

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

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*

Dictionary, 4th ed., p. 1068. As a license does not in any way convey the lands of the state, it can be granted by a state department without specific legislative approval. We, therefore, recommend that the Department of Inland Fisheries and Game execute a license giving the aforementioned company the right to perform the acts in question.

We are enclosing such a limited license for your approval.

THOMAS W. TAVENNER

Assistant Attorney General

February 21, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Contracts and Joint Committees Between Towns and Academies

This is in answer to your two questions relating to Section 105, Chapter 41, Revised Statutes of 1954.

"1. Has an academy the right to contract with the superintending school committee of more than one administrative unit to provide secondary school education?"

Answer: I find nothing in Section 105 of Chapter 41 which would prevent an academy to contract with the superintending school committees of more than one town for secondary education.

"2. If a town contracts with more than one administrative unit may a joint committee be formed with more than one town? If this is legally possible, would such joint committee be formed as a separate committee with each unit or a joint committee comprising all units and the trustees?"

Answer: I find nothing in Section 105, Chapter 41, which would prevent the formation of a joint committee consisting of the superintending school committee of Town A, the superintending school committee of Town B and an equal number of trustees of the academy.

RICHARD A. FOLEY

Assistant Attorney General

February 23, 1962

To: Earle R. Hayes, Executive Secretary of Maine State Retirement System

Re: Status under State Retirement System of Retired State Police Officer

Reference is made to your memorandum of February 13, 1962, asking about the status of state police officers who might retire under the provisions of Chapter 15, section 22, and then seek employment with the State or as a public school teacher. It is assumed you are concerned with the status of such persons relative to retirement rights under the Maine State Retirement System.

Chapter 63-A, section 3, I, provides:

"The membership of the retirement system shall be as set forth following:

I. Any person who shall become an *employee* shall become a member of the retirement system as a condition of employment and shall not

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

I, Roland Cobb, Commissioner of Inland Fisheries and Game, do hereby grant to the New England Telephone and Telegraph Company a license to construct, place, maintain, and remove underground telephone cables over and through land in the Town of New Gloucester, Maine. This license shall be limited to a strip of land approximately 25 feet wide and extending a distance of approximately 245 feet over land purchased by the State of Maine from one Fred B. Blake on or about July 25, 1936, the exact location of said strip to be determined by the aforementioned company. This license shall expire on _____, 19____, unless sooner relinquished by the licensee.

STATE OF MAINE

By _____
 Roland Cobb
 Commissioner, Inland Fisheries & Game

NEW ENGLAND TELEPHONE AND TELEGRAPH CO.

By _____
 (official position)

(date)