it is annexed, (3) so annexed with the intention, on the part of the person making the annexation, to make it a permanent accession to the realty.

It should be kept in mind that the rights of parties regarding realty and personalty can be governed by agreement.

In regard to railroad tracks, the general rule is where the superstructure of a railroad is placed upon the land of another under an easement, license, or lease, the railroad company cannot be said to have intended to attach the rails and other appliances to the land so as to make them a part thereof and they are therefore treated as trade fixtures. By agreement of parties, the railroad may become a fixture and part of the realty.

In general one must apply the test set forth herein and determine if there are any agreements between the parties. Machinery, even though affixed, should be treated as personalty.

GEORGE A. WATHEN
Assistant Attorney General

August 2, 1960

To: Roderic C. O'Connor, Manager of Industrial Building Authority

Re: Tenants acting as Guarantors — Mortgage Insurance Fund

You state that tenants have been required by the Authority to act as guarantor of mortgage payments and as security for the guarantee to

give chattel mortgages to the mortgagee on personal property used in the operation.

You have requested our opinion regarding your right to purchase these chattel mortgages in case of default of the tenant under the terms of the lease.

One must assume by your query that the mortgage is in default and the Authority is called upon to make payments pursuant to the mortgage insurance.

It is my opinion that Section 10-A, Chapter 38-B of the Revised Statutes of 1954, gives authority to take an assignment of a chattel mortgage for the purpose of safeguarding the mortgage insurance fund.

GEORGE A. WATHEN
Assistant Attorney General

August 10, 1960

To: Roland H. Cobb, Commissioner of Inland Fisheries and Game

Re: Great Ponds — Bulldozing in

We have your letter of July 28, 1960 and the attached copy of a letter from R. M. Hussey, Secretary, Assoc. Sportsmen's Clubs of York County, Inc. addressed to you.

It appears from Mr. Hussey's letter that he desires to know the legal aspects concerned with one's bulldozing a long, narrow, 20-foot high hogback extending into a lake, so that after bulldozing, the hogback is 5 feet high, can accommodate a road and camps, where theretofore it could not, and resulted in the deposit of substantial spoil into the lake.

It is our opinion that the waters of a great pond (a lake over ten acres in size) and the land under those waters, belong to the State in trust for the people. Activities on the pond which deny to the State and its people their rightful use of the lake must be authorized by the legislature.

No department, to our knowledge, has funds for enforcing this law. It has been customary, however, in cases where such a trust is violated, and where a group of people feel sufficiently aggrieved at such violation that they care to bring suit, for the Attorney General to lend his name in a proper proceeding where such use of his name is necessary in order that the court can exercise its jurisdiction. The cost of such proceeding is borne by the complaining parties.

We hope the above information will be helpful to you.

JAMES GLYNN FROST
Deputy Attorney General

August 10, 1960

To: Carleton L. Bradbury, Commissioner of Banks and Banking

Re: Authorized Expenditures for Training Personnel

We have your memo of August 2, 1960 in which you inquire as to the propriety of expending funds for a training program for your department employees.