

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

STATE OF MAINE

Inter-Departmental Memorandum Date August 15, 1974

To Thomas Dickens, Director

Dept. Parks and Recreation

From Lee M. Schepps, Assistant

Dept. Attorney General

Subject Landowner Liability Title 12, Chapter 333, Section 3002, 3003 & 3004.

This is in response to your memo of July 15, 1974.

Chapter 333 of Title 12 (§§ 3001 - 3005) limits the tortious liability of landowners for injury to persons injured on their lands under certain circumstances. It provides, among other things, that an owner of land owes no duty to keep his land safe for use by others for hunting, fishing and hiking, or to give warning of any hazardous condition, "except as provided in section 3004." In addition, the chapter provides that even if the landowner gives permission to another to hunt, fish or hike on his land, he does not thereby owe any duty to such person "except as provided in section 3004." Section 3004 provides that the chapter does not limit the liability which would otherwise exist for injury suffered where there is a malicious or willful failure to warn of a dangerous condition or in any case where permission to hunt, fish or hike is "granted for a consideration, other than the consideration, if any, paid to said landowner by the State."

The chapter, therefore, relieves the landowner of certain liability for injuries to persons who hike on their land, even by permission, unless the permission is granted "for a consideration." In such instances the common law imposes a duty upon the landowner and in favor of the person to whom permission is granted to keep his premises safe or to warn of unsafe conditions and the subject statute does not interfere with those common law rules. However, consideration paid "by the State" is excluded from the consideration paid to the landowner which imposes a common law duty.

In other words, if a specific individual hikes on another's land, with or without permission, the landowner owes him no duty of care under the statute (except for a malicious or willful failure to warn). If the landowner exacts a consideration from the individual for the privilege of hiking, the statute leaves intact any common law duties of care arising from the transaction. If the State pays a consideration to the landowner to allow the public to hike on the land, and the consideration paid by the State is the only consideration received by the landowner, then the landowner owes no duty to that individual when he hikes on the land as a member of the public.

In your memo you asked specifically whether the word "consideration" includes solely a payment of money or includes other methods of compensation. The word "consideration" means any benefit conferred between contracting parties, and it would include any right, interest, gain, advantage, benefit or profit conferred upon or paid to a landowner.

You also inquired whether or not the statutory provision is limited solely to consideration paid by the State or includes consideration paid by others. The statute is limited by its terms to a consideration paid by the State and does not extend to consideration paid by others. When the landowner receives any consideration from any source whatsoever other than from the State, the statute does not affect the common law rules which would otherwise apply.

Please let us know if we can be of further assistance.



LEE M. SCHEPPS
Assistant Attorney General

LMS/ec