

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

May 26, 1977

Honorable Walter Bunker
House of Representatives
State House
Augusta, Maine

Dear Representative Bunker:

You have asked whether a municipality may revoke a license to build a fish weir, granted pursuant to the Wharves and Weirs Act, 38 M.R.S.A. §§ 1021, et seq. and if so, what procedures must it follow. My response is that a municipality may, after notice and opportunity for hearing, revoke such a license, provided that it has legal cause to do so.

The Wharves and Weirs Act provides that any person intending to build a fish weir in the tidewaters of the State must secure a license therefor from the municipality in question. In granting the license, the municipality must determine whether the weir "would not be an obstruction to navigation or injury to the rights of others." 38 M.R.S.A. § 1022. The statute is silent as to whether or how such a permit may be revoked. However, the statute does specify that a wharves and weirs license grants no property interest. "Such license does not confer any right, title or interest in submerged or intertidal lands owned by the State." 38 M.R.S.A. § 1022.

In such circumstances, where there is a permit and no transfer of title, the general rule is that an agency granting the permit has the necessary and therefore implied power to revoke, provided it does so for good or legal cause. 9 McQuillin, Municipal Corporations, § 26.80 (3rd ed. 1964). Antieau, Municipal Corporation Law, § 24.118 (1974).

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The determination of whether such cause exists depends upon the facts of the particular case; it is therefore impossible for me to indicate whether a revocation may be accomplished in the circumstances which may have prompted your question. Some examples may be instructive, however. Legal cause would include irregularities in the manner in which the license was obtained, abandonment of the licensed activity by the licensee*, violation of the terms or conditions of the license, violation of other law in the execution of the licensed activity, or imminent danger to the public health, safety or welfare. Legal cause would not include anticipation of use of the license for an improper purpose or personal animosity of members of the licensing authority towards the licensee. See generally, McQuillin, supra, § 26.84, Antieau, supra.

In any event, if a municipality decides to consider whether a license should be revoked, it would be required by the Due Process Clause of the United States Constitution to afford the licensee notice and an opportunity to be heard. See McQuillin, supra, §§ 26.87 - 26.89; Antieau, supra.

I hope this is of some assistance to you. Please let me know if I can be of any further assistance.

Sincerely,



DONALD G. ALEXANDER
Deputy Attorney General

DGA/ec

cc: Honorable Bonnie Post

* In this regard, it should be noted that the Act provides, in Section 1023, that a fish weir license shall be deemed to have expired if the weir is not maintained and operated each year.

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