STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

Public Higher Education (P. & S. 1967, Chapter 229) provided that "all the assets, tangible or intangible, real, personal and mixed [of the State colleges] are transferred and assigned to the university", and the Attorney General was empowered to effect such transfers.

2. As has been noted above, the Legislature declared the University to be an instrumentality and agency of the State for restricted purposes. As such, even though it is a separate entity, it is a "State governmental" agency, to whom the Secretary of State is authorized by 29 M.R.S.A. § 256, to issue registration certificates and plates without fee. It is noted that, in 1943, prior to the afore-mentioned declaration, it was determined in Opinion of Attorney General, March 17, 1943, that, since the University was not then such an instrumentality, the Secretary of State was not justified in issuing motor vehicle registrations without fee.

As to the liability of the University for payment of excise tax, we refer to 36 M.R.S.A. §1483, subsection 8. Undoubtedly the University enjoys excise tax exemption as a literary and scientific institution not taxable as to its real estate.

3. Since the University is an instrumentality and agency of the State for restricted purposes, there is no legal reason why its vehicles may not be included under the State's insurance contract. We have not given an unqualified "Yes" answer to your question however, since it is a matter for the insurance companies to decide whether to include in the insurance contract vehicles other than State owned. Very likely some companies would decline to accept such an inclusion. The University does maintain its own comprehensive fire and theft coverage, and insures occupants of its vehicles for medical payments coverage. But its vehicles are included in the State's public liability policy by special endorsement with stated limits of coverage.

LEON V. WALKER, JR.
Assistant Attorney General

October 16, 1970
Environmental Improvement Comm.

Henry Mann, Chemist

Augmented Water Flow for Dilution Purposes.

SYLLABUS:

The Environmental Improvement Commission in issuing a waste discharge license is only determining that the proposed discharge will not lower the classification of any receiving body of water. The Commission's decision is not an adjudication of the rights of various riparian owners.

FACTS:

An application for a waste discharge license had previously been turned down, since it was determined by the Environmental Improvement Commission that the flow of the receiving waters would not be constant enough to accommodate such a load of waste. Now, that applicant proposes to dilute his waste by artificially augmenting the stream flow. This augmentation will be achieved by adding uncontaminated water from the local water district to the prior proposed waste flow.

QUESTIONS:

1. If the Environmental Improvement Commission grants a license to the applicant, will it be interfering with the rights of downstream riparian owners?
2. Should the Environmental Improvement Commission append a "riparian rights disclaimer statement" to any license issued in this case?

ANSWERS:

1. No.
2. No.

REASONING:

The questions posed may be disposed of without a direct answer by applying the rationale of the Maine Supreme Judicial Court as stated in *Stanton v. Board of Trustees of St. Joseph's College,* 233 A.2d 718 (1967) and 254 A.2d 597 (1969). The facts in the Stanton cases appear to be similar to the facts presented. In those cases, the Environmental Improvement Commission determined that a proposed discharge would meet the statutory criteria assigned to the receiving waters, and issued a license. Downstream riparian owners on a non-navigable stream successfully enjoined this licensed discharge as an interference with their riparian rights.

In rendering its decision, the Law Court specifically discussed the powers of the then Water Improvement Commission. The Court stated that it was the statutory authority of the Commission to determine only whether any proposed discharge would lower the classification of the receiving body of water and hence was in the *public* interest. If such criteria will be met, a license *must* issue. However, the Court went on to state that the Commission:

> ". . . was empowered only to determine whether the discharge of the defendant's sewage effluent into the brook would be against the public interest." *Stanton,* 233 A.2d 718, 724-725 (1967).

Thus, the Environmental Improvement Commission does not have the authority to declare the *private* rights of a riparian owner vis-a-vis upstream owners. Nor does the granting or denial of a license in any way act as an adjudication of the respective rights of such riparian owners. In the instant case, should the Commission deny a license because of this "riparian rights doctrine", the Commission would be going beyond its statutory mandate to insure that the effluent meets certain water quality criteria. Such a decision would be then open to challenge by the rejected applicant.

Since we have disposed of the questions in the above fashion, we need not now go into the question of whether in fact the proposed discharge will be detrimental to downstream riparian owners. Furthermore, since this issue cannot be considered by the Commission, there need be no "disclaimer" in any license issued. Such a "disclaimer" would be meaningless.

JOHN M. R. PATERSON
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October 16, 1970

Industrial Building Authority

Roderic C. O'Connor, Manager

Maine Industrial Building Authority Aid to Existing Firms