

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date January 28, 1975

To Richard Barringer, Director

Dept. Bureau of Public Lands

From Joseph E. Brennan

Dept. Attorney General

Subject Conveyance of Interests in Submerged Lands

This is in response to your memo of November 22, 1974, in which you asked whether the Bureau of Public Lands may alienate state interests in submerged lands or whether such rights are freely available to any member of the public.

The State's interest in submerged lands includes title to the beds of natural ponds greater than ten acres, see, e.g. Fernald v. Knox Woolen Co. 82 Me. 48, 56, 19A93 (1889), Flood v. Earle, 145 Me. 24, 28, 71 A.2d 55 (1950); and to the bed of the ocean and tidal rivers from the ordinary low water mark or from 100 rods from the upland, whichever is closer to the upland; see e. g., Sawyer v. Beal, 97 Me. 356, 358, 54A.848 (1903); (see, generally, Colony Ordinance of Massachusetts, 1641-1647: Title 1 M.R.S.A. §2(3), §3).

The State holds its interest in the submerged lands for the public in general and not for the private use of each member thereof. No rights in submerged lands may be obtained by adverse possession against the State, see, e. g. U.S. v. Burrill, 107 Me. 382, 385-386, 78 A. 568 (1910), Knox v. Chaloner, 42 Me. 150, 156, (1856), nor can such interests be deemed transferred other than by Legislative authority, see In Re Opinion of the Justices, 118 Me. 503, 505, 106A. 865 (1920).


The State's interest in such lands may be transferred by the Legislature as representative of the people of Maine, In Re Opinion of the Justices, supra, at 505. The legislature has provided that the State's interest in submerged land shall be under the supervision, control, and administration of the Commissioner of Conservation, 12 M.R.S.A. §504. The Commissioner may sell, exchange or transfer such lands subject to prior approval of the Legislature, 12 M.R.S.A. §504; he has the same powers with respect to the management of such lands as are set forth in Title 30 M.R.S.A. §4162 subsection 4 with respect to public reserved lands, see 12 M.R.S.A. §514. These responsibilities of the Commissioner concerning state lands have been delegated to the Director of the Bureau of Public Lands by a communication from Commissioner Donaldson Koons to Director Richard Barringer, dated February 13, 1974, see 12 M.R.S.A. §504 and §5014.

Accordingly, the Director of the Bureau of Public Lands, pursuant to the delegation from the Commissioner, is authorized to grant permits to cut timber and harvest grass and other products; to sell gravel for public roads and public works; to lease the right, for a term of not more than 25 years, to set poles and maintain utility lines; to lease campsites on an annual basis; to construct campsites; to grant mining rights (with the consent of the Governor and Council and approval of the Maine Mining Bureau, the Department of Environmental Protection and the Land Use Regulation Commission); to grant the

January 24, 1975

right to construct and maintain public roads; and to lease, with the consent of the Governor and Council, mill privileges and dam sites or flowage rights; 30 M.R.S.A. §4162(4) A-H.

Read together, the provisions of Title 12 and Title 30 clearly set out the parameters of the authority of the Bureau of Public Lands to convey interests in the submerged land of the State. Generally, grants of authority to administrative agencies are strictly construed, 3 Sutherland §6502, (1974); this is especially true where provisions authorize the grant of public lands, see Slidell v. Grandjean, 111 U.S. 412, 437 (1833). Accordingly, the ability of the Bureau of Public Lands to convey any interest in the State's land is limited to those actions specifically enumerated in Title 30 M.R.S.A. §4162(4) A-H. The Bureau does not have the authority to sell, exchange or otherwise alienate public lands except as provided in this section, without the prior approval of the Legislature, 12 M.R.S.A. §504.

  
JOSEPH E. BRENNAN  
Attorney General