

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

regulations excluded National Guard members from eligibility for the group life insurance coverage provided in subchapter VI, chapter 101, of Title 5, Revised Statutes, this circumstance would not alter the apparent State policy as indicated by the Legislature, that life insurance should not be provided free to State employees.

25 M.R.S.A. § 712 specifies the various powers and duties of the Adjutant General. One paragraph of that section provides:

“Without cost or liability to the State at any time, the Adjutant General may enter into insuring agreements with authorized insurance carriers for group life insurance or group health and accident insurance or prepayment plans for hospital and medical service or insurance for the army and air technicians employed by the military establishments as state employees and paid from federal funds.”

While the above-quoted provision applies to certain federally paid State employees of the military establishment, the expression – “Without cost or liability to the State at any time” – indicates a policy of not providing State paid life insurance.

In view of the negative answer to the first question, the second question would seem to be entirely academic at this time.

CHARLES R. LAROUCHE
Assistant Attorney General

April 28, 1972
State Planning Office

To: Philip Savage

The Mandatory Zoning and Subdivision Control Law (12 M.R.S.A. §§ 4811 – 4814, P.L. 1971, c. 535).

SYLLABUS:

The mandatory zoning requirements of The Mandatory Zoning and Subdivision Control Law (12 M.R.S.A. §§ 4811 - 4814, P.L. 1971, c. 535) does not apply to streams other than rivers.

FACTS:

The Mandatory Zoning and Subdivision Control Law, 12 M.R.S.A. §§ 4811 - 4814 (P.L. 1971, c. 535) requires municipalities to zone “shoreland areas” by June 30, 1973. “Shoreland areas” are defined in section 4811 as land areas “within 250 feet of the normal high water mark of any navigable pond, lake, river or salt water body.”

QUESTION:

Are “streams” included within the statutory definition of “shoreland areas?”

ANSWER:

Only streams which are rivers are included within the statutory definition of “shoreland areas.”

REASONING:

L.D. 1543, entitled "AN ACT to Provide Certain State Level Land Use Controls" was the draft of The Mandatory Zoning and Subdivision Control Law ultimately enacted as P.L. 1971, c. 535. L.D. 1543 defined "shoreland areas" as land areas "within 500 feet of the normal high water mark of any navigable pond, lake, river, *stream*, or salt water body (italics supplied)."

Senate Amendment "A" (Filing No. S-213) amended L.D. 1543 "by striking out . . . the . . . word '*stream*'." The Statement of Fact read: "The purpose of this amendment is to remove streams from the bill."

In addition the following statement, by a Representatives, on the floor of the House, is noteworthy:

"The amendment that comes over to us from the other body excludes streams from the bill. Interestingly enough, the reason why streams was excluded is because of a lobbyist . . . The individual represented a large paper company and he was concerned that because they had an awful lot of land that the streams that they had in the individual townships might just be covered. . . ." *House Legislative Record*, May 27, 1971.

The history of a statute may be referred to, to indicate legislative intent. *Hutchins v. Libby*, 149 Me. 371, 103 A.2d 117 (1954). In construing the language which has been used, the history of an enactment may throw light on the intent of the Legislature. *Steele v. Smalley*, 141 Me. 355, 44 A.2d 213 (1945). In construing a statute, the sole duty of the Supreme Judicial Court is to give effect to legislative intent, which is determined by looking first to the language used and then to history of legislation. *Opinion of the Justices*, 38 A.2d 566 (Me., 1944).

The word "stream" is a generic term which generally is understood to mean "a water course having a source and terminus, banks, and channel, through which water flows at least periodically" and includes within its definition rivulets, brooks, creeks and rivers. See *Black's Law Dictionary* (4th Ed. 1951); *Webster's Third New International Dictionary* (1963); 40 Words and Phrases *Streams*; and Hobday, S. R., *Coulson & Forbeson Waters and Land Drainage* (6th ed. 1952).

The word "river" is not capable of precise legal definition. "River" is generally understood to simply mean "a body of flowing water of no specific dimensions larger than a brook or rivulet, a running stream pent in on each side by walls or banks." 37A Words and Phrases, *River*. See also *Black's Law Dictionary* (4th ed. 1951) and *Webster's Third New International Dictionary* (1963).

It seems clear that the Legislature in enacting P.L. 1971, c. 535 intended to exclude streams smaller than rivers, i.e., brooks, creeks, rivulets, from the operation of the Act.

Whether a body of water is a river or some other type of stream is a question of fact for initial administrative determination. While we perceive of no difficulty in determining whether most streams in the State are rivers or not, there may be a number of instances where the determination will be difficult. We suggest that these cases must be determined upon an ad hoc basis with particular regard to the stream's length, width and depth, volume and frequency of water flowage, navigability and other physical characteristics and perhaps its history.

This opinion modifies the previous opinion of this office given to William R. Adams, Director, Environmental Improvement Commission, under date of August 19, 1971, a copy of which is attached herewith.

E. STEPHEN MURRAY
Assistant Attorney General