

# MAINE STATE LEGISLATURE

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May 31, 1951

To the Honorable Frederick G. Payne, Governor of Maine  
Re: Federal Repudiation of Responsibility for Costs of Protecting  
Federal Property.

Reference is made to your request of May 28, 1951, to which was attached a letter from Senator Owen Brewster and a copy of the Committee Report which has to do with a claim that the Town of Mount Desert has been attempting to collect from the Federal Government for costs of suppressing the fire that occurred in the Acadia National Park.

In his letter Senator Brewster asks whether or not there might be someone in the Attorney General's office who could prepare a brief with which to meet the objections of the Secretary of the Interior to the payment of the claim, as stated on page 4 of the Committee Report.

As you know, the Attorney General's office does not have any member of the staff assigned to the Forestry Department, so that it is not possible for us to prepare so elaborate a brief as perhaps could be done by an attorney more familiar with the subject. However, a reading of the Committee Report, particularly the letter of Captain Edward Ellsberg, as it appears on pages 2 and 3 of the Report, together with a reading of the Secretary of the Interior's letter, as it appears on page 4 of the Report, immediately reveals certain conflicts as to facts which, when considered in the light of Maine statutes on the subject of suppression of forest fires, shows how grossly contrary to the State of Maine view is the view expressed by Mr. Oscar L. Chapman, the Secretary of the Interior.

Regardless of the origin of the fire, it is unequivocally stated by Captain Ellsberg that, when the Town of Mount Desert undertook to participate in the suppression of the forest fire on Mount Desert Island on October 24, 1947, the fire was then raging within the National Park. It was not at that time still outside the Park, and the National Park Service was then using every means at its command to suppress the fire within the Park so that the entire Park might not be destroyed. Captain Ellsberg states that it was perfectly well understood by the National Park supervisors that a claim would be made on the National Park Service for reimbursement, since they knew that the men, equipment and supplies were being paid for by the Town of Mount Desert to fight fire on the National Park land. While it is admitted that, if certain acts of God had taken place, the Town of Mount Desert stood ultimately the chance of having its major units wiped out, it is nevertheless a fact that at the time the Town was called upon to furnish fire-fighting men and equipment, the danger to the Town of Mount Desert was only contingent. These matters are unequivocally stated by Captain Ellsberg, who was the co-ordinator on the spot.

The Secretary of the Interior represents that, since the fire started outside the National Park area, the Government should have no responsibility for fire suppression, even when the fire is within the Park area and when the National Park Service is desperately attempting to preserve and protect its own property. That the place where the fire started should have any bearing upon the liability for the suppression

of the fire is too ridiculous to argue, except in a tort case between individuals predicated upon the negligence of the person starting the fire.

It is common knowledge that National Park areas are not, and cannot be, sufficiently manned at all times by Park Service personnel adequately to suppress and control any forest fires which may occur in such Park areas. The suppression and control of forest fires in National Park areas must always involve the assistance of outside agencies and it is only common sense that that Service should be prepared to meet the cost of enlisting the service of outside agencies to protect the National Park forests.

When the Secretary of the Interior states that both Federal and private losses would have been much greater except for the Federal activities in combating the fire, he might well have stated also that the same might have been true, had it not been for the extensive services engaged by the National Park Service of local men and equipment to suppress the fire within the bounds of the National Park.

His statement that the fire-fighting activities of the Town of Mount Desert were not requested by his Department, nor were those activities carried out under the supervision of his Department, is directly refuted by Captain Ellsberg's statement to the contrary. His statement that the activity of the Town was made primarily to prevent the spread of the fire to the town is also refuted by Captain Ellsberg's statement.

It is very significant to note that in the bill dated January 12, 1948, submitted to the Acadia National Park by the town manager of Mount Desert, there is no charge made for the use of town equipment and that the only charges made are for direct expenditures by the Town of Mount Desert for men, equipment and services procured by the Town in the fire-fighting activity.

Had this fire been raging in property not within the bounds of the National Park Service, under the then existing laws of the State of Maine Chapter 362 of the Public Laws of 1945, it would have been the duty of the forest fire wardens of the Town of Mount Desert to call upon any persons in the town for assistance and to pay such persons such compensation as the forest fire wardens should determine, not exceeding the prevailing wages paid by the Town and also to provide such persons with subsistence during the furnishing of such services, the same to be paid for by the Town, provided only that the Town should not be liable for any amount greater than 1% upon its valuation for purposes of taxation. The law also provided that any person ordered to assist and not excused from assisting on account of sickness, disability, or some important business or engagement, should forfeit the sum of \$10 for his refusal to assist. Certainly, the charge of 75¢ per hour for the services of individuals was within the prevailing rate paid by the Town and is not exorbitant, and it should be noted that at no place in the bill rendered was there any charge made to the Federal Government for subsistence of the 268 men employed.

The foregoing reference to the statutes of the State is not made for the purpose of arguing that under the State law the Federal Government has a liability to pay the bill, but is merely pointed out to show,

that, by analogy with our State law, had the fire occurred not within National Park Service property, the action taken by the Town of Mount Desert was in direct compliance with what would have been expected of the Town of Mount Desert under State law. It is pointed out to show, perhaps, why the Town of Mount Desert acted as it did, why the Town of Mount Desert paid for the services rendered as it did, and why the Town of Mount Desert should expect recompense as it does, since with respect to any amount in excess of 1% of the town's valuation, it would expect recompense from the State if the fire occurred in an area over which the State had jurisdiction.

It is noted that the Secretary of the Interior states, "An undesirable precedent would be established if the Federal Government reimbursed the town in this case."

This statement of the Secretary of the Interior ignores the facts existing in this case, which Captain Ellsberg clearly points out as involving a moral, if not a legal, responsibility on the part of the National Park Service to recompense the Town of Mount Desert.

The Secretary's statement with respect to undesirable precedent also ignores the probably very salutary principle that, in view of the inability of the National Park Service to so man its National Parks as to control and suppress fires under all conditions, having to call on local agencies to help, under such circumstances it should be prepared to recompense those who furnish their time, equipment, labor and supplies.

In accordance with State law, the State of Maine reimbursed the Town of Bar Harbor approximately \$8500 as the State's share of the fire suppressions costs incurred by the Town of Bar Harbor for the suppression of fires within the Town of Bar Harbor and not attributable to Acadia National Park.

I point this out simply to show that in accordance with long accustomed usage and practice as well as State law, the entire procedure undertaken here was fully to be expected. The only element that differs is the fact that in this case it was the property of the Federal Government for which the Town was called upon to render assistance.

The Governor by his emergency Proclamation had caused the suppression of the raging fires of 1947 to be a responsibility of the State. Of course the State had no authority to oust the superior authority of the Federal Government within the Federal Government's own area.

It seems strange indeed that there should be no provision by Federal law to recompense those who are called upon to suppress fires on Federal property and that there is no recognition of the principle that the Federal Government, being unable to continuously staff its property in such manner as to protect it, owes as a matter of legal liability, even under the old common-law theory of common accounts in assumpsit, for the acts and services furnished at the request of its agent

I trust that the foregoing will arm Senator Brewster with basic observations from which he may develop in his own resourceful way the arguments which he wishes to present when the matter comes up in the Senate.

John S. S. Fessenden  
Deputy Attorney General