

# MAINE STATE LEGISLATURE

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July 28, 1967

Robert R. Washburn, Commissioner

Veterans Services

Robert G. Fuller, Jr., Assistant

Attorney General

Statutes regulating establishment of Maine Veterans Memorial Cemetery.

FACTS:

The Commissioner of Veterans' Services has been directed to acquire the fee simple title to at least 50 acres of real estate near the population center of the State of Maine for use as Maine Veterans' Memorial Cemetery. Me. Rev. Stat. Ann., Tit. 37, § 21 (Supp. 1966). The Commissioner states that he has acquired an option to purchase about 55 acres of land in northwestern Augusta; however, dwelling houses and presumably wells of adjacent property owners are within 25 rods of the boundaries of the proposed site.

QUESTIONS:

The Commissioner makes general inquiry concerning the statutes applicable to Maine Veterans' Memorial Cemetery and, in view of the nearness to the proposed site of dwelling houses and presumably wells, he makes specific inquiry as to the applicability of Me. Rev. Stat. Ann., Tit. 13, § 1181 (1964).

OPINION:

To answer the specific inquiry first, it appears from the statutory language that Me. Rev. Stat. Ann., Tit. 13, § 1181 (1964) is applicable to Maine Veterans' Memorial Cemetery, even though the thrust of its restrictive language appears to be directed against the landowner who proposes to sell to the Commissioner. The relevant portion of the above-cited statute reads:

"Nor shall any person . . . establish (or) locate . . . any cemetery or burying ground by selling or otherwise disposing of land so that the limits thereof shall be extended nearer any improved land used for recreational purposes or dwelling house or well than 25 rods against the written protest of the owner."

The effect of this language is unclear, but its apparent intent is to allow an affected abutter to bar establishment or enlargement of a cemetery by making written protest to any entity intending to sell land to a cemetery organization.<sup>1</sup>

The serious problem raised by the statutory language is that, should the Commissioner take a deed without determining that all abutting landowners, whose dwelling or wells are within 25 rods of the boundaries, consent to the sale, he might later be faced with a complaint brought by such an abutter, seeking injunctive relief to bar establishment of the cemetery. I suggest that the Commissioner require the seller to obtain written consent to the sale from all affected abutters.

Attention is further directed to Me. Rev. Stat. Ann., Title 13, § 1303 (1964), which provides:

"Every . . . cemetery (hereafter established) shall be located in accordance with statutes already in force and effect, and only after consent for such location has been obtained from the municipality or other political subdivision where the same is proposed to be located, as well as from the Bureau of Health."

I find no language in Me. Rev. Stat. Ann., Tit. 37, ch. 2 (Supp. 1966) which purports to exempt the Commissioner from compliance with this general requirement applicable to all cemeteries sought to be established.

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Robert G. Fuller, Jr.  
Assistant Attorney General

#1. It is difficult to see, though, how a seller "establish(es), locate(s) or enlarge(s)" a cemetery merely by the act of selling land to a cemetery organization, even with knowledge that it is intended for cemetery use.

RGFJr./eh