

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

lature, having created the school district has within its discretionary power the authority to dissolve a school district. In *Kelley v. Brunswick School District*, supra, at page 421, the court stated:

“A statute cannot be invalidated because it seems to the court to inaugurate an inexpedient policy. All questions as to the expediency of a statute are for the Legislature. This is a line of inquiry which courts cannot pursue in determining the validity of a law.

“Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve desired results, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature, and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance.” *Chicago etc., R. R. Co. v. McGuire*, 219 U. S., 549, 55 Law ed., 328.”

In answer to question No. 1 of your memorandum, even though the legal rights of the municipalities may be impaired by dissolution of the school administrative district, it is within the discretion of the Legislature to protect the rights of the municipalities within the district by directing the equitable distribution of funds held by the district and proration among the municipalities of debt assumed by the district.

In answer to question No. 2 of your memorandum, dissolution of one school administrative district in no way affects the legal rights of other school administrative districts in the State.

The answers previously given to questions numbered 3, 4 and 5 on withdrawal apply to legislation for dissolution of a district.

RICHARD A. FOLEY

Assistant Attorney General

March 6, 1961

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

Re: Low water level of a great pond

This is in response to your letter of February 13, 1961 in which you ask “How is the natural low water level of a great pond determined?”

To our knowledge such low water level has never been determined with respect to any pond. Of course, the proof would depend upon the reason for asking the question. If the question is as the result of an upland owner trying to determine where his boundary is, we offer the following quote from *Stevens v. King*, 76 Me. 199:

“The shore of a pond, being the space between high and low water, necessarily has two sides, a high water side and a low water side; and land bounded by the shore may be bounded by the high water side or the low water side. If the side lines of a parcel of land, starting back from the pond, run to the shore, and there stop, and the line between these two points runs along the shore, of course the land will be bounded by the high water side of it. But if the side lines are described as running to the pond, the result will be otherwise. The legal force and effect of

such a description are to carry the land to the pond at all stages of the water, which is equivalent to saying that it extends to low water mark; and if the line between these two points is run along the shore, it must be along the low water side of it; and the land will be bounded at low water mark.”

For a determination as to just what the mark is insofar as title in the State is concerned, then as stated above we know of no case where the procedure for such proof has been established. I suppose one could refer to histories of the local area; testimony of the elder inhabitants; bench marks if any there be. There is no rule of thumb for the determination of natural low water level of a great pond.

JAMES GLYNN FROST

Deputy Attorney General

March 13, 1961

To: John F. Weston, Chairman of Harness Racing Commission

Re: Gorham Raceways

We have your memo of March 3, 1961 in which you ask five questions relating to Gorham Raceways.

1. Can the Bankruptcy Court run Gorham Raceways as a track and under what organization?

Answer: We are of the opinion that the duly appointed Bankruptcy Court Receiver of the owner, or debtor in possession, of Gorham Raceways is eligible to apply for a license to conduct harness racing meets at Gorham Raceways. The application for license should reveal the Court's approval of the activity.

2. We have a law that protects Gorham Raceways. We have an application from Gorham Raceway, Inc. Would this be termed the same as Gorham Raceway?

Answer: We understand that as a result of a conference held in your office recently that a new application will be filed so we are not at this time answering this question No. 2.

3. Can the Bankruptcy Court lease Gorham Raceways and have it run legally as far as the commission is concerned?

Answer: With the approval of the Bankruptcy Court the present owner may lease the raceways. Such lessee would be eligible to apply for a license. See Section 10 V of Chapter 86.

4. Does Gorham Raceway, which is now in bankruptcy, control the four weeks that are now provided by law?

Answer: If your question runs to whether or not you should still recognize the law governing racing at Gorham Raceways, the answer is "Yes."

5. Can any other track buy just the name "Gorham Raceway", rename their track, and qualify for dates as spelled out by the law?

Answer: The laws relating to Gorham Raceways are public laws and as such relate to the Gorham Raceways installation and are not intended for the benefit of specific persons. The law contemplates the possible change of ownership of such