

MAINE STATE LEGISLATURE

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January 25, 1965

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Education

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Use of Chapel at Northern Maine Vocational Technical Institute.

FACTS:

The United States of America, acting by and through its Secretary of Health, Education and Welfare, and other Federal officers, conveyed (by Quit-Claim deed) certain surplus property (buildings and land) to the State of Maine to be used for educational purposes. One of the lots conveyed by the grant (Lot F) consisted of a parcel of land and a building; the structure being known as the "chapel". The deed contained the following proviso concerning the chapel:

"PROVIDED that the building on the above described Lot F., known as the 'Chapel,' being Facility Number 000127 listed in Appendix A is conveyed on condition that, during the useful life thereof, it shall be maintained and used as a shrine or memorial, or for religious purposes and not for commercial, industrial, or other secular use, which restriction shall remain in full force and effect unless released by the Department of Health, Education and Welfare, or its successor in function, upon a determination that the building no longer serves the purpose for which it is hereby conveyed; or that such release will not prevent accomplishment of the purpose for which the building is conveyed. It is expressly understood and agreed that this condition and restriction applies to the building only, and does not run with the land."

To date, the Institute has used the chapel for: (1) its graduation exercises; (2) the presentation of a Christmas program; and (3) vesper services.

Some time ago (April, 1964) a Baptist Mission inquired of the State whether the latter would lease the chapel to the Mission. Between April, 1964, and January 18, 1965, several letters have passed between the Mission's pastor, the Department of Education,

and the Base Commander of Loring Air Force Base. The ~~part~~ of the plural correspondence may be stated as follows:

1. A 'verbal understanding' exists between the State and the Base Commander whereby "the chapel might be made available for religious services for families of Air Force personnel which were conducted by chaplains of the Air Force." That the condition-precendent to the State's granting of such use would be "a formal request from the commanding officer of Loring Air Force Base." (Snell's letter, May 1, 1964.)
2. Neither the Base Commander nor the Air Force "has any formal jurisdiction over this property"; meaning the property subject to the reference deed. (Col. Gaylord's letter - May 11, 1964.)
3. Although the State Board of Education has established a policy "on rental and/or use of facilities" at the vocational-technical institutes, the Board has not yet established any such policy regarding the chapel; and has sought legal advice of the Attorney General's Office. (Maine Commissioner of Education's letter - December 21, 1964.)
4. The Mission Pastor is not a chaplain, and the attendance at the Mission services is not limited to families of Air Force personnel. (Reverend Hutchisons' letter - January 18, 1965.)

QUESTIONS:

1. To what extent may the personnel of the Institute use the chapel?
2. Does the State Board of Education have the right to grant the use of the chapel to other groups, on a rental or non-rental group?

ANSWERS:

The answers appear below.

REASON:

According to the applicable provisions of the reference deed,

the chapel is to be maintained and used "as a shrine or memorial, or for religious purposes." The chapel is not to be maintained or used "for commercial, industrial, or other secular use." Utilization of the facility for the purpose of conducting graduation exercises at the Institute constitutes a qualifying use, and the same is true of special events conducted on campus, such as the Christmas program. We do not wish to prognosticate upon the subject of use; any proposed use may be submitted to this office by the State Board of Education for a decision of its validity in light of the language in the deed. Because no other specific use is contemplated by the State Board of Education, the first question is moot.

The State Board of Education does not possess the requisite authority permitting it to allow the reference religious group to use the chapel for the purpose of conducting religious services. The reference deed contains a condition prohibiting a lease except upon the written authority of the Federal Department of Health, Education and Welfare:

"2. That during the aforesaid period of twenty (20) years the State of Maine will resell, lease, mortgage or encumber or otherwise dispose of the above described property or any part thereof or interest therein only as the Department of Health, Education and Welfare, or its successor in function, in accordance with existing regulations, may authorize in writing." (Deed, page 4.)

Please take particular note of the further condition in the deed which prescribes that the property conveyed to the State must be utilized for educational purposes:

"1. That for a period of twenty (20) years from the date of this deed the above described property herein conveyed shall be utilized continuously in the manner and for the educational purposes set forth in the approved program and plan contained in the application of the State of Maine dated October 2, 1961, as amended by amendments to said application dated December 6, 1961 and January 10, 1962, and for no other purpose;" (Deed, page 4)

It is difficult to perceive how an allowance of the reference use by the State to the religious denomination is a utilization of the realty by the State for an educational purpose of the State. We are mindful

of the fact that the deed vests the State with the maintenance of the facility; and that, therefore, the State's consent to the requested use would result in its support of the particular religious group. Although, according to the provisions of the deed, the State may divest itself of this duty of maintenance, such divestiture cannot result except by reason of action between the State and the Federal Government; and any such cancellation of maintenance results in a loss of the attending use.

In conclusion, the State Board of Education is without legal authority to permit the Mission to use the chapel for the purpose of conducting religious services.

John W. Benoit
Assistant Attorney General

JWB/eh