

MAINE STATE LEGISLATURE

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January 10, 1966

Carl A. Brooks, Utility Engineer, R/W
George C. West, Deputy Attorney General

State Highway Commission
Attorney General

Title 23 M.R.S.A. Sections 154 and 255

No. 5

Facts: None

Question: Is Title 23 M.R.S.A. Section 154 or Title 23 M.R.S.A. Section 255 applicable to utility installation in or under tidewater?

Answer: Yes, However, qualified as stated below.

Opinion: The term "tidewater" would cover both the area between high water mark and low water mark and below low water mark. The utility may acquire a property right in the land located between high water and low water mark and under section 154 would be entitled to compensation for the State's acquisition of such property right. Any new utility located in the ground below low water would be there by virtue of a franchise permit or license issued by the legislature of this State and the Corps of Engineers acting on behalf of the appropriate federal agency. Any relocation of a facility located below low water mark would be compensated for under section 154, for you will note that the language in 154 is "Where the condemnation involves the taking of established rights and facilities owned by a public utility and located outside of an established highway right-of-way----". It is the opinion of this office that the permit or license obtained from the legislative body or the Corps of Engineers would be an established right as provided in section 154.

GEORGE C. WEST, Deputy Attorney General

GCW:bbm