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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

August 15, 1980

Honorable A. Forrest Nelson
New Sweden
Maine 04762

Dear Representative Nelson:

You have inquired whether a person who cuts on a woodlot is required to notify an abutting landowner of such cutting, whether a person who cuts the timber on another's property is liable in damages, and whether a landowner is required to mark his boundary every five years. Succinctly stated, our answers to your questions are as follows: a person who is planning to cut on his own woodlot is not required to notify an abutting landowner; a person who cuts on another's property without authorization is liable in damages; and a landowner is not required to mark his boundary. A more complete discussion of these issues is set out below.

A person who cuts on a woodlot is not required to notify an abutting landowner of such cutting. There is no statutory provision requiring such notification. However, there is a provision requiring a landowner who authorizes another to cut timber or wood on his property to clearly mark any property lines which are within two hundred feet of the area to be cut, where the cutting involves an area of ten or more acres. 14 M.R.S.A. §7552-A. If such a landowner fails to clearly mark such property lines and the person authorized to cut then cuts timber or wood on the abutting land without the authorization of the owner of that land, the person who failed to mark his boundary shall be civilly liable in double damages. Id.

Any person who cuts timber or wood of any kind on land not his own, without license of the owner, is liable for actual damages to the owner in a civil action. 14 M.R.S.A. §7552. If such cutting is committed "willfully or knowingly, the defendant is liable to the owner in treble damages," plus attorneys' fees, court costs and the cost of any professional services necessary for the appraisal of damages. Id. The word "willfully" has been defined to include:

> "conduct . . . which displays an utter and complete indifference to and disregard for the rights of the other [landowner]." Blaisdell v. Daigle, 155 Me. 1, 2 (1959).

If the conduct is willful, as defined above, actual knowledge of wrongdoing is unnecessary in order to find treble damages. Id.

The wronged landowner is permitted to elect the measure of damages. He may elect to seek the difference between the market value of the land immediately before and immediately after the cutting, or he may elect the value of the trees separate and apart from the soil. Nyzio v. Vaillancourt, 382 A.2d 856, 861 (1978). Moreover, the double damages available from the landowner who fails to clearly mark property lines under 14 M.R.S.A. §7552-A are in addition to any damages for unlawful cutting under 14 M.R.S.A. §7552.

No statutory provision has been found requiring a landowner or woodlot owner to walk or mark his property line every five years or, for that matter, at any time. It should be noted that any person who negligently disturbs, removes or destroys any monument marking the bounds of public or private property is liable to the person injured for the amount of damage done, this damage being the cost of replacing such monument, including necessary engineering services. 14 M.R.S.A. §7554.

I hope this information answers your questions. If you have any further inquiries, please do not hesitate to contact my office.

Sincerely,

RICHARD S. COHEN
Attorney General

RSC:jg