

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

constructing, maintaining and operating an all-season airport serving the Upper St. John River Valley in Aroostook County. (See Agreement annexed, page 1.)

“2. State aid.

“The director with the consent of the Governor and Council may from the amount appropriated to aid in the construction, extension and improvement of state, municipal or county airports, known as the ‘Airport Construction Fund’ grant to cities, towns or counties separately and *cities and towns jointly with one another* or with counties an amount not to exceed 50% of the total cost of the construction, extension or improvement of such airport or airports.” (Emphasis supplied.)

JOHN W. BENOIT, JR.  
Deputy Attorney General

May 6, 1971

Fred E. Holt, Deputy Commissioner

Extent of Forest Commissioner’s Jurisdiction under 12 M.R.S.A. § 514

*SYLLABUS:*

The jurisdiction of the Forest Commissioner over naturally occurring great ponds with artificially raised waters begins at the artificial mean low-water mark.

*FACTS:*

Pond P was, in its natural state, a “great pond” within the meaning of the Colonial Ordinance of 1641–47. Approximately a century ago a dam was constructed at the outlet, raising the water level. Pond P presently has a surface area in excess of 30 acres and its shore is owned by several littoral proprietors.

One of these proprietors wishes to dredge in a bog which is above the *natural* low-water mark of Pond P and which, but for the dam, would be dry land. However, because of the impoundment, the bog is flowed by the waters of Pond P for a portion of each year.

*QUESTION:*

Does the littoral proprietor need a permit to dredge the bog?

*ANSWER:*

To the extent that the bog is below the artificial mean low-water mark of Pond P, yes.

*OPINION:*

12 M.R.S.A. § 514 invests the Forest Commissioner with regulatory authority over “lands specified herein under the direction of the Governor and Council and on such terms as they direct.” Subsection 3, paragraph B of section 514 empowers the

Commissioner to grant permits to dredge in "great ponds." Paragraph C of the same section broadens the definition of the term "great pond" beyond the Colonial Ordinance definition to include a body of water "artificially formed or increased from natural size which has a surface area in excess of 30 acres at all times, the shore of which is owned by 2 or more persons, firms or corporations."

It is undisputed that Pond P is a "great pond" as defined by paragraph C. The question presented is whether the bog is part of the pond for purposes of the Forest Commissioner's jurisdiction. The State's title to the bed of a natural great pond begins at the natural low-water mark. *Fernald v. Knox Woolen Co.*, 82 Me. 48 (1889). We consider it reasonable to assume that the Legislature, in enacting section 514, intended the regulatory authority of the Forest Commissioner to commence at the artificial mean low-water mark of artificially increased great ponds.

Accordingly, we are of the opinion that on the facts presented the Forest Commissioner may grant a permit to dredge in such portion of the bog as lies below artificial mean low-water mark of Pond P. The portion of the bog above artificial mean low-water mark is not within the sphere of the Commissioner's jurisdiction.

ROBERT G. FULLER, JR.  
Assistant Attorney General

June 1, 1971  
Education

Carroll R. McGary, Commissioner

Providing Educational Opportunities for Physically Handicapped or Exceptional Children "within practical limits".

We acknowledge receipt of your inter-departmental memorandum dated April 29, 1971.

*SYLLABUS:*

The phrase, "within practical limits", as used in the statutes respecting educational opportunities for physically handicapped or exceptional children, means the providing of reasonable or feasible special education by administrative units, as determined by the State Board of Education.

*FACTS:*

Legislation was presented at the present session of the Legislature intending to require public school education for physically handicapped or exceptional children. (L.D. No. 896: AN ACT to Require Public School Education of Handicapped Children). The reference legislation has been withdrawn.

You request legal advice defining the extent of your authority under present statutes respecting educational opportunities for physically handicapped or exceptional children. Your memo quotes statutory language appearing in 20 M.R.S.A. §3111 and §3116 specifically involving such special education as well as language in 20 M.R.S.A. §101, 1 and 7 reciting certain of the general duties of the Commissioner of Education.