

# MAINE STATE LEGISLATURE

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June 9, 1976

The Honorable Lorraine N. Chonko  
New Lewiston Road  
Topsham, Maine 04067

Dear Representative Chonko:

This is in response to your request for an opinion concerning the constitutionality of Bowdoinham's Winter Fishing Ordinance. The Winter Fishing Ordinance requires registration and payment of a registration fee prior to construction of fishing structures on tidal ice within the town limits. The ordinance also prohibits the operation of motorized vehicles within 100 feet of fishing structures which have been constructed on the tidal ice of the town. The ordinance on its face raises several questions which could be exhaustively researched. We have not undertaken such research since the question is essentially a local one. Since this office is counsel to State agencies and officials and because there is always the possibility, particularly in a case such as this, of conflict between state and municipal actions, we generally decline to issue opinions on questions of this sort. However, we have briefly reviewed the ordinance at your request and conclude generally that the ordinance is within the authority of the town to enact.

Municipalities have traditionally been delegated the general power to provide for general welfare and public safety (30 M.R.S.A. § 2151(1)(A)) and the specific powers to regulate the construction of new buildings and to require permits upon payment of reasonable fees (30 M.R.S.A. § 2151(4)(A)) and to regulate the operation of all vehicles in the public ways (30 M.R.S.A. § 2151(3)(A)). In addition, under home rule, all municipalities have the right to enact all such ordinances as they deem necessary provided that the subject matter has not been explicitly or implicitly limited by Legislative action. 30 M.R.S.A. § 1917. Since we know of no such express or implied limit on towns to regulate ice fishing shanties, we conclude the town had the authority to enact the provisions of the Winter Fishing Ordinance.

Hon. Lorraine N. Chonko

June 9, 1976

Page 2

While there are numerous other state laws regulating activities in tidal areas (e.g. wetlands alteration laws, shellfishing regulations, etc.) these statutes do not expressly or by necessary implication prevent this municipality from regulating structures on tidal ice and within the Town boundaries.

We also believe that it is reasonable to conclude that the construction and use of fishing camps on tidal ice creates a potential health and safety problem, and the operation of motor vehicles on tidal ice within the vicinity of a fishing camp poses a danger to public safety making such activities a subject which should be controlled for the protection of public safety. Municipal regulation designed to protect the public health safety and welfare constitutes a legitimate exercise of the police power. York Harbor Village Corp. v. Libby, 126 Me. 537( ). We conclude, therefore, that the town ordinance is a valid exercise of police power.

Since the application of the statute is limited to fishing structures located within town limits, we have concluded that it is not necessary to address the issue of whether the location of structures on tidal ice effects its validity. It is sufficient that the area regulation be within the boundaries of the Town of Bowdoinham.

Finally, insofar as the statute imposes different registration fees on residents and nonresidents, the legality of such differentiation would depend on the purpose for which the determination was made. Without knowing more about the reason for the distinction we are unable to give a definitive answer to that question. Assuming, for the sake of example, that non-residents were charged a greater fee than residents to compensate for the fact that part of the cost of administration or enforcement of the ordinance was borne by residents as general taxpayers in the community, such distinction might provide the basis for different fees.

I hope this response satisfies your request. If you have any further questions, please do not hesitate to contact me.

Sincerely,

JOHN M. R. PATERSON  
Deputy Attorney General

JP:jg