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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

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)

Anyone familiar with water courses, such as the Allagash, knows that the shore line for long distances may be nothing but flowage grass, swamp or other land of such character as to be economically valueless. Without reasonable knowledge of mineral formations including ores, sand and gravel in each township, the Forest Commissioner could be derelict in his duty if he simply laid off the public lots in strips 400 to 800 feet wide along water courses.

In my opinion, the Forest Commissioner not only ought not, but must not, ignore the quality, situation and value of the land when laying out public lots. This is particularly important when one remembers that the timber and grass rights were long ago sold to the land owners.

JAMES S. ERWIN
Attorney General

February 15, 1967

Honorable E. Perrin Edmunds
Chairman, Executive Council
State House
Augusta, Maine

Dear Mr. Edmunds:

I acknowledge receipt of your letter bearing today's date requesting an answer to the question posed therein.

You asked:

> "Can the Governor and Council authorize the issuance of bonds in anticipation of their ultimate need for the purpose of reinvesting the proceeds of those bonds at a higher rate of interest to earn money for the General Fund?"

The answer must be in the negative and will need a certain amount of explanation. By an Opinion of the Justices, 139 Maine 416, the Supreme Judicial Court in 1943 ruled on this same question. The Court said among other things:

> "Unless otherwise explicitly prohibited, the legislature has the power to authorize the refunding of valid outstanding obligations of the State, *but the issuance of bonds for that purpose an unreasonable length of time before the maturity of the indebtedness for the avowed and inseparable purpose of establishing an interim investment fund for gain and profit . . . will create a new debt or liability on behalf of the State in violation of the provisions of Section 14 of Article IX of the Constitution of Maine as amended.*" (Emphasis supplied.)

I think that this Opinion of the Justices clearly prohibits the procedure outlined in your question. The operative words are "an unreasonable time." I will not attempt to define a standard of reasonableness, but it would seem very clear to me that borrowing money by issuing authorized bonds in anticipation of a future need at a time not yet clearly determinable, would be unreasonable and the investing of the proceeds of such an issue at a higher rate of interest would fall under the ban of the Opinion of the Justices.

The standard of a reasonable time is inexact enough to create doubt in all but the clearest of circumstances. It is my opinion that whenever such a doubt may exist, the problem should be avoided by not borrowing the money. This does not mean that State funds may not be temporarily invested in short-term U. S. Government obligations. In fact, there could well be times when an obligation could exist so to invest idle funds. The ban is clearly upon the borrowing in anticipation of need for the purpose of reinvesting at a profit.