

# MAINE STATE LEGISLATURE

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Inter-Departmental Memorandum Date August 28, 1975

To Fred W. Snow

Dept. Environmental Protection

From Donald G. Alexander, Assistant

Dept. Attorney General

Subject Interpretation of Minimum Lot Size Law

Your memorandum of August 1, 1975 asks if the minimum lot size law, 12 M.R.S.A. § 4807 et seq. applies to the following situation:

A lot with 140 feet of frontage on a lake contained two cottages, each with a separate independent septic system, and such cottages and septic system were in existence prior to January 1, 1970. Early this summer the lot was divided in half and one cottage was sold, making two lots with frontages of 70 feet each. No separation of the original lot was indicated by virtue of deed or registered plan prior to October 3, 1973.

The principle section to be reviewed for determination as to whether the minimum lot size law applies to the above situation is 12 M.R.S.A. § 4807D, the second paragraph, which reads:

"This chapter shall not apply to any structure in existence and in place on or before October 3, 1973, which then or theretofore disposed of wastes by means of subsurface waste disposal; except that no person shall reduce the size of the lot upon which such structure is located to a size or frontage less than that allowed by § 4807-A unless permitted pursuant to § 4807-B."

In this case, the structures and subsurface disposal systems existed prior to October 3, 1973. The question becomes, is the lot as divided here such a reduction of the size of the lot as requires approval under the minimum lot size law.

The apparent size of the lots on which the dwellings and septic systems existed has been changed by division of the lots, however, the amount of land for septic waste disposal which is owned by the cottage owners is unchanged. This would be unlike the situation where a portion of one or both of the lots involved in this matter had been sold to a third party, so that the amount of land available for septic disposal and owned by the cottage owner had been reduced. The latter case, approval under the minimum lot size would be required.

The clear intent of the law was that those dwellings in existence prior to October 3, 1973 with subsurface disposal systems be grandfathered. The law further intended that small lots not be reduced by their transfer to third parties. Here the size of the land area owned by the cottage owners and to which subsurface disposal is to be discharged is not effected by the transaction. Therefore, the law does not apply. The intent that pre-existing dwellings with subsurface disposal be grandfathered prevails. As no purpose related to the minimum lot size law would be served by requiring applications, in this case, from such preexisting dwellings whose ownership is divided.

DGA:jg