

MAINE STATE LEGISLATURE

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April 30, 1973

Fred E. Holt, Commissioner
Forestry Department
State House
Augusta, Maine 04330

Dear Mr. Holt:

Title 22 M.R.S.A. § 4835 states that no citizen or subject of a foreign government shall purchase, cut or carry off trees, timber or grass from Indian Township and prohibits the Forest Commissioner from issuing permits for such a purpose.

You inquired whether or not that statute prohibits a present arrangement pursuant to which timber is cut by Indian crews, under proper legal authority, who sell the logs to a Maine resident who trucks the logs to Canada for manufacture. I assume that what occurs is that the Maine resident, in fact, sells the logs to a Canadian company.

The statute prohibits not only the cutting and carrying away of timber from Indian Township by foreign citizens, but it prohibits the purchase of timber by foreign citizens. "Timber" includes not only standing timber, but felled timber. Black's Law Dictionary. Moreover, in the early case of Marks v. Hapgood, 24 Me. 407 (1844), the Supreme Judicial Court virtually assumed to be illegal by virtue of the above statute, an arrangement pursuant to which an American, duly licensed to cut timber on Indian Township, agreed with a Canadian to cut, haul and float logs from Indian Township to Canada. In general, therefore, the purchase of timber from Indian Township by a foreign citizen is unlawful.

We recognize that the timber lawfully cut from Indian Township finds its way into the channels of commerce and, in one form or another, may frequently end up in the hands of a foreign citizen. Obviously, the taint of illegality cannot follow the wood and wood products indefinitely. It is our view, therefore, that the mere fact that timber from Indian Township is ultimately sold to a foreign citizen does not render illegal the activities or contractual arrangements of persons duly authorized to cut and haul wood from Indian Township so long as such persons have no privity with or knowledge (actual or implied) of

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any agreement or arrangement to sell wood from Indian Township to a foreign citizen. Concomitantly, to the extent persons authorized to cut and haul timber from Indian Township are in privity with or have actual or implied advance knowledge of agreements or arrangements to sell such timber to foreign citizens, their activities and contractual arrangements are prohibited by Title 22 M.R.S.A. § 4835.

Yours very truly,

JON A. LUND
Attorney General

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