

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

boat is *numbered* in accordance with our law or in accordance with applicable federal law or the numbering system of another State, yet section 4, paragraph II, requires the *number* issued by the Coast Guard or another State to be *recorded* in this State where the motorboat has been within this State for a period in excess of 90 consecutive days.

Therefore, we must conclude that a motorboat numbered in accordance with applicable federal law or the numbering system of another State which has been within this State for a period in excess of 90 consecutive days must have that number recorded with the Commissioner of Inland Fisheries and Game.

GEORGE C. WEST  
Deputy Attorney General

August 24, 1961

To: Governor John H. Reed  
State House  
Augusta, Maine  
Re: Casco Bay Lines

Dear Governor Reed:

On Wednesday, August 23, a request was received in this office from the Maine Public Utilities Commission asking our interpretation and construction of Chapter 79 of the Private and Special Laws of 1959, and particularly section 3 of that chapter.

Section 3 of Chapter 79, Private and Special Laws of 1959, amends Private and Special Laws of 1929, Chapter 114, section 1, by adding subsection (f) which reads as follows:

“Ferry service between mainland and islands in Casco Bay. Whenever it is determined by the Public Utilities Commission that ferry transportation for persons and property between the mainland and the islands in Casco Bay located within the limits of the City of Portland and the Town of Cumberland can no longer feasibly be provided by private operators at rates established by said Public Utilities Commission, the Port Authority shall take such means as shall be necessary to provide such service, either through contract with private operators or by acquiring and operating the necessary facilities as provided herein.”

In discussing this section with the Public Utilities Commission’s attorney, we both agreed that the feasibility relates directly to rate establishment which is not the particular problem presented in the present Casco Bay Lines situation because of the following language in this subsection:

“Whenever it is determined by the Public Utilities Commission that ferry transportation . . . can no longer feasibly be provided by private operators at rates established by said Public Utilities Commission, the Port Authority shall take such means as shall be necessary to provide such service . . . ”

We, therefore, look to other sections of the Maine Port Authority law which are scattered throughout Private and Special laws from 1929 until 1959. For-

getting for the moment section (f) above, we refer you to section 1, subsection (b), which sets forth the Port Authority's purposes.

"The said Port Authority is constituted a public agency of the State of Maine for the general purpose of acquiring, constructing and operating piers and terminal facilities at the Port of Portland and the Port of Bar Harbor and for the purpose of securing and maintaining adequate ferry transportation for persons and property between the mainland and the islands in Casco Bay located within the limits of the City of Portland and the Town of Cumberland, with all the rights, privileges and power necessary therefor, . . . "

We then refer you to the second paragraph of section 6 of the Port Authority law which reads as follows:

"The Maine Port Authority may take for public use, for its purposes, any property, right, easement, use, interest or estate in any wharf, dock, pier or site, including related approaches, abutments and appurtenances, ferry line, boat or landing area already appropriated to or charged with a public use, under the power of eminent domain; but consideration shall be given to such existing public use and all reasonable efforts shall be made to interfere no more than may be reasonably necessary with the business, service or functions of the owner, operator, possessor or other person controlling, managing or operating such existing public use. No such property, right, easement, use, interest or estate already appropriated to or charged with a public use shall be taken without contract with or consent of the owner, operator, possessor or other person controlling, managing or operating the same, unless or until the Public Utilities Commission, after notice and hearing, shall have determined that such property, right, easement, use, interest or estate appropriated to or charged with a public use is necessary to said Authority for the purposes of this act, and that the taking by said Authority is in the public interest."

It appears to us that under the present situation where certain of the wharves have been closed by order of the Public Utilities Commission, that the Maine Port Authority may take, under its purposes as stated in section 1, above referred to, by the authority granted in the second paragraph of section 6, the necessary wharf rights and landing areas, in behalf of the State of Maine, at a reasonable market value figure and proceed on a repair program; meanwhile, allowing the Casco Bay Lines Co. to continue its ferry operation. This seems proper, particularly in light of the following language of the second paragraph of section 6:

". . . but consideration shall be given to such existing public use and all reasonable efforts shall be made to interfere no more than may be reasonably necessary with the business, service or functions of the owner, operator, possessor or other person controlling, managing or operating such existing public use."

Any such eminent domain proceedings could not be accomplished "until the Public Utilities Commission, after notice and hearing, shall have determined that such property, right, easement, use, interest or estate appropriated to or charged with a public use is necessary to said Authority for the purposes of this act, and that the taking by said Authority is in the public interest."

The law above quoted in which the Maine Port Authority may proceed seems to us to better fit the present problem than does section (f) in which apparently there is some question in the minds of the Public Utilities Commission as to the feasibility heretofore discussed. The Public Utilities Commission might well find it difficult to determine that it is no longer feasible for a private operator to provide service according to the established rates.

We see no reason why you, as Governor, could not request the Maine Port Authority to proceed along the lines as outlined in the second paragraph of section 6. It would appear that the State then would be going as far as it necessarily would have to and still allow the continuance of the business by private operation.

I believe that the general consensus is that the State should not be in the ferry business. This action would put the State in the position of helping to continue service to the islands and yet not actually delving into the operation of the ferry line.

Very truly yours,

FRANK E. HANCOCK  
Attorney General

August 25, 1961

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: School Administrative District #4

This is in answer to your request for an opinion dated August 18, 1961, relative to expenditures for capital outlay purposes by the district directors.

As I understand it, some \$23,000.00 previously obtained from the participating municipalities when the district was formed has been carried from year to year by the district directors as a balance carried forward. The directors have designated that sum as a contingency account. The voters of the district did not set up the account as a contingent account at a budget meeting as provided in Revised Statutes, Chapter 41, Section 111-S, nor was the balance set up as a reserve fund for capital outlay purposes under R. S., c. 41, § 111-L-1.

You inquire whether or not the directors can use the \$23,000.00 to supplement a \$145,000.00 capital outlay bond issue where the amount authorized in the district budget meeting of \$145,000.00 is not sufficient to complete the work contemplated.

Since the voters have not designated the \$23,000.00 as a contingency fund or a capital reserve fund at the district budget meeting, I find no authorization in the law to use that money to supplement the bond issue.

The fact that a bond issue originally authorized is not sufficient to carry out the contemplated work has been anticipated in the law and the procedure for obtaining additional capital outlay bonds or notes not exceeding 1 per cent of the total State valuation of all participating towns in the district is set out in R. S., Chapter 41, § 111-K, second paragraph.

It is our recommendation that the directors follow the above procedure of obtaining additional funds by supplemental bond issue rather than use the \$23,000.00 account previously carried forward.

RICHARD A. FOLEY  
Assistant Attorney General