

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date October 3, 1974

To Charles S. Allen, Chief Warden

Dept. Inland Fisheries and Game

From Jon A. Lund, Attorney General

Dept. Attorney General

Subject Hatfield's Pond

There are two issues presented by the Hatfield Pond situation. The first is whether Hatfield Pond is a private pond and/or a great pond; the second is whether the sheriff and/or the fish and game wardens have enforcement responsibilities for the pond.

It appears (as discussed infra) that Hatfield Pond is a private pond. Accordingly, fish and game wardens and/or the sheriff may enforce fish and game restrictions against those people who are not "designees" of the owner. In addition, the sheriff may enforce the criminal provisions prohibiting trespass.

Hatfield Pond is not a great pond. "Great Pond" is defined by Title 38 M.R.S.A. § 381 and § 422 as including:

"an inland body of water which in its natural state has a surface area in excess of 10 acres, and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres, the shore of which is owned by 2 or more persons."

Ostensibly, this definition encompasses Hatfield Pond, an artificially formed body of water of more than 30 acres with two abutting owners, Hatfield and the Town of Berwick. However, this definition of "great pond" appears in Title 38 as part of the statutory framework governing protection and improvement of waters of the State. Specifically, the definition relates to provisions for classification of such ponds (see 12 M.R.S.A. § 382.1), for prevention of pollution (see 12 M.R.S.A. § 392.3), and for prohibition of dredging and filling (see 12 M.R.S.A. § 422).

The definition of great pond in Title 38 is not meant to apply as a general definition for other contexts, such as the public right of access by foot provided by Title 12 M.R.S.A. § 2557-B \*/. This right and a general definition of great pond

\*/ Title 12 M.R.S.A. § 2557-B provides:

"Any person on foot may engage in any activity on the great ponds not inconsistent with any other law or regulation of the State or its political subdivisions."

stems, instead, directly from Chapter 91 of the Colonial Ordinances of Massachusetts, adopted as common law of Maine, see Parker v. Cutler Milldam Co., 20 Me. 353 (1841). This ordinance provides that no individual may appropriate any pond containing more than 10 acres. Any man has a right to fish and fowl there and may "pass and repass on foot through any man's property for that end, so they trespass not upon any man's corn or meadow." That is, the Colonial Ordinance provides the public with a basic right to fish and fowl at great ponds and to walk across private, unimproved lands to do so. However, because the Colonial Ordinance contemplates natural ponds, it does not apply to a pond such as Hatfield's which is artificially created. Without the sanction of the right of public access provided by the Colonial Ordinance, anyone gaining access to Hatfield's Pond without the permission of the proprietor is trespassing and may be subject to the criminal trespass provisions of the Maine statutes, see 17 M.R.S.A. § 3852 and § 3853. The enforcement of these trespass provisions is the responsibility of the sheriff, see Sawyer v. Commissioners of Androscoggin County, 116 Me. 408, 102A. 226 (1917).

Hatfield Pond, then, is not a great pond. Accordingly, there is no right of public access, and the sheriff is basically responsible for enforcing the statutes prohibiting trespass. However, this is not the sole enforcement responsibility relevant to Hatfield's Pond. For although Hatfield Pond is not a great pond, it is a private pond subject to the relevant provisions of the Inland Fisheries and Game laws.

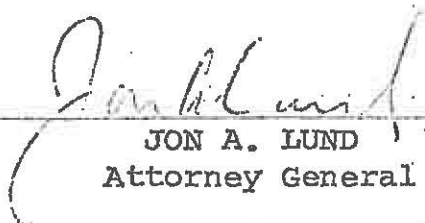
Title 12 M.R.S.A. § 2557 defines private pond as including any "artificially constructed pond;" this would include man-made Hatfield Pond. As a private pond, it is governed by the restrictions set out in § 2557 which provides:

"Any riparian proprietor or proprietors of such private pond, or his or their designee or designees, may take, catch, kill, possess, transport or have transported fish cultivated in a private pond as set forth in this section. Said fish may be taken regardless of existing regulations pertaining to manner, time, season, bag limit, length limit or fishing license requirements."

That is, the riparian proprietor of the pond (in this case, Hatfield), or his designees, may take fish from the pond regardless of the State

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fishing regulations or requirements, and the fish and game wardens have no jurisdiction over them. However, the fish and game wardens do have jurisdiction over those who are not designees of the proprietor. These people are subject to fish and game regulations concerning season, bag limit, length limit, etc. Accordingly, the inland fish and game wardens are responsible for enforcing these regulations against those people who are not designees of the owner, see 12 M.R.S.A. § 2001. The sheriff is also vested with the power to enforce the fish and game regulations, 12 M.R.S.A. § 2003.

  
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JON A. LUND  
Attorney General

JAL/jwp

cc: Chief John M. Montgomery  
Representative Richard Stillings