

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)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

✓✓
December 29, 1972

James S. Haskell, Jr.
Lawrence Stuart, Director
E. Stephen Murray, Assistant

Land Use Regulation Commission
Parks and Recreation
Attorney General

L.U.R.C. Jurisdiction over Allagash Wilderness Waterway

SYNOPSIS:

The Land Use Regulation Commission has concurrent jurisdiction over the Allagash Wilderness Waterway.

FACTS:

The Maine Land Use Regulation Commission (hereinafter sometimes called L.U.R.C.) has been charged with the responsibility of zoning and regulating development in the "unorganized and deorganized areas" of the State of Maine.

"Unorganized and deorganized areas," (hereinafter called the wildlands), as defined by 12 M.R.S.A. § 682.1, is defined as "unorganized and deorganized townships and mainland and island plantations" not including Indian reservations.^{1/}

L.U.R.C. is charged with the responsibility of establishing land use guidance districts (zoning) in the wildlands (12 M.R.S.A. § 685-A.1) and with the responsibility for establishing standards of land use within the districts (12 M.R.S.A. § 685-A.3).

Any "person" who wishes to erect a structure, subdivide land or construct or operate a development in the wildlands must first receive the approval of L.U.R.C.

"Person" is defined as "an individual, firm, association, organization, partnership, trust, company, corporation, state agency or other legal entity." (12 M.R.S.A. § 682.6)

The Allagash Wilderness Waterway is located in the wildlands and is administered by the Maine State Park and Recreation Commission.

QUESTION:

Does L.U.R.C. have jurisdiction over the Allagash Wilderness Waterway?

^{1/} See Formal Opinion of November 23, 1971 in the form of a memorandum from E. S. Murray to James S. Haskell concerning jurisdiction of L.U.R.C. over mainland plantations.

ANSWER:

Yes. However, this jurisdiction is not exclusive and is subject to some exceptions.

REASONING:

In reaching the conclusion it is important to keep in mind the general legal principles that statutory provisions, unless absolutely conflicting, are to be construed so as to make them operate harmoniously as a whole, giving each its appropriate effect and not using one section to evade or abrogate another. Cram v. Inhabitants of Cumberland County, 96 A.2d 839, 148 Me. 515 (1953).

There is no question but that State agencies must apply for L.U.R.C. permits to erect structures or construct or operate developments anywhere in the wildlands. State agencies and other legal entities are specifically referred to in 12 M.R.S.A. § 682.6, which defines persons. Any "person", as defined in the Law, who erects a structure or constructs or operates a development anywhere in the wildlands, requires a permit from L.U.R.C.

It is important to note that L.U.R.C. permits do not authorize a development but are merely, in effect, a finding that the development, if operated or constructed, will meet the requirements of the Wildlands Law. Thus, permission from L.U.R.C. to engage in a particular activity does not mean that the licensee may violate or fail to conform to other State laws or requirements, such as those of the Maine State Park and Recreation Commission. In this sense, L.U.R.C.'s jurisdiction is concurrent with those of other State agencies. The following specific comments apply to activities in the Allagash Wilderness Waterway.

In regulating activities permitted by or engaged in by the Maine State Park and Recreation Commission, hereinafter called "the Commission", L.U.R.C. must avoid prohibiting activities which the statutes governing the Waterway require the Commission to permit or engage in. Again, in this regard it is for initial determination by the Commission whether or not a particular activity is required by the terms of the statute. For example, the statute contemplates the building of structures "essential to state service agencies."^{1/} While the Commission must meet L.U.R.C. requirements in building such structures, L.U.R.C. cannot prohibit such building. In short, while L.U.R.C. may decide how and where certain activities will occur in the Waterway, the Commission may decide whether such activities will occur.

^{1/} 12 M.R.S.A. § 666.

Further guidance as to the extent of L.U.R.C.'s jurisdiction over the Allagash Wilderness Waterway must await specific situations.^{1/}

E. STEPHEN MURRAY
Assistant Attorney General

ESM:mfe

^{1/} We are not unmindful of the provisions of 12 M.R.S.A. § 664 but simply note that it was enacted prior to the effective date of the current Wildlands Law and deem its provisions not inconsistent with this opinion.