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

November 30, 1978

The Honorable J. P. Normand LaPlante
Turcotte Road
Sabattus, Maine 04280

Subject: Ownership of Sabattus Pond Dam

Dear Representative LaPlante:

You have requested an opinion on what method the Town of Sabattus may legally obtain ownership of the Sabattus Pond (or Lake) Dam. If the dam is abandoned, the statutory procedure to obtain ownership of it is provided in 12 MRSA c. 5, § 251 et seq. (Abandoned Dam Act).

For the purpose of this opinion, it is assumed that while the Town of Sabattus registered the dam with the Soil & Water Conservation Commission, it does not claim to own or operate said dam, and no person has asserted that he owns or operates this dam.

Any owner or operator of a dam must register his dam annually with the Commission. 12 MRSA § 303. To properly register a dam, the person who seeks to register it must either "own" or "operate" the dam. Since the Town of Sabattus makes no claim that it owns or operates the dam, it did not properly register the dam pursuant to § 303.

A dam which has not been registered pursuant to § 303 is deemed abandoned for purposes of the Abandoned Dam Act. When a dam is so abandoned, 12 MRSA § 253 (1) allows "any person" to petition the Commission to be awarded ownership of the dam.

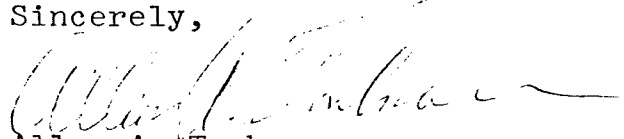
The purpose of the Abandoned Dam Act is to encourage the assertion of responsibility for the maintenance of dams when the ownership is unknown or so diffuse as to make it extremely difficult to determine ownership. 12 MRSA § 251. The Sabattus Pond Dam was built pursuant to Special Laws of Maine, 1846, c. 318; 1848, c. 187. There were seven incorporators in 1846, and their existing successors, if any, are unknown or at least have not asserted ownership.

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Upon receipt of a petition and the appropriate cost of publication of notice, the Commission will give public notice that the Town is seeking award of the dam. 12 MRSA § 253 (2). Any one who claims ownership must notify the Commission of such claim within sixty days of the public notice. § 253 (3). If there is a claim, the Commission will take no further action until the Town brings a declaratory judgment against anyone claiming said dam. If no one makes such a claim, the Commission will hold a public hearing on the petition. § 253 (4). The Commission will then decide whether the Town should be awarded the dam. § 253 (4).

If the Town wishes to take responsibility for the Sabattus dam, it should petition the Commission for award of ownership pursuant to the Abandoned Dam Act.

Sincerely,



Allan A. Toubman
Assistant Attorney General

AAT:er