

# MAINE STATE LEGISLATURE

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October 12, 1973

JUB  
JAS  
Robert H. Johnson, Director

Bureau of Watercraft  
Registration & Safety  
Attorney General

John Kendrick, Assistant

"Excessive speed of motorboat" prosecutions on complaint of the harbor master of Boothbay Harbor

We suggest there is no conflict between the Boothbay Harbor town ordinance (Port Regulation No. 4) you cite in your letter dated September 11, 1973, and any of the statutory provisions of 38 M.R.S.A. §§ 201-241 (Subchapter VI, known as the Watercraft Registration and Safety Law.) Boothbay Harbor is affirmatively required under 38 M.R.S.A. § 2 to make regulations to keep harbor channels open for the passage of vessels. Section 2 authorizes the harbor master to enforce those regulations. Maintaining open channels would be impossible for a maritime town if 38 M.R.S.A. § 202 were read as broadly as you suggest it should be.

Every harbor master is authorized not only to enforce the town ordinances referred to above, but may arrest a person and bring a complaint against him to enforce any portion of the Watercraft Registration and Safety Laws. 38 M.R.S.A. § 205. This would include enforcement of 38 M.R.S.A. § 237 sub-§4 requiring "prudent speed for the existing conditions" within 200 feet of shore or in a water safety zone.

Additionally, 38 M.R.S.A. § 285 gives harbor masters and their deputies authority to enforce yet another State watercraft speed law; to wit, § 281, which forbids and makes criminal "greater speed than is reasonable and proper," having due regard for traffic, proximity to wharves, docks, moorings or shores, and for other existing conditions.

The point is that a conviction for "excessive speed of motorboats" could have come out of a prosecution caused by a harbor master and based upon either of these state statutes. Also, we are not prepared to say that Boothbay Harbor's established 5 m.p.h. maximum speed in a portion of Boothbay Harbor is not in harmony with the "prudent" speed or "reasonable and proper" speed standards used in the statutes.

A definite determination of the matter can only be made by a court in a case involving an alleged violation of the Town regulation.

JK/mf

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John Kendrick  
Assistant Attorney General