

MAINE STATE LEGISLATURE

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April 29, 1968

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Parks and Recreation
Attorney General

Restricted Zone Allagash Wilderness Waterway

SYLLABUS:

The phrase "within the bounds of the watercourse" requires that a parcel of land be completely surrounded by the waters of the watercourse.

FACTS:

You have furnished this department with maps showing bounds established at 400 feet from the Allagash Watercourse; at 800 feet from the Allagash Watercourse; and the proposed bound of the restricted zone, which bound falls within the 400-foot bound and the 800-foot bound. A portion of the proposed bound of the restricted zone in Township 7 Range 12 completely isolates a parcel of land within Township 7 Range 12, i.e., the isolated parcel is bounded on all sides but one by waters of the watercourse and on that one side the parcel is bounded by the proposed restricted zone.

The isolated parcel, in turn, is large enough to have a set of bounds also, as it is wider and longer than 1600 feet. It appears desirable to include the parcel within the ownership of the State in the Allagash Wilderness Waterway.

QUESTION:

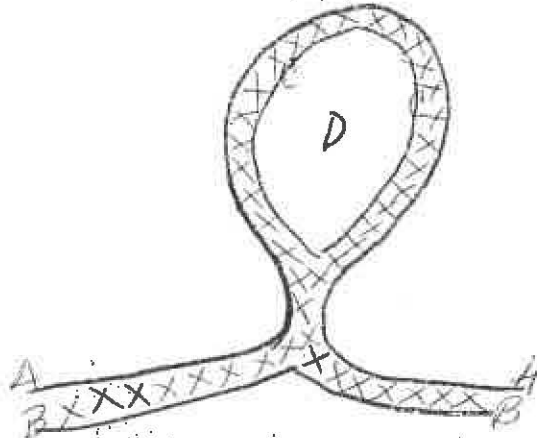
Can the Maine State Park and Recreation Commission acquire this isolated parcel within the provisions of 12 M.R.S.A. § 662, subsection 7 by virtue of the phrase, ". . . and includes all land area within the bounds of the watercourse." ?

ANSWER:

No.

OPINION:

To illustrate the problem, a simple diagram follows:



Line A is a bound of the watercourse. Line B and Line C are bounds of the restricted zone. The cross-hatched area is the proposed restricted zone. Area D is the isolated parcel.

The Act creating the Allagash Wilderness Waterway (P.L. 1965, Ch. 496) defines the phrase "the bounds of the watercourse" as ". . . the high water marks of the shore lines of the lakes and ponds, intervening and connecting waters and the high water marks of either bank of the streams and rivers of the watercourse." 12 M.R.S.A. § 662, subsection 9. The Act further establishes a restricted zone as being "an area defined in section 662, § 7 . . ." 12 M.R.S.A. § 663, subsection 3.

12 M.R.S.A. § 662, subsection 7, reads as follows:

"Restricted zone. 'Restricted zone' means a land area of from 400 feet to 800 feet extending in all directions from the bounds of the watercourse, and includes all land areas within the bounds of the watercourse. The restricted zone shall also include all additional areas that may be added by mutual agreement between the commission and a private property owner." (Emphasis supplied)

When one replaces the phrase "the bounds of the watercourse" with its definition, it is clear that area D is not "within the bounds of the watercourse." The term "within" is defined as

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"in the limits or compass of." Bouvier's Law Dictionary Unabridged, Rawle's Third Revision, Volumes 2, Page 3474. Also see Webster's New International Dictionary, Second Edition Unabridged, Page 2941.

For a land area to be within the bounds of the watercourse, the land area would have to be an island completely surrounded by water, that is, the watercourse as defined by 12 M.R.S.A. § 662, subsection 10, and not partially surrounded by the watercourse as in the instant fact situation.

Area D can, of course, be included as a portion of the restricted zone by mutual agreement between the Commission and the owner of area D. 12 M.R.S.A. § 662, subsection 7. Without such an agreement, the Commission cannot acquire area D by eminent domain. The authority of the Commission to use eminent domain is limited to the restricted zone. 12 M.R.S.A. § 667. However, the Commission can acquire area D by purchase, lease or gift. 12 M.R.S.A. § 667.

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