

MAINE STATE LEGISLATURE

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Construction of reversionary clause in deed, City of Bangor to United States of America.

FACTS:

In 1942 the City of Bangor conveyed to the United States of America the tract of land which was thenceforth used as the site for Dow Air Force Base. The deed contained the following language:

"Provided, however, and this conveyance is made on the condition that if and when the Secretary of War hereafter declares that there is no further necessity for the use for military purposes of the property conveyed by this deed, the same shall revert to the Grantor, exclusive of any buildings, improvements or equipment thereon, belonging to the United States or to any lessee of the United States or belonging to others holding order or using said property with the permission of the United States all of which buildings, improvements and equipment may be sold or otherwise disposed of and removed from said property by the United States within one hundred twenty (120) days after the date of the declaration by the Secretary of War there is no further military necessity for the use of the property hereby conveyed to the United States."

The Secretary of Defense (the statutory successor to the Secretary of War) has declared Dow Air Force Base surplus to the military needs of the United States. Formal deactivation of the base is scheduled for June 30, 1968. Certain interests in real property, e.g., approach zones and easements; and certain improvements to the land described in the 1942 deed, e.g., runways, taxiways, buildings and equipment, will be conveyed and sold to the City of Bangor on or about June 30, 1968 for nominal consideration. Other interests in property and improvements (generally, all such which are not, in the opinion of the Federal Aviation Administration,

necessary for the operation of a civilian airport at the Dow site) will be conveyed and sold to the City of Bangor at a price to be negotiated.

The Maine Aeronautics Commission, acting in conjunction with the City of Bangor, intends to remodel and improve an existing permanent building at the Dow site for use as a terminal building at the civilian airport. The Commission wishes to be advised of its rights with respect to entry upon the land described in the 1942 deed and the propriety of remodeling the building.

QUESTION:

In view of the language in the 1942 deed, under what circumstances may the Maine Aeronautics Commission enter upon the land described in said deed, make use of the improvements thereon, and remodel an existing building thereon presently owned by the United States?

OPINION:

To answer properly the question presented requires an analysis of presently existing rights with respect to three classes of property, viz: the land described in the 1942 deed; the improvements (exclusive of buildings) since made thereto by the United States; and the buildings since constructed thereon by the United States.

1. Land: The language in the 1942 deed conveyed a fee simple determinable to the United States of America with a contingent reversionary interest remaining in the City of Bangor. The contingency upon which the fee is limited (the declaration by the Secretary of War) has occurred; the estate of the United States, upon that occurrence, expired automatically, and the City of Bangor became again the fee simple owner of the subject premises. Accordingly, should the Commission wish to enter upon the land, permission should be obtained from the appropriate municipal authorities.

2. Improvements (exclusive of buildings): The United States has made extensive improvements to the land described in the 1942 deed, including access roads, runways and taxiways. By the terms of the deed, the United States has 120 days to remove these improvements after the happening of the contingency upon which

its estate in the land expires. This interest may be called a "limited right of entry". However, even if such improvements are not removed within the 120-day period, title thereto nonetheless remains in the United States. Since, as we understand it, the Commission proposes to use these access roads and other ways, license to do so should be obtained from the appropriate federal authorities for such use until such time as the United States conveys such improvements to the City of Banger; thereafter the City is the appropriate licensing authority.

3. Buildings. Since the date of the 1942 deed, the United States has erected buildings on the land therein described. As pointed out in the preceding paragraph, the United States has under the deed 120 days to remove these buildings after the declaration by the Secretary of Defense that Dow AFB is surplus, but if the buildings are not removed within this period, the United States still retains title to them. As you state, the General Service Administration proposes to sell one of these buildings to the City of Banger for use as an air terminal. Prior to actual consummation of the sale, license to enter and use this building must be obtained by the Commission from the United States; thereafter, from the appropriate municipal authorities. Since the Commission proposes to expend public funds to improve the building prior to consummation of the sale, appropriate measures must be taken to safeguard the Commission's investment. There are several ways to accomplish this objective - for example, an agreement between the City and the Commission that, in the event the United States became unable or unwilling to make conveyance of the subject building, the City will reimburse the Commission for the amount which the Commission expended on improvements. You do not state the nature of the proposed relationship between the Commission and the City; however, if the Commission is to be the City's lessee, the lease should establish who pays for the leasehold improvements and who gets title to them upon expiration of the lease.

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