

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

*OPINION:*

The powers of the Commissioner of Agriculture are limited by the statutes of the State of Maine. The general rule as relates to administrative agencies is stated in 1 Am. Jur. 2nd 72:

“The powers of administrative agencies are measured and limited by the statutes or acts creating them or granting their powers, to those conferred expressly or by necessary or fair implication.”

The Commissioner of Agriculture derives his powers in regard to official grades and standards from 7 M.R.S.A. § 441 through 447 and section 950 through 957. These sections prescribe the methods by which he establishes and promulgates the grades and standards and limits his powers thereto. It was under the former sections, namely 441 through 447 that the Blue, White and Red state trade marks were adopted some years ago. These statutes give the Commissioner no authority to control the parties to whom processing potatoes may be sold; this would be the effect of the licensing and controlling which you have described.

Under 10 M.R.S.A. § 1605 the Commissioner may delegate to the Maine Potato Commission the authority to regulate the use of the State of Maine trade mark; under sections 1602 and 1606 the Commission derives its power to prescribe rules and regulations for carrying out the purposes of the chapter and the issuance of licenses thereunder.

This is not to say, however, that the Maine Potato Commission can use the licensing process for restricting the use to which the potatoes can be put. Establishing a grade for identification is one thing. Restricting sales is another.

We are therefore of the opinion that the controls as to usage about which you inquired can not be utilized by the Commissioner of Agriculture or the Maine Potato Commission to confine this grade to the purposes for which it was established. It would appear that new legislation would be needed to effectuate this end.

WARREN E. WINSLOW, JR.  
Assistant Attorney General

September 20, 1967

Samuel S. Silsby, Jr., State Archivist

Clarification of Jurisdiction of Maine State Cultural Building Authority

*FACTS:*

The Maine State Cultural Building Authority is authorized under Private and Special Laws, 1965, Chapter 259, “to acquire land and construct a building thereon to provide appropriate facilities for housing the Maine State Archives, Maine State Library, and Maine State Museum, with service approaches, parking facilities, equipment, exhibits and furnishings therefor, at costs not exceeding \$4,800,000.”

The site selected by the Authority for the construction of the building includes land previously owned by the State and private lands acquired under orders of taking adopted by the Governor and Council on March 29, 1967. Title to the land within the site area selected by the Authority is now in the State of Maine.

The Maine State Cultural Building Authority has been advised of the authority of the Bureau of Public Improvements relative to the approval of the construction plans for the

Cultural Building, 5 M.R.S.A. § 1741, *et seq.* A question has arisen as to the authority of the Bureau over the choice of the already selected site by the Authority.

*QUESTION No. 1:*

Must the Bureau of Public Improvements grant its approval of the site already selected by the Authority as a condition precedent to the validity of said selection by the Authority?

*QUESTION NO. 2:*

Whether the Bureau of Public Improvements may legally condition its approval of the plans of the Cultural Building upon the Bureau's acceptability of the site already selected by the Authority?

*ANSWERS:*

1. No.
2. No.

*REASONS:*

The provisions of P. & S. 1965, c. 259, § 1 creating the Maine State Cultural Building Authority vest in that State agency the authority to acquire land and to construct a Cultural Building facility together with appropriate service approaches, parking facilities, equipment, exhibits, and furnishings. Nothing in the reference measure authorizes the Bureau of Public Improvements to exercise approval of the site as a condition precedent to the Authority's selection of the site. There is no indication whatsoever from a reading of the Authority's legislative mandate that some other State agency exercise a right of approval regarding the acquisition of the land upon which the Cultural Building is to be rested. Too, nothing appearing in 5 M.R.S.A. § 1741, *et seq.* authorizes the Bureau of Public Improvements to approve of the site selected by the Maine State Cultural Building Authority. The powers and duties of the Bureau of Public Improvements in the Department of Finance and Administration are set forth in § 1742 of Title 5 of the Maine Revised Statutes. Nothing there curtails the authority vested in Chapter 259 of the Private and Special Laws of 1965.

JAMES S. ERWIN  
Attorney General

September 20, 1967  
Maine Cultural Building Authority

Samuel S. Silsby, Jr., State Archivist

Definition of Jurisdiction of Capitol Planning Commission.

*FACTS:*

The 103rd Legislature enacted P.L. 1967, c. 458 for the purpose of creating a Capitol Planning Commission. The measure will become effective October 7, 1967. When