

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

January 20, 1967  
State Parks and Recreation

Lawrence Stuart, Director

Allagash Wilderness Waterway – Boundaries of Restricted Zone prior to and after survey.

*FACTS:*

By memorandum dated January 13, 1967 you have posed the following questions concerning timber cutting within 400 feet and 800 feet of the bounds of the watercourse within the Allagash Wilderness Waterway.

*QUESTIONS:*

“Until such time as the State takes title in fee to the restricted zone, does the landowner have the right to cut wood,

- (a) from shoreline back 400 feet?
- (b) between 400 and 800 feet?”

*ANSWERS:*

See opinion.

*OPINION:*

Section 3 of P. L. 1966, c. 496 (An Act Creating the Allagash Wilderness Waterway) provides:

“Sec. 3. Contingent upon authorization and ratification of bond issue. This Act with the exception of section 4, shall not become effective unless the Legislature adopting this Act shall have by legislation authorized a bond issue in the amount of \$1,500,000 to develop the maximum wilderness character of the Allagash Waterway, and unless and until the People of the State of Maine shall have ratified the issuance of bonds as set forth in such Act.”

Thus, the Act establishing the Allagash Wilderness Waterway became effective December 28, 1966 the effective date of the ratification of the issuance of the bonds by the people of the State of Maine. Therefore, on December 28, 1966 a restricted zone within the Allagash Wilderness Waterway also was established. *12 M.R.S.A. § 663, subsection 3.*

The exact limits of the restricted zone were not determinable on December 28, 1966. The Legislature of the State of Maine recognized that the exact limits of the restricted zone would not be determinable until the passage of a period of time from the effective date of the Act as the Legislature specifically provided that:

“ . . . the boundaries of the restricted zone shall be determined by the Commission *after survey*. . . . ” (Emphasis supplied) *12 M.R.S.A. § 663, subsection 3.*

The Legislature did specifically provide, however, that the restricted zone must be a minimum of 400 feet in width from the bounds of the watercourse and could be as much as 800 feet in width from the bounds of the watercourse. The determinative factor as to the exact limits is the preservation, protection and development of the maximum

wilderness character of the watercourse. *12 M.R.S.A. § 663, subsection 3.*

Thus, we know that all areas within 400 feet from the bounds of the watercourse must be within the restricted zone. As to the area between 400 feet and 800 feet from the bounds of the watercourse we know that this area would also be within the restricted zone if the required survey provides the commission with information that the additional area would be needed to preserve, protect and develop the maximum wilderness character of the watercourse. Within the 400 foot limit there can be no timber harvesting operations other than those operations specifically directed by the commission for the purpose of maintaining healthy forest conditions or for the purpose of correcting situations arising from natural disasters. *12 M.R.S.A. § 670, subsection 1 (A-B).*

Within any or all of the area between 400 feet of the bounds of the watercourse and the outer boundaries of the waterway, the commission must require that a management plan be submitted to the commission before any cutting is allowed. This management plan and its provisions are specifically provided for by 12 M.R.S.A. § 670, subsection 2 (A) 1-4.

Upon receipt of the management plan the commission should immediately survey the area in question to determine whether or not an area in excess of the 400 foot minimum and not exceeding 800 feet from the bounds of the watercourse is necessary to preserve, protect and develop the maximum wilderness character of the watercourse. If a determination is made that a portion of the additional area not exceeding 800 feet from the bounds of the watercourse is needed to preserve, protect and develop the maximum wilderness character of the watercourse, the commission must refuse to permit any cutting within that additional area other than that permitted in the restricted zone.

JEROME S. MATUS  
Assistant Attorney General

February 1, 1967  
Forestry

Austin H. Wilkins, Commissioner

You have asked if the Forest Commissioner has, in effect, the right to lay out the public lots in the unorganized territory so that they will be included in the 400 to 800 foot boundary of the Allagash Wilderness Waterway.

The operative law is Title 30, Chapter 233, § 4151:

“In every township there shall be reserved, as the Legislature may direct, 1,000 acres of land, and at the same rate in all tracts less than a township, for the exclusive benefit of such township or tract, to average in quality, situation and value as to timber and minerals with the other lands therein. In townships or tracts sold and not incorporated, the public reserved lots may be selected and located by the Forest Commissioner and the proprietors, by a written agreement, describing the reserved lands by metes and bounds, signed by said parties and recorded in the commissioner’s office. The plan or outline of the lands so selected shall be entered on the plan of the township or tract in the commissioner’s office, which shall be a sufficient location thereof.”

While the Forest Commissioner is empowered to lay out certain reserved public lots by this section, he is clearly bound by the requirements, “... *to average in quality, situation and value as to timber and minerals with the other lands therein . . .*” (Emphasis supplied)