

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date September 22, 1975

To R. Umberger
J. Walker
L. Hoar
From David T. Flanagan, Assistant

Dept. Forestry
Public Lands
Parks and Recreation
Dept. Attorney General

Subject P.L. 1975, c. 253

Mr. Umberger, on behalf of the Bureau of Forestry, has asked the Department of the Attorney General for an informal opinion defining the expression "clearly mark" as it appears in 14 M.R.S.A. 7552-A, as enacted by P.L. 1975, c. 253.

This Act relates to the continual problem of small scale intrusions by operators into the timber stands of abutting owners. As a practical matter, the value of the stumpage for which an action of trespass can be maintained is often sufficiently small that the expenses of establishing the case are thought to outweigh the loss incurred by the trespass. The intent of the Act is to increase the chances of the plaintiff abutting owner recovering double damages for such a trespass. It provides that when the defendant land owner neglects to "clearly mark" his own boundaries, the measure of damages will automatically be double value. This intent was summarized in the Statement of Fact for H.P. 715, L.D. 891: "The purpose of this bill is to correct the situation in which a land owner finds that his woods have been harvested by a cutter who did not clearly understand the property boundaries because his employer failed to insure that they were known to the cutter." None of the changes in the bill reflected in H.P. 1545, L.D. 1852 indicates any changes in legislative intent.

It is clear that §7552-A is intended to provide practical standards for working operators and wildland property owners.

In the absence of case law and a Legislative record, it is appropriate to interpret the words "clearly mark" according to commonly understood usage in the affected industry.

As the Court has said, "The object of construing a statute is to ascertain the intent of the Legislature. This should be done by an examination of the phraseology of the statute itself, and by ascertaining the circumstances and conditions surrounding, and the subject matter, object and purposes of the enactment of the statute. * * * the effect of the statute upon business interests as understood by the 'business public' must be taken into consideration in determining the rights of parties to be affected by the construction given." Peirce v. City of Bangor, 105 Me 413, 417, 74 A 1039 (1909).

A good summary of prevailing forestry guidelines for "clearly marking" wood land boundary lines in Maine may be found in the "Boundary Information Sheet" MFD 400, August 22, 1974 ed., published by the Bureau of Forestry, Maine Department of Conservation. There in paragraph 4, it is said, "It is recommended that the lines be blazed, and then painting the blaze and around it. If just the blaze is painted, it will soon be grown over. An unpainted blaze soon becomes hard to see. . . as it blends with the woodland colors, appears as some ordinary woodland mark, and is difficult to distinguish from logging and trail blazes."

In paragraph 7 of the same document it is said, "In blazing and painting trees along the boundary line, the following rule is used: (a) If the line passes through the middle of the tree, blaze and point on opposite sides of the tree where the line passes through. . . (b) Where the line passes adjacent to the tree, two methods can be used: (1) Blaze and paint one point immediately adjacent to the line (2) Blaze and paint to two spots on two sides of the tree about 90 degrees apart. . . (c) Be sure to blaze and paint both sides of the line so that it can be seen from either side. This will help prevent accidental trespass."

Standard surveying texts recommend the same procedure. "Not infrequently woodland is marked off by blazing the trees on one or both sides of the boundary line, the blazing being done of the side of the tree nearest the boundary line. If a tree comes directly on the line, it is blazed on both sides at the points where the line strikes the tree. * * * In the New England states round cedar posts from 4 to 6 inches in diameter are often used to mark corners." Breed and Hosner Elementary Surveying vol. 1, §141, pp. 119 - 120. (8th ed., 1945).

In summary, to "clearly mark" in the Maine woods appears, by the ordinary useage of the industry, to mean to blaze and paint in some way reasonably discernable to persons using the woods trees along the property line.

This useage is consistent with dictionary definitions. In Webster's New World Dictionary (2nd ed., 1972), the word "mark", as a verb, is assigned the meaning "to show plainly; to make clear or perceptible."

In this context, blazing and painting would make the boundary line "clear and perceptible" in a way no other method can. Any other commonly used boundary delineation, such as a road or a fence or a stream, is inevitably ambiguous because marking a boundary is not ordinarily its principal purpose. Such use may be only incidental to its use for transportation, fencing animals and so on. A road, fence, or stream may or may not mark a property boundary.

But a blazed and painted line ordinarily has no other function but that of marking a boundary. There is no ambiguity, and the boundary is clearly marked by the use of this method.

It is the opinion of this Department that State agencies engaged in harvesting operations or in permitting public land to be harvested must take the following steps to conform with the requirements imposed by P.L. 1975, c. 253:

- 1) blaze and paint boundary lines
- 2) in a bright color
- 3) above the ordinary snow depth
- 4) with the blazes within eyesight of each other wherever practicable
- 5) along so much of the length of a boundary as is within 200 yards of any proposed cutting operation*
- 6) when the area to be harvested is greater than 10 acres*

There may be occasions when the courts find that a road, stone or wire fences, or other artificial improvements are sufficient to "clearly mark" the boundary so as to give the reasonable notice intended to be provided by the statute.

There may likewise be occasions when natural boundaries such as streams, ridges, or even different timber types are determined to be adequate. Blaisdell v. Daigle 155 Me 1, 3, 149 A2 904 (1959).

But by the useage of the industry, there is no marking technique less ambiguous than the blazed and painted line. In the interest of forestalling even the possibility of litigation against the State or its employees under this statute, it is this standard that should be applied to timber harvesting operations on public lands.



 DAVID T. FLANAGAN
 ASSISTANT ATTORNEY GENERAL

*These requirements are explicitly set out in chapter 253. A reasonable construction of the 10 acre rule is any proposed cutting in any one year on each of 10 contiguous acres is sufficient to activate the statute.