

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

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

effective, the subject legislation will appear in a new chapter in Title 5 of the Maine Revised Statutes, i.e., 5 M.R.S.A. § 297, et seq.

The Legislature, in enacting the declaration of policy re the Commission, has decreed that the Commission shall develop the "Capitol Area" with "economy, careful planning, aesthetic consideration, and with due regard to the public interests involved." *P.L. 1967, c. 458, § 1*. The duties of the Commission are set forth in the proposed section 299; which duties require the Commission to prepare a master plan for the orderly development of future state buildings and grounds in the Capitol Area of the City of Augusta; and to "submit the completed plan to the Legislature for adoption as the official state master plan for the development of state buildings and grounds in the Capitol Area." (See 5 M.R.S.A. § 302, as enacted in P.L. 1967, c. 458.) Section 304 of the new Chapter 14 of Title 5 re the Capitol Planning Commission provides that no construction project shall be initiated in the Capitol Area for the development of state buildings and grounds "following the adoption of the plan by the legislature without the approval of the commission of the proposals and plans for such projects."

Private and Special Laws of 1965, c. 259 was enacted by the Maine Legislature for the purpose of creating the Maine State Cultural Building Authority. In that piece of legislation, the lawmakers determined that said Authority was to be an agency of the State of Maine for the purpose of acquiring land and for the companion purpose of constructing a building thereon to house the Maine State Archives, the Maine State Library, and the Maine State Museum. Pursuant to Chapter 259 of the aforementioned Private and Special Laws of 1965, the Authority, at an organizational meeting held January 17, 1967, voted favorably upon a site for the Cultural Building facility, to wit:

"VOTED: That the site south of the State House, west of State Street, north of Kennedy Brook, and east of Jackson Street be selected as the site for the Cultural Building."

It was also voted at the same meeting that the Chairman of the Maine State Cultural Building Authority be authorized to proceed with the acquisition of the property denominated in the above vote. Thus, properties within the reference site area were acquired by the Authority on the basis of orders of taking of the Governor and Executive Council passed on March 29, 1967. The matter of the amount of damages to be paid by the Authority was decided by the Authority on September 7, 1967 according to an award made by the County Commissioners of Kennebec County on September 5, 1967. Architectural plans for the construction of the building on the selected site were completed on June 2, 1967 by the architectural firm selected by the Authority. (A time schedule re the construction of the Cultural Building has been established so as to realize the completion of the building as a focal point for the State's Sesquicentennial Celebration during 1970.)

The relationship and authority of the Capitol Planning Commission, established as aforesaid, to the Maine State Cultural Building Authority is of concern to the Authority in view of the present status of the development of the Cultural Building. The Authority wishes to receive clarification as to the responsibilities of these two respective State agencies regarding the proposed construction of the Cultural Building.

QUESTION:

Whether the Capitol Planning Commission created by P. L. 1967, c. 458, is authorized to exercise jurisdiction regarding the site selected by the Maine State Cultural Building Authority so as to control the placement of the Cultural Building already initiated by the Authority?

ANSWER:

No.

REASON:

The Maine State Cultural Building Authority was created by legislation which has become effective prior to the creation of the Capitol Planning Commission. In fact, the latter Commission is not effective at this writing and will not become effective until October 7, 1967. The master plan to be created by the Capitol Planning Commission will not become effective until adopted by the Maine Legislature. It is clear that the Capitol Planning Commission is vested with the authority to prepare the subject master plan; and to present the same to the Legislature for adoption. Until such adoption occurs, the Capitol Planning Commission cannot utilize the mandate in Section 304 of Title 5, i.e., approve proposed plans for State buildings in the Capitol Area. At the same time, the provisions of the Act creating the Maine State Cultural Building Authority vests that agency with jurisdiction to acquire land for the purpose of constructing a Cultural Building facility. *P. & S. 1965, c. 259, § 1, et seq.*

JAMES S. ERWIN
Attorney General

September 21, 1967
Bureau of the Budget

R. M. Berry, State Budget Office

Longevity Pay for State Employees

FACTS:

The 103rd Legislature enacted Chapters 490 and 494 of the Public Laws of 1967 authorizing the fixing of salaries of certain State executive officers from the Governor and Executive Council determination to an annual statutory amount computed on the basis of 52 times their respective current weekly salaries. With regard to the effect of those chapters in view of the Private and Special Laws of 1963, Chapter 202, and the subsequent enactment of Chapter 483 of the Public Laws of 1965, you have asked for an opinion on five (5) questions.

QUESTION NO. 1:

When the statutory salary of this State executive officer, and the other six of the same category (step 2) becomes effective on October 7, 1967, are all 7 entitled to an additional 10% of the amount specified in the new statute?

ANSWER NO. 1:

No.

OPINION: