

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

Professor Donaldson Koons, Chairman

Reclassification hearings

SYLLABUS:

38 M.R.S.A. § 365 (1964) evinces legislative intent that the Water and Air Environmental Improvement Commission hold a public hearing in the area affected by a proposed reclassification of waters prior to recommending such reclassification to the Legislature.

The Legislature being the final authority on reclassifications, it follows that it may enact legislation reclassifying waters without regard to whether the WAEIC has held the public hearing contemplated by 38 M.R.S.A. § 365 (1964) in connection therewith.

FACTS:

The Water and Air Environmental Improvement Commission proposes to submit, to the current session of the Legislature, bills to reclassify certain waters in the State. No public hearings have been held in connection with these proposed reclassifications.

QUESTIONS:

1. Should the Water and Air Environmental Improvement Commission recommend reclassification of waters to the Legislature without first holding the public hearing contemplated by 38 M.R.S.A. § 365 (1964) in connection with such proposed reclassification?

2. Where no such public hearings have been held by the Water and Air Environmental Improvement Commission with respect to a proposed reclassification of waters, is such reclassification, if enacted into law on the recommendation of the Water and Air Environmental Improvement Commission, nonetheless valid?

ANSWERS:

1. No.
2. Yes.

OPINION:

1. 38 M.R.S.A. § 365 (1964) does not in unequivocal terms state that the Commission must hold a public hearing in the affected area before it may submit a reclassification proposal to the Legislature. Nonetheless, in our opinion, when read as a whole this section evinces a clear legislative intent that such a hearing should be held. Indeed, it would seem that such a hearing is desirable from a policy standpoint (given the vagueness of the statute), since it tends to provide the Commission with information concerning existing and proposed uses and the sense of the community as to what standard the waters under consideration should attain. Such information would appear to be useful to the Commission in making its judgments on reclassification, adds weight

to such judgments, and is, if preserved in a record, useful to the Legislature in determining whether to adopt the Commission's proposal.

2. It should be borne in mind that the Legislature makes the final decisions on reclassifications. 38 M.R.S.A. § 361 (Supp. 1968). The WAEIC by statute, serves the function of advising and recommending to the Legislature with respect to reclassifications. *Ibid.* But it is the Legislature which decides what the classifications shall be, and it is not bound by the Commission's recommendations or advice. A reclassification statute, therefore, is not invalid because the WAEIC did not hold the public hearing.

ROBERT G. FULLER, JR.
Assistant Attorney General

March 18, 1969

To: Thomas S. Squires, Asst. Director, Sales Tax, Bureau of Taxation

Subject: Sale of "Hulls"

SYLLABUS:

A HULL IS NOT A BOAT FOR THE PURPOSES OF 36 M.R.S.A. § 1760 (25); FURTHER, THE SALE OF A HULL TO A NONRESIDENT FOR COMPLETION INTO A BOAT AT A SECOND MAINE BOATYARD IS NOT EXEMPT FROM THE MAINE SALES AND USE TAX LAW.

FACTS:

Taxpayer manufactures and sells marine hulls 35 feet or longer in length, out of a new form of cement. After completion, the hulls are shipped, according to the buyer's directions, to boatyards, either in state or out of state, where superstructures, cabins, wiring, engines, etc., are added.

The hull is the frame or body of a boat exclusive of superstructure, cabin, engine, masts, wiring, rigging, etc. The reference hulls, without these additions, have little practical use.

QUESTIONS:

1. Is a hull to be considered a boat for the purposes of 36 M.R.S.A. § 1760 (25)?
2. If such a hull is sold to a nonresident and is completed into a boat by a second Maine boatyard is the sale exempt from Maine Sales and Use Tax Law?

ANSWERS:

1. A hull is not a boat within the meaning of 36 M.R.S.A. § 1760 (25).
2. The sale of a hull to a nonresident for completion into a boat at a second Maine boatyard is not exempt from the Maine Sales and Use Tax Law.

REASONS:

1. Case law on what constitutes a hull or boat is sparse. Those decisions which do