

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date December 10, 1973

To Fred Holt, Director, Bur. of Forestry Dept. Conservation

From David Roseman, Assistant Dept. Attorney General

Subject Maine Christmas Tree Law--Title 32 Sections 4401-4408; 4451, 4452.

This is written in response to your memo of October 31, 1973, wherein you asked numerous questions concerning the Christmas Tree Law. It summarizes the more detailed discussion I had on November 26 with Joe Lupsha, Utilization Forester of your staff, concerning that memo.

1. What is the legal definition of the word "commercial"? M.R.S.A. 1 Section 72 says in applicable part that words in statutes shall be construed according to the "common meaning" of the language. The common meaning given by the dictionaries is basically that commercial relates to the purchase, sale and exchange of commodities or is that which is connected with trade, or done primarily for profit.

2. Are Forestry employees empowered to enforce trespass laws regarding the cutting of Christmas trees for noncommercial or commercial purposes? Forestry employees are not given the power by statute to enforce trespass laws. It is, perhaps, arguable that 12 M.R.S.A. § 524 could be interpreted to empower forest rangers to enforce trespass laws regarding the cutting of Christmas trees. However, this interpretation is by no means free from doubt. Furthermore, the forest ranger would have this power only when a "forest" is involved. For these reasons, all forestry employees should refrain from enforcing trespass laws regarding the cutting of Christmas trees.

3. What documents may a transporter use to prove legal ownership of Christmas trees, boughs or tips? The statute itself gives examples of the types of documents that may be used to prove ownership. Section 4406 says "some proof of ownership will be required such as customs clearance at points of entry or landowner or owner of growth permit." (emphasis added). Section 4402 (2) says "[a] current landowner permit or owner of growth permit or other written proof of ownership." (emphasis added). In addition, other documents may be used. As examples--a written contract of sale; a simple memorandum evidencing an oral or written contract; a bill of sale. See Emerson v. Shores, 49 A. 1051 (Maine, 1901).

4. and 5. Can Bureau of Forestry personnel legally use a blue flashing light on their vehicles? M.R.S.A. 29 § 1368 lists specifically those vehicles which can emit a blue light, and vehicles used by Forestry personnel to enforce the Christmas Tree Law are not included. The statute states in applicable part that "There shall not be used on or in connection with any motor vehicle a red or blue light, the beam

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from which is visible to the front of said vehicle, except that emergency vehicles, so called, may display lights which emit a red or blue beam to the front thereof only under the following classifications: . . . 2. Police department vehicles. Lights used on police department vehicles and on motor vehicles operated by chiefs of police, state fire inspectors, inland fisheries and game wardens, sea and shore fisheries wardens, Baxter State Park rangers, sheriffs and deputy sheriffs shall emit a blue beam of light." Thus, Bureau of Forestry personnel cannot legally use a blue flashing light on their vehicle when enforcing the Christmas Tree Law.

6. Who is responsible in a Christmas Tree Law violation where the violator has a "duplicate" Certificate? Does the holder of the "original" bear any responsibility? This question, which involves criminal responsibility, is too broad, and can be answered properly only when applied to specific factual situations.

7. (a) Where a Forestry employee observes the cutting of a Christmas tree on private land, is he empowered to go on that land and interrogate the cutter? A Forestry employee is empowered to go on the land and question the cutter under such conditions. He is authorized by the statute (Sections 4402 and 4408) to make inspections and investigations of a person engaged in cutting. And where a statute grants a power, it also confers by implication those incidental powers necessary to carry out the express grant of power.

(b) If it is found that the person is cutting the trees for his own use, and not for sale, does the inspector have any further responsibility? There is no violation of the Christmas Tree statute in this situation (the statute applies only to Christmas trees cut for commercial purposes), and therefore the Forestry employee must not attempt to exercise any further authority granted to him by this statute. In a situation such as this it would, perhaps, be advisable for the Forestry employee to inform a police officer, a sheriff or other peace officer, or the landowner, if he thought that some other violation of the law had occurred.

(c) If a person cuts for commercial purposes on the land of another without landowner permission, is the cutter in violation of the Christmas Tree Law--or is he in violation only if the landowner makes a complaint? Whether the cutter is in violation of the Christmas Tree Law does not depend upon the complaint of the landowner. When there is commercial cutting upon the land of another without landowner permission, a violation of this law has occurred. As a matter of law, the complaint of the landowner is not an element of the offense.

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However, as a practical matter you may wish to use your discretion in exercising the authority granted you by the statute where the landowner states that he wishes to make no complaint. (In such a situation you might encounter problems of proof, for example.)

8. and 9. Should out of state violators be arrested and bailed? Should resident violators be issued a summons and not arrested and bailed unless the seriousness of the offense requires it? These are policy decisions which Forestry must make. They can best be made by examining such factors as the past experiences you have had, any difficulties you have met in the past, and the situations you encounter as you deal with this law and the people involved.

If you have any additional questions, please do not hesitate to contact this office.

DAVID ROSEMAN

Assistant Attorney General

DR/nm

cc: Joseph Lupsha
Bureau of Forestry
Division of Forest Management

NOT A FORMAL OPINION