

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date June 9, 1976

To Lt. Col. Allan Weeks, Admin. Ass't Dept. Public Safety
From Joseph E. Brennan, Attorney General Dept. Attorney General
Subject Posting of No Trespassing Signs at Fire Scenes

FACTS:

The State Fire Marshal is authorized by statute to investigate any fire within the State, and is required to conduct a full investigation of any fire when notified by a municipal fire inspector that arson may be the cause of the fire. 25 M.R.S.A. §2394. After a fire has occurred, a considerable period of time may elapse, often 24 hours or more, before the burned premises have cooled sufficiently to allow the Fire Marshal to conduct an investigation. Recently, members of the Fire Marshal's office have experienced difficulty in excluding persons from the scenes of fires both before and during the investigations.

QUESTIONS:

1. May the State Fire Marshal post "No Trespassing" signs at the scene of a fire during the course of the investigation of the fire?
2. If the answer to question #1 is affirmative, by what means may the State Fire Marshal enforce exclusion of persons from the fire scene?

ANSWERS:

1. The State Fire Marshal may post "No Trespassing" signs at the scene of a fire before and during the investigation of the fire.
2. When the State Fire Marshal has posted "No Trespassing" signs at the scene of a fire, he may enforce the exclusion of persons from the scene by the application of 17-A M.R.S.A. §402.

REASONING:

25 M.R.S.A. §2397 provides in pertinent part:

"The Commissioner of Public Safety, the Attorney General, or their designees, shall have authority, at all times of the day or night, in the performance of the duties imposed upon them, to enter upon and examine any building or premises adjoining or near the same. Persons other than those required to be present by the provisions hereof may be excluded from the place where such investigation is held. . . ." (Emphasis added)

The State Fire Marshal is appointed by the Commissioner of Public Safety and is his "designee" for purposes of §2397. The State Fire Marshal, therefore, is authorized, pursuant to §2397, to exclude persons from the scene of a fire which he is investigating. The posting of "No Trespassing" signs which indicate that persons are being excluded by the Commissioner of Public Safety (or the State Fire Marshal) pursuant to statutory authority vested in him by 25 M.R.S.A. §2397 is a reasonable means of limiting access to the scene of the investigation and preventing destruction or removal of evidence. This is especially true in light of the fact that it is often impractical to cordon off a fire scene with enforcement personnel during the long period of time that the burned premises must cool. Thus, the posting of the "No Trespassing" signs for a reasonable time--usually until the completion of the investigation--is a proper exercise of the statutory power to exclude persons from the fire scene.

2. 17-A M.R.S.A. §402(1) and (2) provide:

"1. A person is guilty of criminal trespass if, knowing that he is not licensed or privileged to do so:

- A. He enters in any secured premises; or
- B. He remains in any place in defiance of a lawful order to leave which was personally communicated to him by the owner or other authorized person.

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2. As used in this section, 'secured premises' means any dwelling place, structure that is locked or barred, and a place from which persons may lawfully be excluded and which is posted in a manner prescribed by law or in a manner reasonably likely to come to the attention of intruders, or which is fenced or otherwise enclosed in a manner designed to exclude intruders." (Emphasis added)

Because the State Fire Marshal may lawfully exclude persons from a fire scene, a fire scene duly posted by the Fire Marshal would be a "secured premises" for purposes of §402. Because unauthorized entry upon the posted premises would constitute a Class E crime under §402, the Fire Marshal may enforce the exclusion of persons from the premises by the application of that section.

JOSEPH E. BRENNAN
Attorney General

JEB/rh