

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

public streets, then it is the responsibility of the municipality to plow such streets.

Question No. 2: "Is the school committee authorized to expend funds for plowing or to reimburse a town or city for such service?"

Answer: The school committee is authorized to expend funds for plowing but only of school property. If the town does the plowing of the school property, they have no right to reimbursement since it is public property of the town.

Question No. 3: "Would there be any difference in the answers to the above questions if a school were operated by an administrative district?"

Answer: The answer to question No. 2 above would be different in that the directors of a school administrative district could reimburse the town for plowing the school property such as playgrounds, parking lots, driveways owned by the district but not public streets leading up to the school property.

RICHARD A. FOLEY

Assistant Attorney General

February 14, 1962

To: Scott K. Higgins, Director of Aeronautics Commission

Re: Control of Structures Near Airports — L. D. #418

You have asked our interpretation of the language contained in Section 3, Paragraph I, of L.D. #418, "An Act Relating to Control of Structures Near Airports," which bill was referred to the Legislative Research Committee by the 100th Legislature.

"Sec. 3. Limitation on structure. Until a permit therefor has been issued by the commission, no person shall erect, add to the height of or replace any structure:

"I. Near airports. Within an area lying 1500 feet on either side of the extended center line of a runway or landing strip for a distance of 2 miles from the nearest boundary of any approved airport which will result in a structure extending to a height of more than 150 feet above the level of such runway or landing strip; nor, within that portion of such areas that is within a distance of 3,000 feet from such nearest boundary, that will result in a structure extending higher than a height above the level of such runway or landing strip determined by the ratio of one foot vertically to every 20 feet horizontally measured from such nearest boundary.

"II. Height. At any other place within the State which will result in a structure extending more than 500 feet above the highest point of land within a one-mile radius from such structure."

The first part of Paragraph I specifies a restriction of structural height of 150 feet within an approach and landing zone of a width of 3000 feet, the center line of which is the center of the runway or landing strip, and a length or distance of 2 miles from a designated airport boundary. The second part of Paragraph I, after the semi-colon, refers to the first part of Paragraph I by the language "nor, within that portion of *such areas* . . ." (Emphasis ours) indicating that the 3000 foot distance is within the area of the aforementioned approach and landing

zone. It does not include all surrounding areas within a distance of 3000 feet from the nearest boundary.

FRANK E. HANCOCK

Attorney General

February 14, 1962

To: Lawrence Stuart, Director of Park Commission

Re: Registration Fee for Municipal Ski Tow

We have your request for an opinion as to whether or not the Town of Millinocket must pay the customary registration fee for its municipal ski tow. Under the terms of Chapter 325, Public Laws of 1961, the Passenger Tramway Safety Board is empowered to establish annual fees not in excess of \$300 to accompany each application for registration. The question has arisen as to whether or not a municipality must pay this fee for a municipally owned ski tow.

Under the provisions of Revised Statutes, Chapter 91-A, Section 10, all municipalities are exempted from taxation on their property and polls. This exemption covers only taxes and is not applicable to fees for services rendered to the municipality. A fee is defined as "A charge fixed by law for services of public officers or for use of a privilege under control of government." (Black's Law Dictionary, Fourth Edition, Page 740). A tax on the other hand, is "A pecuniary burden laid upon individuals or property to support the government" (Black's Law Dictionary, Fourth Edition, Page 1628).

It is our opinion that the fee assessed by the Passenger Tramway Safety Board is not a tax and that, therefore, the Town of Millinocket must pay said fee in making its application for a license to operate a ski tow.

THOMAS W. TAVENNER

Assistant Attorney General

February 21, 1962

To: Laurence F. Decker, Chief Engineer, Inland Fisheries and Game

Re: N. E. Tel. & Tel. Co. request for a Right of Way to cross State property.

We have your request of February 19, 1962, for an opinion as to what type of instrument should be executed in order to grant to the New England Telephone and Telegraph Company an easement over state-owned land in the Town of New Gloucester.

An easement is a right in the owner of one parcel of land to use the land of another for a specific purpose, *Black's Law Dictionary*, 4th ed., p. 599. Therefore, an easement is an interest in real property. The real property of the State of Maine can be transferred only by authority of the state legislature, R. S., c. 16, § 85. Therefore, the Department of Inland Fisheries and Game has no right to give to any person an easement over state property.

A license is "Permission or authority to do a particular act or series of acts on land of another without possessing any estate or interest therein." *Black's Law*