

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

first be approved by the superintending school committee. A schoolhouse to be erected by a school district in a town comes within the purview of this act. It is a schoolhouse voted by the town and the statute provides that the plan for its erection shall *first* be approved by the superintending school committee.

It is pointed out in the case of *Lunn v. City of Auburn*, 110 Maine 241 at page 245 that not only should the plan be approved by the superintending school committee before such building is erected, but that it should be so approved before having the approval of your department or that of the State Board of Health, and that it is the building approved by the superintending school committee of the town which should have the approval of your department and the Bureau of Health. . .

NEAL A. DONAHUE
Assistant Attorney General

March 16, 1951

To Harold J. Dyer, Director, State Park Commission
Re: Lamoine State Park

In your memorandum of March 13th you say that the question has arisen whether the Commission can dispose of Lamoine State Park and you give some of the history of its acquisition. As you have noted, it was deeded to the State of Maine in 1927 by the United States of America. In that deed the following provision is found:

“This conveyance is made upon the express condition and limitation that the said property hereby conveyed shall be limited to the retention and use for public use and upon cessation of such retention and use shall revert to the United States of America without notice, demand or action brought.”

Because of this condition and limitation the premises may not be conveyed or disposed of by the State Park Commission either with or without the help of the legislature, and any conveyance of the premises would entitle the United States to acquire them at once.

You will note that, while retained by the State, the premises must be used for public purposes. This does not necessarily mean that they shall be used for Park purposes, and it may be that some other use can be found for them which will still be a public use and will be acceptable to the Navy Department from which the premises were acquired. In that manner, with the assistance of the legislature, you may find a proper other use for the premises and so have the Park status thereof terminated.

NEAL A. DONAHUE
Assistant Attorney General

March 27, 1951

To Maine Real Estate Commission
Re: Partnership of Husband and Wife

This office is in receipt of your letter of March 26th, inquiring whether or not it is legal for a man and wife to form a partnership and to operate as such.

While by statute law now found in Chapter 153, Section 39 of the Revised Statutes, a married woman has considerably more latitude in regard to her property than she had at common law, that right in this State has never been extended so far as to permit a business partnership between husband and wife.

Apparently the leading case on this subject is found to be *Haggett v. Hurley*, 91 Maine 542. It is there pointed out that a married woman is by statute made liable for her debts contracted before her marriage, her debts contracted after her marriage in her own name, and her torts committed after April 26, 1883, in which her husband took no part. It is there said:

“The statute thus makes a distinction between her debts contracted before and her debts contracted after marriage. As to the former she is made liable without restriction. As to the latter her liability is confined to those contracted ‘in her own name’. This phraseology alone at the outset should make the Court hesitate to declare that she is liable for a debt contracted after marriage not by her in her own name but in the partnership name.”

I therefore conclude that a husband and wife may not enter into a *business* partnership.

NEAL A. DONAHUE
Assistant Attorney General

March 28, 1951

To H. H. Harris, State Controller
Re: Maine State Office Building Authority

In your memo of March 16, 1951 you inquire whether or not the State Controller should refuse to make payments of any future charges that may be presented for payment with respect to the Maine State Office Building Authority. Your inquiry is predicated upon the recent Opinion of the Supreme Judicial Court of Maine, dated March 14, 1951, which holds in effect that the legislation creating the Maine State Office Building Authority is unconstitutional.

In answer to the question with respect to future payments you are advised that no future payments should be made.

You have asked a second question as to whether or not the committee which passes upon the writing off of uncollectible accounts receivable has authority to authorize the State Controller to charge off as uncollectible the sums of money heretofore paid on account of the Maine State Office Building Authority and owed to the general fund of the State by the Authority.

The answer to this question will have to be held in abeyance pending further study of the statutes and the application thereto of the Opinion of the Supreme Judicial Court.

JOHN S. S. FESSENDEN
Deputy Attorney General