

# MAINE STATE LEGISLATURE

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STATE OF MAINE

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A. Willis

Dept. Forestry

From Donald G. Alexander, Deputy

Dept. Attorney General

Subject: Fire Permits in Non-MFD Towns

Forestry has asked three questions with respect to construction of laws relating to fire permits.

1. If landowners wish to restrict the use of all fire, including gas, propane and sterno, can the Bureau of Forestry issue a permit under these restricted conditions; and can Forestry enforce the ban on such fires? Initially, it must be emphasized that where a property owner has indicated that he wishes no fires on his property, then no permits for fires of any kind may be issued. As for this question, under ordinary conditions, Forestry can neither ban nor enforce a ban on gas, propane and sterno fires.

12 M.R.S.A. § 1402 provides that while the Director of the Bureau of Forestry is authorized to issue fire permits for private lands, "this section shall not apply to use of portable stoves which are fueled by propane, gas, gasoline or sterno." It would be an act outside the scope of his duties for any ranger to purport to restrict the use of such fires when the Legislature has specifically authorized their use without permits.

It should be noted, however, that in the event of forest fire emergency proclaimed by the Governor pursuant to 12 M.R.S.A. § 1151, he can prohibit out-of-door fires of any type.

2. Can Bureau of Forestry rangers issue campfire permits for those towns not included in the Maine Forestry District?

No. The authority of rangers with respect to campfires is limited to those occurring within the Maine Forest District.

12 M.R.S.A. § 1402 provides that "to better accommodate recreational and sporting users of the woods and to prevent forest fires in the Maine Forestry District, the director is authorized to issue permits. . . ." (emphasis added). 12 M.R.S.A. § 1403 further provides "All fines. . . collected. . . shall be. . . credited to the Maine Forestry District for forest fire purposes."

While the statute does not explicitly provide the ranger's jurisdiction under this statute shall be limited to MFD and adjacent townships (see 12 M.R.S.A. § 1202), the language used clearly reveals the Legislature's intent to restrict the application of this statute to the MFD.

When the Legislature intends a forest fire law to apply to non-MFD townships, it knows how to express that intent. For example, in 12 M.R.S.A. § 1551, dealing with the closely related subject of permits to burn slash, the law states "Requests for permits to burn under this section may be obtained from forest rangers within the State and from town forest fire wardens outside the limits of the Maine Forestry District. \* \* \* Whenever possible town forest fire wardens of municipalities outside the limits of the Maine Forestry District shall notify their forest ranger of any permit issued."

Thus, because of the limitations on jurisdiction of § 1402 on its face, and by comparison with similar statutes intended to have state-wide application, Bureau of Forestry rangers have no authority to require or enforce campfire permits outside the Maine Forestry District.

3. Can town forest fire wardens issue campfire permits for those towns not included in the Maine Forestry District?

No, because their powers are no greater than those of a ranger employed by the Bureau of Forestry.

25 M.R.S.A. § 2501 requires the Director of the Bureau of Forestry to appoint a forest fire warden in each organized municipality. He is given authority to appoint deputies and to issue slash burning permits under 12 M.R.S.A. § 1551. In subsequent sections of Title 25, chapter 319, additional powers and duties are assigned to such wardens.

However, in no instance is it either expressed or implied that such wardens have authority to enforce 12 M.R.S.A. § 1402, relating to campfires.

Since it appears that 12 M.R.S.A. § 1402 only applies in MFD townships, and since organized town wardens are given no authority to enforce it in any event, the conclusion is compelled that town forest fire wardens can neither issue nor enforce campfire permits.

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