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STATE OF MAINE

Inter-Departmental Memorandum Date November 20, 1974

To A. Willis, Director, Division of Fire Control Dept. Forestry
From Lee M. Schepps, Assistant Dept. Attorney General
Subject Seizure of equipment without spark arrestor

This is in response to your memo of October 22, 1974. Title 12 M.R.S.A. § 1456-A provides that no "equipment for producing power shall be operated in, through or near forest lands unless it is provided with approved and efficient spark arrestors designed to prevent the escape of sparks, carbon deposits or other substances likely to cause fires." The statute goes on to provide a penalty of \$100 or 30 days imprisonment, or both, for the operation of equipment not provided with such spark arresting equipment. In your memo, you inquired whether or not a forest ranger who discovers a violation of the foregoing statute by a "mini-bike" or a chain saw may seize the "mini-bike" or chain saw (hereinafter referred to as "equipment") and (i) hold it for evidence of violation of the subject statute or (ii) hold it until the particular piece of equipment is modified (or the spark arrestor thereon is fixed) so that it can be operated in the manner specified in the statute.

The answer to the first question is a qualified "yes" and the answer to the second question is "no".

The Fourth Amendment to the U. S. Constitution guarantees the right of the people to be secure in their persons and property against "unreasonable searches and seizures". Except in certain narrowly defined situations, a warrant is required for a search or a seizure, and the warrant may be issued only under specified conditions. It goes without saying that if a warrant authorizing the seizure of the equipment is issued, then the warrant may be executed in accordance with its terms. Two of the situations in which a seizure may be made without a warrant are where a seizure is made incident to a valid arrest and where the evidence seized is in the forests and the officer has probable cause to believe the item is subject to seizure under Rule 41(b) Maine Rules of Criminal Procedure. I assume that your question relates to seizures under such circumstances, as where a forest ranger observes the use in the woods of the equipment in its defective or unlawful state. The equipment so operated would clearly be the instrumentality or evidence of a crime and in circumstances in which no warrant is required, a forest ranger, as a law enforcement officer under Title 12 M.R.S.A. § 1456-A, may seize the equipment and hold it as evidence of a violation of the foregoing statute. The fact that violation of the statute is merely a misdemeanor and that the value of the equipment may be high does not necessarily prevent the seizure of the equipment under proper circumstances, to be held in the custody of the State as with other seized items of personalty, and used as evidence at trial.

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The Constitution protects against "unreasonable" seizures, however, and the law in this area is evolving and changing. There is no precise definition of what constitutes a "reasonable" seizure. For example, courts have held that where law enforcement personnel seized the entire contents of a house, even under otherwise permissible circumstance, the mere quantity of items seized was unreasonable. Other cases have considered the use of force and other conduct of the law enforcement officer under the circumstances in determining the reasonableness of a particular search or seizure. Although this writer has found no situations directly on point, it would not be unexpected if a District Court Judge considered a broad range of matters in determining the legality of a seizure of the equipment for a violation of Title 12 M.R.S.A. § 1456-A, including the value of the equipment, the manner in which it was being used, the amenability of the operator to having it fixed, the practicality of having it fixed before further use, the conditions of the forest at the time and the like.

Suffice it to say that we suggest that prudence and good judgment be exercised in seizing equipment used in violation of Title 12 M.R.S.A. § 1456-A, but feel that under proper circumstances, such a seizure would be lawful.

As to the second question, we are of the view that it would be improper to seize such equipment and hold it until it is repaired or specific devices added to it. The seizure would be outside of the ordinary duties of enforcement officers. Moreover, such equipment is required to be adequately equipped with spark arrestors only for use in or near forest lands. Mini-bikes and chain saws can be operated away from forest land and the owner may elect to so use the equipment rather than to alter or repair it.

I hope this is responsive to your request. Please let us know if we can be of further assistance.



LEE M. SCHEPPS
Assistant Attorney General

LMS/bls