

MAINE STATE LEGISLATURE

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March 1, 1974 ✓

Maynard F. Marsh, Commissioner

Inland Fisheries & Game

Leon V. Walker, Jr., Assistant

Attorney General

SYLLABUS:

The ownership of the land around and beneath a natural pond of 10 acres or less in area does not include ownership of the fish within the pond. A natural pond of 10 acres or less in area, with a small tributary and a small outlet, is to be considered a pond within the provisions of 12 M.R.S.A. § 2555, and to be governed by the same law or rules and regulations governing fishing that apply to the tributary and outlet on which it is situated.

FACTS:

12 M.R.S.A. § 2555 provides as follows:

"All ponds of 10 acres or less in area, formed on brooks, streams or rivers, shall be governed by the same law or rules and regulations governing fishing that apply to the brook, stream or river on which they are situated, whether said pond be natural or artificial. This section shall not apply to private ponds as set forth in § 2557."

There are many natural ponds of 10 acres or less in the northern part of the state which have a small tributary and a small outlet. The fishing season under the general law extends to September 30 while on brooks and streams the season legally closes on August 15.

QUESTIONS:

1. Does the right of ownership of land around and beneath a natural pond of 10 acres or less include ownership of the fish within the pond?
2. (a) Does a natural pond of 10 acres or less with a small tributary entering it and a small outlet come under 12 M.R.S.A. § 2555?

(b) Should the Department consider such a pond to be in fact formed on a brook or stream for the reason that it has an inlet and outlet?

ANSWERS:

1. No.
2. (a) yes; (b) See reason.

REASON:

1. Fish are ferae natural and belong to the first taker.
Ferry v. Dodge, (1949) 144 Me. 219
Trest v. Parsons, (1892) 84 Me. 520

The State holds the fish in trust for the benefit of all the people, and no individual has any individual interest therein.

McKenney v. Farnsworth, (1922) 121 Me. 450
Small v. Wallace, (1925) 124 Me. 365
State v. Peabody, (1907) 103 Me. 327

The owner of a natural pond of 10 acres or less in area, therefore, does not thereby own the fish within the pond.

2. Unless the topography otherwise clearly indicates, a natural pond of 10 acres or less, with a small tributary and a small outlet should be considered to have been formed on a brook or stream, and thus to be governed by the same law or rules and regulations governing fishing on the brook or stream, in accordance with 12 M.R.S.A. § 2555. It is natural to presume that such ponds evolved over the years from a watercourse, such as a brook or stream.

For any particular pond, the Commissioner should make a determination as to the applicability of § 2555, based upon the available information as to that watercourse.

LVWJr/mf

Leon V. Walker, Jr.
Assistant Attorney General