STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

October 5, 1953

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Bartlett Island

We have your memo of September 30, 1953, with attached letter from Phillips H. Lord and intra-departmental memos concerning Mr. Lord's Bartlett Island.

It appears that Mr. Lord is desirous of selling his island and that, to make it salable, he thought it desirable that legislation be passed, placing in the Commissioner of Inland Fisheries and Game the discretion of removing hunting restrictions placed upon the island. In their anxiety to have limited restrictions, it appears that the legislature completely removed Bartlett Island from that statute which made it a game preserve. Now Mr. Lord wishes the State to take it over until the next legislature for any purpose, to the end that hunting not be permitted on the island.

It is apparent from the intra-departmental memos that proper management would require that the island be opened to deer hunting and that a short-term lease not be negotiated.

That statute which made Bartlett Island a game preserve was amended during the last session of the legislature, to remove any restrictions against Bartlett Island. While this is not strictly a legal question, it would appear to be directly in conflict with legislative intent if, after the legislature removed restrictions from Bartlett Island, the Commissioner of Inland Fisheries and Game were to renew them.

To our knowledge, Section 129 of Chapter 33 of the Revised Statutes appears to be the only section empowering the Commissioner to create game preserves. This statute limits the land which may be created a game preserve to 1000 acres. Such preserve would, therefore, only partially cover the 3000-acre tract comprising Bartlett Island.

Considering all these factors and the recommendations of members of your own department, we feel that Mr. Lord has made a request impossible to comply with.

JAMES G. FROST
Deputy Attorney General

October 13, 1953

To A. D. Nutting, Forest Commissioner
Re: Federal Funds

We have your memo in which you ask that our opinion of July 10, 1953, relative to the encumbrance of State funds be reviewed, to the end that an amendment be made to that opinion so that Federal funds will not lapse.

It appears that your Department receives certain monies from the Federal Government under the provisions of the Clarke-McNary Law, such funds being allocated by the United States Department of Agriculture to the several States under a formula determined primarily upon the amount of money spent by the States. The money must have been spent on projects approved by the

Federal Government, and the Clarke-McNary Law contemplates that the Federal Government shall cooperate with the various States in these endeavors.

We have closely examined the law and have carefully read the Clarke-McNary Forest Fire Control Manual which outlines the policies of administrative procedure, and it appears that, consistent with the intent of the law, the monies paid to the State of Maine under the provisions of the law are paid so that the Federal Government will share in the burden of protecting our forests and water resources, which are of national as well as state-wide concern. In other words, it appears that it is the very intent of the law that the Federal Government "foot" part of the cost the State undertakes in carrying out its Forestry program, always with the proviso that in no case (with certain exceptions) shall the amount expended by the Federal Government in any State during any fiscal year exceed the amount expended by the State for the same purpose during the same fiscal year.

If the Federal Government is going to cooperate with the State of Maine by allocating to the State a sum of money based upon the amount spent by the State in a prior year, but to be spent in the same fiscal year as the State is working in it would seem that such sum is a reimbursement of the cost the State has been put to. And the result which follows is that such funds, in so far as the Federal allocation does not exceed the amount the State spends in that particular year, are State monies and should be dealt with in accordance with our laws.

It is therefore our opinion that the funds being here discussed are not of such a nature as would remove them from our laws relative to encumbrances.

JAMES G. FROST
Deputy Attorney General

October 15, 1953

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Greenville Cemetery Corporation

We have previously discussed this matter and, on the furnishing of the certificate of incorporation as per my request, have attempted to determine the status of the Greenville Cemetery Corporation as it fits into our Retirement System.

Our search fails to show that said corporation is a "political subdivision" as the term is used in Section 2, Chapter 395, of the Public Laws of 1951. Our statutes provide that every cemetery shall be owned, maintained or operated by: (1) a municipality or other political subdivision of the State; (2) a church; (3) a religious or charitable society; or (4) by a cemetery association formed under the provisions of Chapter 54, R. S. 1944. We feel that it is clear that in this instance the cemetery itself is owned and maintained by a charitable corporation which is not a political subdivision of the State. It is a body corporate, but it is not a body politic.

By way of suggestion, if the town came into the ownership of the cemetery, then its employees would be town employees; or the corporation might be