

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

R. W. Macdonald, Chief Engineer

Storm Drainage

*SYLLABUS:*

Discharge of purely storm water drainage by a municipality into a water course does not require a license from the Water & Air Environmental Improvement Commission pursuant to 38 M.R.S.A. § 413. The Commission has no authority in this situation to take other action unless there is sufficient evidence of a classification violation to allow the Commission to make an order for enforcement under 38 M.R.S.A. § 451.

*FACTS:*

The Town of Sanford is contemplating discharging a considerable amount of purely storm water drainage into Great Work's Brook. The Water & Air Environmental Improvement Commission considers that since storm drainage contains a substantial amount of sediment there is a danger of pollution from this sediment as well as from bacterial accumulation from ground wash.

*QUESTION:*

Whether the Water & Air Environmental Improvement Commission has the authority under Maine law in this situation to: 1) require a license of the Town for this discharge; 2) take other action.

*ANSWER:*

- 1) No.
- 2) See Opinion.

*OPINION:*

38 M.R.S.A. § 413 relates to the standards necessary for requiring a license from the Water & Air Environmental Improvement Commission. Pertinent portions of 413 reads as follows:

*"No person, firm, corporation or municipality or agency thereof shall discharge into any stream, river, pond, lake or other body of water or watercourse of any tidal waters, whether classified or unclassified, any waste, refuse or effluent from any manufacturing, processing or industrial plant or establishment or any sewage so as to constitute a new source of pollution to said waters without first obtaining a license therefor from the commission. . . ." (Emphasis supplied)*

It does not appear that purely storm water drainage is ". . . waste, refuse or effluent from any manufacturing, processing or industrial plant or establishment or . . . sewage" so as to require that the municipality obtain a license from the Commission.

With respect to other action, it appears that the Commission cannot withhold approval of the plans for a system of the type proposed.

Paragraph 7 of 38 M.R.S.A. 361 reads in part as follows:

“The commission shall consult with and advise the authorities of municipalities, persons and businesses having, or about to have, systems of drainage or sewerage *except purely storm water systems*, as to the best methods of disposing of the drainage or sewage with reference to the existing and future needs of the municipality, other municipalities, persons or businesses which may be affected thereby.

. . . Municipalities and sewer districts shall submit to said commission for its advice and approval the plans and specifications for any proposed new system of drainage, sewage disposal or sewage treatment, *except purely storm water systems* and any alterations in existing facilities. . . .” (Emphasis supplied)

Under Paragraph 7, the Commission has no authority to consult and advise municipalities about systems of drainage or sewerage which are purely storm water systems. The same rule applies to submission of plans and specifications for proposed new systems.

The Commission is not barred from enforcement action if the situation develops to a point where there is sufficient evidence of a classification violation. In such case the Commission may make an appropriate order for enforcement under 38 M.R.S.A. § 451.

WARREN E. WINSLOW, JR.  
Assistant Attorney General

October 1, 1969  
Executive

Allen G. Pease, Administrative Asst.

#### SYLLABUS:

A Council Order for the purpose of expending funds must show on its face the source of the funds to be used.

#### FACTS:

On Tuesday, September 30, 1969, you telephoned and requested a written opinion answering a question relating to the purchase of an aircraft. The aircraft is for use of various state departments and the Governor. The matter was being considered by the Governor and Council at a special meeting that afternoon. The Council Order to be considered reads as follows:

“ORDERED, That the State Purchasing Agent be and hereby is authorized to accept the bid of Central Maine Flying Service, Inc., of Old Town, Maine, the low bidder, and to contract with the said firm in the net amount of \$76,900.00 for delivery of a new State Executive Aircraft, a 1969 Piper Navajo Airplane, effective October 1, 1969.

#### STATEMENT OF FACTS

“Section 12 of Title 6 of the M.R.S.A. states in part that ‘The Director shall have the care and supervision of such planes as may be owned by the State for the use of its departments and agencies and shall provide adequate hangar facilities and be responsible for the maintenance, repair, upkeep and operation of such planes, .....

“The present aircraft was originally acquired under the Federal Surplus Property Program in 1960, converted from military to civilian use, and has been in continuous operation since. The Director feels that it should be replaced at this