

MAINE STATE LEGISLATURE

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August 30, 1973

Fred E. Holt, Commissioner

Forestry

Lee M. Schepps, Assistant

Attorney General

State Forests at Hebron and Thomaston

I believe that you and I discussed the questions contained in your memorandum of June 7, 1973, at a meeting we had last week on other matters. Nevertheless, for your records, I will answer the questions you raised in that memorandum.

You indicated that lands which formerly belonged to the State and were part of the Hebron Sanatorium and the Thomaston State Prison were, by an inter-agency transfer, transferred to the Forestry Department and are now under your custody and control. You indicated that you "consider" these lands to be part of the state forests administered under the provisions of Title 12 M.R.S.A. § 512 and inquired whether or not the revenue sharing provisions of that statute apply to your administration of those state forests.

Title 12 M.R.S.A. § 512 authorizes the Forestry Department, with the advice and consent of the Governor and Council, to purchase lands or to "accept on the part of the State gifts or parcels or tracts of land". The inter-agency transfer/responsibility for the administration of the lands described in your memorandum do not amount to a "purchase" of those lands by the State. Moreover, inter-agency transfer does not constitute a "gift" of those lands to the State. The lands were already owned by the State before the transfer and no consideration was exchanged and one cannot be the recipient of a gift of what one already owns.

Accordingly, in my view, the lands at Hebron and Thomaston which were transferred to the Forestry Department for their administration are not subject to the revenue sharing provisions of Title 12 M.R.S.A. § 512. From a legal standpoint, those lands are administered by you pursuant to the provisions of Title 12 M.R.S.A. §§ 504, 514 and 515 but there is nothing in any of those statutes which would prevent the Forestry Department from managing the subject lands under the principles and for the management objectives specified in Title 12 § 512 establishing State forests.

Because of this conclusion, the questions which you ask in your memorandum of June 7, 1973, as they apply to the lands at Hebron and Thomaston are moot. Nevertheless, the second question, in particular, has applicability to all of your state forests and I thought I would answer it for your benefit. The second question inquired whether or not

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it is permissible to take the cost of timber stand improvement out of the stumpage received by the Forestry Department before calculating the percent of revenues to which a town is entitled under the revenue sharing provisions of Title 12 M.R.S.A. § 512. Under the statute, the towns are entitled to 25% of the "net revenues". The expression "net" means after all deductions such as charges, expenses, discounts, commissions, taxes, etc. have been made. From reading the statute, it is also clear that the stumpage in which the towns are entitled to share is included within the definition of "net revenue." Accordingly, the expression "stumpage" as used in Title 12 M.R.S.A. § 512 may be read by the Forestry Department as if it were the "net stumpage" after deduction of your costs for timber stand improvement and other expenses, to the extent that such deductions are in accordance with generally accepted accounting procedures used in ascertaining net revenues to a landowner.

Please let me know whether I can be of further assistance to you in connection with this matter.

LEE M. SCHEPPS
Assistant Attorney General

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