STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

October 24, 1969
Forestry

Austin H. Wilkins, Commissioner

Submarine cable in great pond – permit requirements

SYLLABUS:

Where the laying of a submarine cable in a great pond involves no dredging and disposal of dredged material, no permit is required under 12 M.R.S.A. § 514 (3) (B) (Supp. 1968). A public utility wishing to lay a submarine cable in a great pond must obtain an easement, permitting such use, from the legislature.

FACTS:

A public utility plans to lay a submarine cable beneath the waters of a great pond. It appears that the project involves no dredging and disposal of the dredged material. The utility has applied to the Forest Commissioner for the permit described in 12 M.R.S.A. § 514 (3) (B) (Supp. 1968).

QUESTION:

Is such a permit required?

ANSWER:

No.

OPINION:

The permit described in the reference statute allows

" . . . dredging in great ponds and for disposal of the materials thereby removed which are not classified as minerals under the mining law . . . "

Since such dredging and disposal are not contemplated as part of the cable project, no permit is required. However, the utility must obtain an easement from the state in order to lay the cable on the bottom of the great pond, since this land is the property of the state. Such easements have, in the past, been granted by the legislature. See, *e.g.*, Me. Private and Special Laws 1969, c. 49.

ROBERT G. FULLER, JR.
Assistant Attorney General

November 5, 1969
Soil & Water Conservation Comm.

Charles L. Boothby, Executive Director

Great Ponds

SYLLABUS:

Although the point has never been squarely decided in Maine, case law would appear to indicate that an artificially impounded body of water having a surface area in excess of 10 acres is not a "great pond" within the meaning of the Colonial Ordinance of 1641-47.

QUESTION:

Is an artificially impounded body of water having a surface area in extent of 10 acres a "great pond" within the meaning of the Colonial Ordinance of 1641-47?

ANSWER:

The cases indicate that it is not.

OPINION:

This question appears never to have been squarely presented to a court of last resort in either Maine or Massachusetts. However, there are *dicta* in both jurisdictions indicating that the term "great pond" means only a body of water whose surface area, in its *natural* state, exceeds 10 acres.

In *Commonwealth v. Tiffany*, 119 Mass. 300 (1876), the court stated:

> "But the term 'great pond', as used in the Body of Liberties, Art. 16, 25 Mass. Hist. Coll. 219; in the colony ordinance of 1647; Anc. chart, 148, 149; and in St. 1869, means a pond of a certain area created by the natural formation of the land at a particular place." 119 Mass. 300, 303.

In *Robinson v. White*, 42 Me. 209, (1856), the Maine court, in construing a deed description, appeared to distinguish between natural and artificial ponds in excess of ten acres for conveying purposes. Said the court:

> "Where land is bounded upon a lake or pond, if it is in its natural state, it would seem that the grant extended only to the water's edge. (Citation omitted)
>
> Where the pond is an artificial one, 'it would be natural to presume,' remarks SHAW, C.J. in *Waterman v. Johnson*, 13 Pick. 261, 'that a grant of land bounding upon such a pond, would extend to the thread of the stream upon which it is raised, unless the pond had been so long kept up to become permanent, and to have acquired another well defined boundary." 42 Me. 209, 218.

Whittlesey cites the *Tiffany* case and several Maine cases as authority for the statement " 'Great pond' means a pond of the area specified in the Ordinance, or subsequently otherwise defined by statute, and created by the natural formation of the land." Whittlesey, *Law of the Seashore, Tidewaters and Great Ponds*, 45. Only *Tiffany*, however, actually supports this statement.

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