

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

We therefore conclude on the authority of *U.S. of America and Bottomley vs. Arlington County, Commonwealth of Virginia*, supra and section 514 of the Soldiers and Sailors Civil Relief Act that a person serving in the Armed Forces of the United States, who is not present in Maine in compliance with military orders, who is not a domiciliary or resident of Maine, but whose motor vehicle is in Maine, may register his motor vehicle in Maine without being required to pay the Maine motor vehicle excise tax levied by Title 36 M.R.S.A. §1482 et seq.

JON R. DOYLE  
Assistant Attorney General

April 10, 1968  
Education

Kermit S. Nickerson, Deputy Comm.

Condemnation of Flowage Rights at Lake Auburn

*SYLLABUS:*

A Water District may not obtain flowage rights to State lands by eminent domain.

*FACTS:*

In your memorandum of April 1 you state that the Auburn Water District has filed with the Androscoggin County Commissioners and Registry of Deeds a taking of certain flowage rights on land of the State of Maine occupied by Central Maine Vocational Technical Institute at Lake Auburn.

*QUESTION:*

You have asked for our opinion as to the legality of this taking.

*OPINION:*

As sovereign power, the right of eminent domain belongs to the State alone, 29 A C.J.S. "Eminent Domain" § 2, and this right cannot be surrendered, alienated or contracted away; 29 A C.J.S. "Eminent Domain" § 4. By P. & S.L. 1923, Ch. 60, §§ 7, 8 and 9, the Legislature conferred upon the Auburn Water District the power of eminent domain for certain purposes. However, it did not, and could not, confer that power as against the State. In our opinion subject taking was invalid.

*RECOMMENDATION:*

The proper way for the Water District to obtain these flowage rights is by grant of the Legislature. You should return the check to the Water District with an appropriate explanation.

LEON V. WALKER, JR.  
Assistant Attorney General