

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

*QUESTION:*

Does this law mean that an Indian, on reservation lands, may take a deer, sell it, and use the money to purchase food or clothing?

*ANSWER:*

No.

*OPINION:*

The answer to this question depends upon the meaning of the word "sustenance" in the context of the statute, having in mind the intent of the Legislature.

"Sustenance" is defined in the New Standard Dictionary as follows:

"1. The act or process of sustaining; especially, maintenance of life or health; subsistence.

2. That which sustains; especially, that which supports life; food; as, a day's sustenance."

In Webster's International Dictionary (2nd Ed.) it is defined as:

"1. Means of support, maintenance or subsistence; a living; now, more often, food; provisions; also, nourishment, as to wring a scanty sustenance from the soil; . . . ."

In *Justice v. State* (Ga. 1902) 42 S.E. 1013, the only decided case defining "sustenance" which has been found, it was held that as used in a statute declaring that whoever shall "deprive of necessary sustenance shall be guilty of misdemeanor" it means "that necessary food and drink which is sufficient to support life and maintain health" and not to include medicine.

Giving consideration to these definitions, and to the fact that the right of Indians to take wild life for their own sustenance applies only on their own reservations, it is our opinion that it was not the intent of the Legislature to allow an Indian to sell such wild life and use the proceeds for buying food or clothing. The intent of the Legislature was to allow an Indian to take deer on his own reservation solely to feed himself and his family.

LEON V. WALKER, JR.  
Assistant Attorney General

August 14, 1969  
Park and Recreation Commission

Eugene P. Hart, Supervisor

Fee for copy of Lake Chart prepared under 38 M.R.S.A. § 323

*SYLLABUS:*

38 M.R.S.A. § 323 does not authorize the Director of the State Park and Recreation Commission to prepare and sell a navigational chart showing the navigational aids placed in a certain lake in accordance therewith, since there is no express statutory authority for charging a fee for such a publication.

*FACTS:*

The Division of Waterways, Park and Recreation Commission, has established marking systems on several lakes of the State, including Sebago Lake, and has prepared a navigational chart of Sebago as a service to the boating public. The nature of this type of publication, and its overall cost, precludes free distribution. A fee of \$.25 to cover the cost of printing and postage is proposed.

*QUESTION:*

Is 38 M.R.S.A. § 323 sufficient authority for charging a fee for this service?

*ANSWER:*

No.

*OPINION:*

A department of the State Government may not prepare and sell a publication to the public without express statutory authority to do so. See Attorney General Opinion dated July 18, 1968.

38 M.R.S.A. §323, as enacted by P.L., 1963, Ch. 367, provides that the Director of the Park and Recreation Commission may charge reasonable fees for the services provided in connection with boating facilities in the waters of the State. By P.L. 1965, Ch. 173, a new paragraph was added to § 323 providing that the Director may make rules for the uniform marking of the water areas of the State through placement of aids to navigation and regulatory markers.

The authority to make rules for such marking includes the authority to prepare and distribute such rules to the public. Nowhere in the statute, however, does there appear the authority to print and sell any publications, nor can any such authority be inferred. The "services" for which the Director is authorized to charge reasonable fees, as provided in the first paragraph of §323 would include launching ramps, parking sites and access roads as provided in § 321 and the navigational markers provided for in § 321 but not preparation of publications such as the proposed navigational chart.

LEON V. WALKER, JR.  
Assistant Attorney General

William A. Garside, Director

August 15, 1969  
Legislative Finance

*SYLLABUS:*

The setting of salaries of Legislative officers is a matter solely for the Legislature. Whether there is a repugnant conflict between a Senate Order and a Joint Order is a question of fact, not of law.

*FACTS:*

The Legislature has a number of employees. Some are employed by the House and some by the Senate. A Joint Order which reads: