

MAINE STATE LEGISLATURE

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April 13, 1967

Hon. Harrison Richardson, Majority
Floor Leader
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House of Representatives
Attorney General

Constitutionality of L.D. 732, as amended.

FACTS:

Section 1 of L.D. 732, An Act Authorizing the City of Portland to Use Parklands for Public Highway Purposes has been amended to read as follows:

"The City of Portland is authorized and empowered to use for public highway purposes or to convey to another governmental use for said purpose such portions of its lands dedicated acquired by condemnation or by the expenditure of public funds for public park purposes as may be deemed necessary by its City Council. The remainder of such land shall continue to be used as dedicated public park land."

QUESTION:

Is L.D. 732, as amended, constitutional?

ANSWER:

Yes.

OPINION:

An annotation entitled "To what uses may park property be devoted" states in part:

"II. In General.

"The municipal authorities have power to devote park property to uses which are proper park purposes or consistent with the purposes of its dedication; but it is generally held that they cannot divert park property from park purposes or the purposes of its dedication.

"The uses to which park property may be devoted depend, to some extent, upon the manner of its acquisition, i.e., whether dedicated by the owner thereof, or purchased or condemned by the municipality.

"Thus, the uses to which land dedicated by its private owner as a park may be devoted depend upon the purposes of the dedication, as determined by the intention of the dedicator, and such land cannot be used for any purpose which is inconsistent with such intention. *McIntyre v. El Paso County* (1906) 15 Colo. App. 78, 61 Pac. 237; *Riverside v. MacLain* (1904) 210 Ill. 308, 66 L.R.A. 288, 102 Am. St. Rep. 164, 71 N.E. 408; *Hopkinsville v. Jarratt* (1914) 156 Ky. 777, 50 L.R.A. (N.S.) 465, 162 S.W. 963; *Harris County v. Taylor* (1883) 58 Tex. 690; *Clement v. Paris* (1913) --Tex. Civ. App. --, 154 S.W. 624; *McBride v. Rockwall County* (1917) --Tex. Civ. App. --, 195 S.W. 926.

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"But where land is acquired by a city or town by eminent domain or through expenditure of public funds, for public uses as a park, and not subject to the terms of any gift, devise, grant, bequest, or other trust or condition, it may be devoted to some other public use by legislative mandate. *Wright v. Walcott* (reported herewith) ante, 1242; *Higginson v. Treasurer* (*Higginson v. Slattery*) (1912) 212 Mass. 583, 42 L.R.A. (N.S.) 215, 99 N.E. 523." 18 A.L.R. 1246

There are further supplemental annotations to 18 A.L.R. 1246 found at 63 A.L.R. 484 and 144 A.L.R. 444. Both of these annotations uphold the general principles stated in the 18 A.L.R. annotation, as quoted above. Thus it is clear that one must look to the means by which public parklands are acquired by a municipality before one can determine whether the land can be converted from a public park use to another public use by legislative action.

Legislative Document 732 in its original form could have contemplated lands dedicated by individuals for park purposes. It has been held that:

"Where property is dedicated . . . to a public use for a particular purpose, it cannot . . . without the exercise of . . . eminent domain, be . . . (put) to a use of a different character, in disregard of the trust . . . and . . . the rights of the donors." Nichols v. Commissioner (Mass.) (1960) 166 N.E. 2d 911.

The Maine Supreme Judicial Court has said: ". . . the Legislature in permitting a municipality to accept gifts for public parks and playgrounds surely intended that the wishes of the donor be honored . . ." City of Bangor v. Merrill Trust Company, et al. 149 Me. 160 at 167. We are of the opinion that L.D. 732, in its original form, could have been validly attacked on constitutional grounds.

The amendment to the bill meets our objections to the original bill by making it clear that the property in question was acquired by the city through condemnation or by the expenditure of public funds for public park purposes. L. D. 732, as amended, falls within the legal principle set forth in the last-quoted paragraph of 18 A.L.R. 1246 at 1246 and is a valid legislative document.

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JSE/eh