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Inter-Departmental Memorandum Date November 20, 1973

To Maynard Marsh, Commissioner

Dept. Inland Fisheries and Game

From Jon A. Lund, Attorney General

Dept. Attorney General

Subject Jurisdiction of Millinocket District Court.

SYLLABUS:

The District Court for the Northern Division of Penobscot (Millinocket) has jurisdiction to try certain misdemeanor offenses committed within the geographical area of the Piscataquis Division of the District Court (Dover-Foxcroft).

FACTS:

It has come to our attention that wardens are taking certain misdemeanor cases to the District Court for the Northern Division of Penobscot (Millinocket) when those offenses have in fact occurred within the geographical boundaries of the District Court of the Piscataquis Division (Dover-Foxcroft). The District Court Judge in Millinocket has apparently accommodated the wardens in this procedure. However, certain visiting judges have raised a question as to its propriety.

QUESTIONS:

Does the District Court for the Northern Division of Penobscot (Millinocket) have jurisdiction to try certain misdemeanor offenses committed within the geographical area of the District Court for the Division of Piscataquis (Dover-Foxcroft)?

ANSWER:

Yes; however, such jurisdiction is limited by the nature of the offense charged.

REASONS:

Initially, it must be realized that we are probably discussing venue, not jurisdiction. 4 M.R.S.A. § 154 (13) reveals that both the Piscataquis Division (Dover-Foxcroft) and the Northern Penobscot Division (Millinocket) are both located within the 13th District.

Subsection 1 of 4 M.R.S.A. §155, entitled "Venue", provides that a criminal prosecution must be brought in the division in which the offense charged took place. 4 M.R.S.A. §155 (7) provides that if any action or proceeding, civil or criminal, is brought in the wrong division the Court may upon motion, or on its own initiative, transfer it to a proper division. Since, in the instant case, we are dealing with divisions of District Courts located within the same district (the 13th), the proper focus of the problem should probably be on venue as opposed to jurisdiction. At any rate, this analysis may be merely academic since we are dealing with divisions of the District Court within the same district, and not with divisions of the District Court in different districts.

12 M.R.S.A. §3052, entitled "Arrest; Jurisdiction; False Personation" (emphasis supplied) provides as follows:

"Any officer authorized to enforce the inland fish and game laws may arrest any violator of said laws or any person who impersonates or represents himself as being a game warden. Any person so arrested shall be taken without unnecessary delay before the division of the District Court nearest to the place of violation." (Emphasis supplied)

Thus, 12 M.R.S.A. §3052 provides an exception to the general venue provisions in 4 M.R.S.A. §155 Subsection 1. The Legislature has decreed that if the violation, for which an individual is arrested, is a violation of the inland fish and game laws, Title 12 will control the question of "jurisdiction" (venue). A fish and game offense occurring in the Piscataquis Division is properly tried in the Northern Penobscot Division of the District Court, provided that that Court is closer to the place of the violation.

The rationale for this rule is found in the case of State v. Carey, 136 Me. 47 (1938). Carey discussed the reasons why the Legislature had adopted such a rule for violations of the fish and game laws. The Court stated:

"We think there can be no real doubt as to the intention of the Legislature when this law was passed. It was then, as now, common knowledge that violations of the fish and game laws often take place in remote parts of the State where no trial justices or municipal courts (District Courts) are located, and the taking of the violator before any particular magistrate or inferior court might be attended

by great expense, long travel and much delay. It seems certain that it was the purpose of the lawmakers in enacting the jurisdictional provisions of this act of 1899 (now 12 M.R.S.A. §3052) to establish a rule or system of procedure applicable to prosecutions for violations of the fish and game laws which obviated these difficulties and at the same time established and ensured uniformity throughout the State in the enforcement of the law..." (parenthetical expressions added).

Therefore, proper venue for certain types of misdemeanor offenses is determined by the nature of the offense rather than the place where the offense occurred. It is incumbent upon the arresting officer to make a determination, at the time of arrest, whether or not the offense, which he is charging, is a violation of the fish and game laws or some other statute. The nature of the offense will govern the proper division of the District Court wherein to bring the complaint.

12 M.R.S.A. §3052 is not the only exception which the Legislature has created to the general rule contained in 4 M.R.S.A. §155. 12 M.R.S.A. §907, entitled "Jurisdiction", provides that any person arrested for violations committed under the subchapter dealing with Baxter State Park may be taken before the District Court in the division nearest to where the offense is alleged to have been committed and in such a case "jurisdiction" is granted to the District Court in adjoining divisions to be exercised in the same manner as if the offense had been committed in that division. 12 M.R.S.A. §607, again entitled "Jurisdiction", provides that any person arrested for violations committed under the chapter creating the Maine State Park and Recreation Commission, may be taken to the District Court in the division where the offense was committed or in any adjoining division, jurisdiction in such cases is to be exercised in the same manner as if the offense had been committed in that division. 12 M.R.S.A. §676 ("Jurisdiction") provides that persons arrested for violations committed under the chapter creating the Allagash Wilderness Waterway may be taken before the District Court in the division where the offense was committed or if the District Court in an adjoining division is the nearest court to the place of the violation, original and concurrent jurisdiction is given to such District Court to hear and try such case. 38 M.R.S.A. §327 provides that any person arrested for violations committed under the chapter relating to Waters and Navigation may be taken before the District Court in the division where the offense was committed or in any adjoining division, jurisdiction in such cases is granted to the District Court to be exercised in the same manner as if the offense had been committed in that division.

It is interesting to note that this last provision, 38 M.R.S.A. §327 ("Waters and Navigation") is not indexed in the State statutes under the following headings, "District Court, Jurisdiction" or "Jurisdiction". It is, rather, indexed under the heading "Waters and Navigation". It is therefore possible that there may be other special "jurisdictional" statutes which the Legislature has created, which are indexed under the title of the chapter as opposed to the category entitled "Jurisdiction". It may therefore, be very difficult under some circumstances for either the arresting officer or the District Court to know whether or not it is the proper court before which to bring a specified category of offense.

In addition to the special exceptions, which the Legislature has created, there also exists a class of offenses where the "jurisdiction" of the District Court will be controlled by the general rule, 4 M.R.S.A. §155. Wardens are invested by 12 M.R.S.A. §2001 with wide powers to arrest for a variety of offenses, unrelated either to enforcement of the fish and game laws or the special provisions which the Legislature has created. They have the same authority as County Sheriffs (15 M.R.S.A. §704) and are specifically directed to arrest for larceny, trespass, and assault on a warden. Because the offenses do not fit within the created statutory exceptions, they should be treated as any other misdemeanor. Therefore the proper "jurisdiction" (venue) within which to bring violators for this class of offenses is the division within which the offense took place.

In conclusion, wardens may bring violators of fish and game laws, and certain other classes of offenses, designated by the Legislature, to the division of the District Court nearest to the place where the offense occurred. However, wardens may not bring violators of certain public classes of offenses to such a court, but must take them to the division of the District Court within which the offense occurred. This necessitates that the officer, as well as the court, familiarize itself with each of the statutory provisions governing venue for the particular offense involved.