

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

enforcement of their laws and is required by law to publish the names of those whose licenses were suspended or revoked in the year preceeding the publishing of the list of the licensees. 32 M.R.S.A. § 4057. Inasmuch as pleadings, decisions and docket entries are public, the Commission may publish them. The Commission, of course, must present the information fairly.

In the event that the Commission wishes to publish such information, it should publish all the pleadings and the decision, not merely excerpts therefrom; or in the alternative, publish only the decision.

GARTH K. CHANDLER
Assistant Attorney General

May 7, 1969
Parks & Recreation

Lawrence Stuart, Director

Disposition of Buildings in the Restricted Zone of the Allagash Wilderness Waterway

SYLLABUS:

Determination of what structures are to remain in the restricted zone of the Allagash Wilderness Waterway lies with the State Park and Recreation Commission and there is no necessity for Governor and Executive Council approval for the tearing down and removal of structures within the restricted zone.

FACTS:

The Act creating Allagash Wilderness Waterway provides, inter alia, that the State Park and Recreation Commission is required to remove all existing structures within the restricted zone of the waterway not necessary to the operation of the waterway.

QUESTION:

Is it necessary to obtain Governor and Executive Council approval to tear down and remove any buildings or other structures which are not needed in the operation of the waterway?

ANSWER:

No.

OPINION:

12 M.R.S.A. § 666, subsection 1 reads as follows:

“1. Structures. No new structures or expansion of existing structures shall be permitted within the restricted zone, except those structures essential to state service agencies, those structures determined by the commission to be essential in maintaining water level controls, and such temporary structures as may be determined by the commission to be necessary for watercourse crossing and access. *All existing structures are to be removed except those deemed necessary by the commission to carry out the intent of this chapter.*” (Emphasis supplied.)

Thus, an express legislative mandate has been given to remove all existing structures except those necessary to carry out the intent of the chapter creating the Allagash Wilderness Waterway. If the legislature desired the State Park and Recreation Commission to receive prior Governor and Executive Council approval before removing a structure within the restricted zone of the waterway, the legislature would have made a statutory proviso to that effect. There is no such proviso. To the contrary, discretion is lodged with the State Park and Recreation Commission to determine what structures are necessary to carry out the intent of the legislature in creating the Allagash Wilderness Waterway.

JEROME S. MATUS
Assistant Attorney General

May 12, 1969
Bureau of Mental Health

William E. Schumacher, M.D., Director

Liability of State of Maine for Medical Expenses Incurred with Regard to Treatment of State Hospital Patient for Self-inflicted Gunshot Wound Occurring at Patient's Parental Residence.

SYLLABUS:

The State is immune from suit for the recovery of medical expenses incurred with respect to the treatment of a state hospital patient for a self-inflicted gunshot wound occurring away from the State Hospital at the patient's parental home. Action of the Legislature would be necessary to permit such suit. Absent negligence in permitting the release of a State Hospital patient to her parental home the State cannot be held liable for medical expenses incurred with respect to treatment of such patient for a self-inflicted gunshot wound occurring away from the State Hospital at the home of her parents.

FACTS:

The patient in question was admitted to the State Hospital in May, 1961. She was divorced from her husband in 1963, his responsibility for support of the patient being limited to \$1.00 per month. From the date of admission until 20 November 1968, the patient had on frequent occasions been released from the State Hospital to reside temporarily with her parents, one such occasion occurred in June of 1968. In October 1968, the mother of the patient included a comment in a personal letter to a social worker of the hospital, addressed to the social worker's personal address, relative to the patient during the June visit having been found with the kitchen doors closed and the range gas jets on. The parents immediately returned the patient to the State Hospital. No other comment was ever made with respect to this alleged incident and it was not brought to the attention of any physician of the State Hospital until 7 December 1968. The medical records at the institution show no indication of there having been suicidal tendencies manifested by this patient.

On 20 November 1968, this patient was transported to her parental home, the visit having previously been arranged with her parents with the approval of the attending State Hospital physician. On 25 November 1968, the patient shot herself in the