

MAINE STATE LEGISLATURE

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Maine Land Use Regulation Commission Law as Originally Enacted
by P.L. 1969, c. 494.

SYLLABUS:

"Public road" as used in P.L. 1969, c. 494, meant a road or way to which all members of the public have an absolute right of use, subject to ordinary police power regulation, as distinguished from a permissive privilege of use.

The recording of a plat purporting to "subdivide" lands located in a "zoned area" as defined by P.L. 1969, c. 494 § 682.3, between October 1, 1969 and September 23, 1971, without either (1) the Maine Land Use Regulation Commission's approval evidenced thereon, or (2) an attested statement by the draftsman or the owner that written notice has been mailed to the Commission set forth thereon, is void.

The conveyance of any land from a subdivision, a plat of which has not been recorded, or the plat of which is void, is void itself.

FACTS:

P.L. 1969, c. 494, which enacted Chapter 206-A of Title 12 of the Maine Revised Statutes and was effective October 1, 1969, granted power to the Maine Land Use Regulation Commission, hereinafter called the Commission, to adopt zoning regulations¹ and subdivision control regulations² in "zoned areas" which is defined to "include all land within 500 feet of the traveled edge of any public road",³ among other areas.

P.L. 1969, c. 494 provided

" * * * Any individual or corporation who would subdivide lands,⁴ any part of which is within the zoned area but not subject to subdivision control regulations. . . must give written notice of same to the commission. . . . "⁵

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1. 12 M.R.S.A. § 686.1.
 2. 12 M.R.S.A. § 687.1.
 3. 12 M.R.S.A. § 682.3.
 4. as defined by 12 M.R.S.A. § 682.2.
 5. 12 M.R.S.A. § 687.5.

and

" * * * A register of deeds shall not record any plat or any writing purporting to convey or subdivide land, * * *, located in the unorganized territory or mainland plantation areas of the State unless the same bears an attested statement by the draftsman or the owner of such land that no portion of the same is within the zoned area, or if within the zoned area but not subject to subdivision control regulations, that * * * notice * * * has been mailed to the commission, or unless the commission's approval is evidenced thereon. The recording of a plat or plan in violation of this subsection is void."¹

and

" * * * Any conveyance of unrecorded subdivided land or subdivided land recorded in violation of this chapter shall be void and any structure erected on such land after conveyance shall constitute a nuisance which may be abated by either public or private action."²

The Commission never enacted any "subdivision control regulations" and hence there never were any zoned areas "subject to subdivision control regulations."

12 M.R.S.A. §§ 686 and 687 were repealed by P.L. 1971, c. 457, effective September 23, 1971.

QUESTIONS:

1. What did the term "public roads" mean as set forth in 12 M.R.S.A. § 682.3, as enacted by P.L. 1969, c. 494?

2. Was a subdivision which was within a "zoned area" in violation of P.L. 1969, c. 494 if it failed to give notice as required by 12 M.R.S.A. § 687.5, as enacted by P.L. 1969, c. 494?

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1. 12 M.R.S.A. § 687.6.
 2. 12 M.R.S.A. § 687.7.

3. Is a plat of a subdivision which was within a "zoned area", recorded, without meeting the requirements of 12 M.R.S.A. § 687.6 as enacted by P.L. 1969, c. 494, void?

4. What options for "legal action" does the Commission have now with regard to such situations?

ANSWERS:

1. See "Reasoning".
2. Yes.
3. Yes.
4. See "Reasoning".

REASONING:

1. P.L. 1969, c. 494 did not provide a definition of "public roads." Nor was there any general definition of "public roads" in the Maine Statutes. Unless inconsistent with the plain meaning of enactment, words and phrases must be construed according to common meaning of language. Doughty v. Maine Central Transp. Co., 141 Me. 124, 39 A.2d 758 (1944). Webster's New International Dictionary (2nd Ed., Unabridged (1955) defines "highway" as "... a road or way open to the use of the public, including in its broadest sense of the term, ways upon water as well as upon land. . . as distinguished from a private way. . . In its general sense, however, it is used to include any way of whatever nature, which the law makes open to the use of all to pass, whether a carriageway, horseway, footway, or waterway, and whether a thoroughfare, a public bridge or a cul-de-sac. . . ". In other words, "highway" is ordinarily used to mean "public highway" or "public road" and means simply a passageway which the public has an absolute right to use as distinguished from a permissive privilege of use.¹ This right, however, is subject to ordinary police power regulation.

2. The language of 12 M.R.S.A. §§ 687.5 and 687.6, as enacted by P.L. 1969, c. 494, is clear. Between October 1, 1969 and September 23, 1971, the effective period of section 687, any person who wished to subdivide land in a zoned area (not subject to subdivision control regulations) was required to mail notice thereof to the Commission. Failure to comply with this notice requirement obviously was a violation of law, but the statute provided no penalty.

1. Standard Life Ins. Co. v. Hughes, 203 Tenn. 636, 315 S.W.2d 239, 240; Jenkins v. Chicago & A.R. Co., 27 Mo. App. 578, 583; and Dow v. Latham, 80 N.H. 492, 120 A. 258.

3. The language of 12 M.R.S.A. §§ 687.5, 687.6 and 687.7, as enacted by P.L. 1969, c. 494, is clear. The statute prohibited and made void the conveyance of land from a subdivision in a zoned area, a plat of which was either unrecorded or recorded without an attestation thereon that notice had been mailed to the Commission. While the statute provided no penalty, both the plat, if any, and the conveyance was void.

4. P.L. 1969, c. 494 provided no penalties for failure to comply with the law. Nevertheless, even if penalties were provided, a penal action cannot be maintained after the repeal of the statute creating the penalty sought to be recovered. Gaul v. Brown, 53 Me. 496 (1866). However, where a contract is void as being in violation of a statute, the subsequent repeal of the statute will not render it valid. Robinson v. Barrows, 48 Me. 186 (1859). Thus a deed, being an executed contract, is void if in violation of a statute, despite later repeal of the statute. "It is a well established rule, * * * that a void deed passes no title." 26 C.J.S., Deeds, § 68.

Conveyances of land from a subdivision in a zoned area, a plat of which was either unrecorded or recorded in violation of the statute were void and remain void. Thus the original owner still holds title to the land. Any attempt, at this time, by the original owner to convey good title will require a subdivision permit from the Commission pursuant to 12 M.R.S.A. § 685.B.1.B, as enacted by P.L. 1971, c. 457.

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1. 12 M.R.S.A. § 687.7.