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August 18, 1971

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**Fire permission requirements in Maine Forestry District**

**SYLLABUS:**

The amendment to 12 M.R.S.A. § 1402 enacted by Me. Public Laws 1971, c. 179 has no effect upon the requirement in Section 1401 that permission to kindle fires on land of another must be obtained from the landowner.

**FACTS:**

12 M.R.S.A. § 1401, as amended by Me. Public Laws 1965, c. 226, § 45 reads as follows (the last sentence of the section is immaterial for purposes of this opinion and has been omitted):

"No person shall kindle or use fires on land of another without permission of the owner, except at public camp sites and lunch grounds maintained or authorized by the Forestry Department, state parks, and state highway picnic areas, or when the ground is covered with snow. Such fires include the use of sterno, gasoline, charcoal or other fuel fires in or out of tents and collapsible shelters."

The following section, 12 M.R.S.A. § 1402, provides that the Forest Commissioner may issue permits for out-of-doors fires "except in areas where the majority ownerships thereof have withdrawn permission in writing to the Commissioner." This section was amended by Me. Public Laws 1971, c. 179, (effective September 23, 1971) which exempts portable stoves fueled by propane gas, gasoline or sterno from the purview of the section.

12 M.R.S.A. § 1403 provides criminal penalties for violation of sections 1401 and 1402.

**QUESTION:**

Assume that a forest ranger discovers a person camping in the Maine Forestry District on land of another which is not an exempted area under 12 M.R.S.A. § 1401; that such person has

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kindled a fire fueled by propane gas, gasoline or sterno; and further, that such person has no permission from the landowner. Is such person liable to the criminal penalties under 12 M.R.S.A. § 1403?

ANSWER:

Yes.

OPINION:

The amendment to 12 M.R.S.A. § 1402 enacted by the Me. Public Laws 1971, c. 179 has no effect upon the requirement in section 1401 that permission to kindle fires on land of another must be obtained from the landowner. Section 1402, in effect, designates the Forest Commissioner as the landowner's agent for the purpose of issuing fire permits. The amendment prohibits him from acting as such agent with respect to propane, gasoline and sterno stoves. Thus, the landowner, not the Forest Commissioner, is the person from whom permission to kindle such fires should be obtained. Absent such permission, the kindler is subject to the criminal penalties of section 1403.

RGF/mf

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