

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date October 16, 1973To Fred Holt, CommissionerDept. ForestryFrom David Roseman, AssistantDept. Attorney GeneralSubject Minimum Lot Size

In your memo of August 22, 1973, you requested a more specific answer to your June 11 memo (concerning minimum lot size for camp lots on the public lots) than that given you by this office in an informal opinion dated July 10, 1973.

Two separate questions are presented by you. The first question - whether a residence or other structure might be built on a lot of less than minimum size - depends on whether or not there is going to be subsurface waste disposal. The new Minimum Lot Size Law, 12 M.R.S.A. Chapter 423-A, applies only when there will be subsurface waste disposal. Section 4807-A "Minimum lot size required" states in applicable part that ". . . no person shall: . . . [d]ispose of waste from any single family residential unit by means of subsurface waste disposal" (emphasis added) unless the lot on which the single family residential unit is located contains at least 20,000 square feet and has 100 feet of frontage, if abutting certain waters. Therefore, the answer to your first question is that a residence might be built on a lot of less than minimum size if there is to be no subsurface waste disposal. Once there will be subsurface waste disposal, however, the minimum lot size requirement must be met. It is important to point out that subsurface disposal from smaller lots will be permitted if approved by the Board of Environmental Protection (Section 4807-B). Certain standards must be met before the Board will grant such approval. The new law exempts only those structures in existence and in place on or before January 1, 1972, which then or theretofore disposed of wastes by means of subsurface waste disposal. (Section 4807-D).

You next wanted to know in particular whether "privies" would be permitted on a lot of less than minimum size. (And during our telephone conversation October 10, you also requested a similar opinion regarding "subsurface leach lines for waste water.") The minimum lot size requirement, as previously discussed, applies only where there is subsurface waste disposal. Therefore, it must be determined whether a privy with a leach line is a means of subsurface waste disposal as that term is defined in the statute, 12 M.R.S.A. Chapter 423-A. "Subsurface waste disposal" is defined in § 4807.5 as any system for disposing of wastes or waste waters on or beneath the surface of the earth. "Waste" is defined in § 4807.6 as any liquified sewage, garbage, . . . human body wastes, or any other refuse or effluent in a

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liquid form, except any wastes containing insufficient liquid to be free flowing. We discussed this issue at some length over the telephone, and you requested me not to detail my reasoning again in this informal opinion. To be brief, therefore, a leach line disposes of waste water and a privy disposes, in part, of liquid human body waste. The privy and leach line is a system for subsurface waste disposal which disposes of waste as those terms are defined in the statute. Thus, the Minimum Lot Size Law prohibits the use of a privy and subsurface leach line for waste water on a lot of less than minimum size without specific approval of the Board of Environmental Protection, or unless the structure upon the lot was in existence and in place on or before January 1, 1972, and then or theretofore disposed of wastes by means of subsurface disposal.

I hope this clarifies the matter satisfactorily. If you have any additional questions, please do not hesitate to contact this office.

David Roseman

DAVID ROSEMAN
Assistant Attorney General

DR/ec

cc: Board of Environmental Protection
Land Use Regulation Commission

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