

STATE OF MAINE
YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-09-111

ROBERT F. ALMEDER and VIRGINIA
S. ALMEDER, et al.,

Plaintiffs

v.

TOWN OF KENNEBUNKPORT and
ALL PERSONS WHO ARE
UNASCERTAINED,

Defendants

**STATE OF MAINE'S REPLY
MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO
INTERVENE AS DEFENDANT**

The State of Maine, by and through the Office of the Attorney General, moved for leave to intervene in this matter. Plaintiffs have filed an opposition which misses the point.

As plaintiffs relate at page 9 of their memorandum, in *Bell v. Town of Wells I*, 510 A.2d 509, 517 (Me. 1986), the Law Court held that “the public at large ‘owns’ or ‘holds’” the public trust rights in the intertidal area for purposes of sovereign immunity. No one can reasonably deny, however, that the Attorney General is the attorney for the “public at large.”

The Attorney General, in this State, is a constitutional officer endowed with common law powers. See, Constitution of Maine, Article IX, Section 11. As the chief law officer of the State, he may, in the absence of some express legislative restriction to the contrary, exercise all such power and authority as public interests may, from time to time require, and may institute, conduct, and maintain all such actions and proceedings as he deems necessary for the enforcement of the laws of the State, the preservation of order, and *the protection of public rights*.

Lund ex rel. Wilbur v. Pratt, 308 A.2d 554, 558 (Me. 1973) (italics added); *see also Withee v. Lane & Libby Fisheries, Co.*, 120 Me. 121, ___, 113 A. 22, 23 (1921) (Attorney General and not county attorney could bring action for public nuisance); *see also* 5 M.R.S. § 191. Indeed, it is no surprise that in the same decision relied upon by plaintiffs -- *Bell I* -- the Law Court clearly

stated that the Attorney General could participate if he “decide[d] that the public rights will be more effectively protected through its continued direct intervention than in its absence.” 510 A.2d at 518. As plaintiffs’ counsel is well aware, the Attorney General did just that in *Bell*, and fully participated in that litigation. In two subsequent cases also involving public rights in the intertidal area -- *Eaton v. Town of Wells*, 2000 ME 176, 760 A.2d 232, and *Flaherty v. Muther*, Cumb. Cty. Super. Ct. No. RE-08-098 (July 30, 2009) (Crowley, J.) -- the Attorney General decided to moved for leave to intervene in the exact same circumstances as presented here, and then-Justice Kravchuk and Justice Crowley granted those motions, respectively.

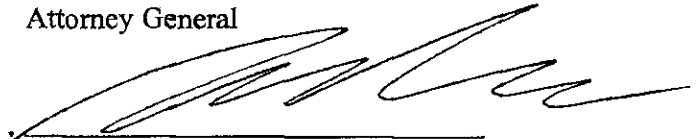
In the present case, the Attorney General has decided to intervene to protect the rights of the “public at large” just as in *Bell*, *Eaton* and *Flaherty*. In sum, no court in this State has denied the Attorney General’s participation in a case involving public rights in the intertidal area of the State because, quite obviously, such litigation involves *public* rights. As is clear from the history of the public trust doctrine in Maine over the last 30 years, moreover, the Attorney General’s Office has particular expertise that will be helpful to the Court, the public and the defendants.

WHEREFORE, this Office respectfully requests that the State of Maine be afforded
intervenor status in this matter.

Dated: January 21, 2010

Respectfully submitted,

JANET T. MILLS
Attorney General

A handwritten signature in black ink, appearing to read 'Paul Stern', is written over a horizontal line.

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