STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

Electrician's Examining Board agreed with him, that the initial electrical plan was inadequate. The initial approval of the electrical plan by the State did not relieve the architect from responsibility for submission of an adequate plan. See paragraph IV (a), Instructions to Architects and/or Engineers for the Development of Plans and Specifications for State Project, incorporated by reference in paragraph IV A of the contract between CBA and the architect. Upon notification of the subsequent determination of inadequacy of the initial plan, based upon a disputed interpretation of the NEC, the architect submitted a revised electrical plan which is now deemed adequate.

If the initial plan had incorporated all of the requisite work, the State would have had the benefit of competitive bidding; while this might have reduced somewhat the $8,268 figure for such additional work, the material presented contains no facts upon which to base a determination of the extent of any such reduction. But even if the extent of such a loss could be determined, the architect is only liable therefor if the loss resulted from a failure on his part to exercise reasonable care. *CJS, Architects §19.* The Code Consultant for the International Association of Electrical Inspectors concedes that the pertinent sections of the Code are ambiguous and that "an effort is now being made to clarify the rules in the Code for secondary overcurrent protection." The architect's consulting engineers still dispute, with some supporting authority, the correctness of that interpretation which was finally adopted by the Electrician's Examining Board. *Furthermore, the Secretary of that Board had previously approved the initial plan without comment.* Under these circumstances, no substantial basis exists for concluding that the architect had failed to exercise reasonable care in preparing the initial electrical plan. Accordingly, the third question must be answered in the negative.

CHARLES R. LAROUCHE
Assistant Attorney General

January 11, 1971
Parks and Recreation Commission

Lawrence Stuart, Director

Participation of the Maine State Parks and Recreation Commission in the Historic Preservation Program Established by 16 U.S.C. §§ 470-a – 470-m, Pub. L. 89-665 (1966).

SYLLABUS:

The Maine State Parks and Recreation Commission has no authority to participate in the "program for preservation of additional historic properties" established by Pub. L. 89-665 (1966) (16 U.S.C.§§470-a to 470-m).

FACTS:

16 U.S.C. §§470-a – 470-m (1966) (Pub. L. 89-665) entitled "An Act to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes." provides for financial aid grants to states for "the acquisition of title or interests in and for the development of, any district, site, building, structure, or object that is significant in American history, architecture, archeology, and culture . . . in order to assure the preservation for public benefit of any such historical properties." In

connection with such grants, the law requires the grantee state "to assume, after completion of the project, the total cost of the continued maintenance, repair and administration of the property in a manner satisfactory to the Secretary (of the U.S. Department of the Interior)".

The United States Department of the Interior has, in a memorandum dated October 20, 1970, construed the requirement that the grantee state assume "the total cost of the continued maintenance etc." to allow the grantee state to satisfy the Secretary either (1) by making a "contractual commitment to the Federal Government that it will be solely responsible for the continued maintenance, etc." or (2) by requiring "the owner of a private site to enter into an enforceable contract to maintain, etc." and allowing the state to perform necessary maintenance and repair at the owner's expense if the owner fails to maintain the site properly" or (3) by acquiring an "easement" and assuming the costs of maintenance, etc.

QUESTION:

Does the Maine State Parks and Recreation Commission, hereafter called the Commission, have the authority to participate in the "program for the preservation of additional historic properties" established by Pub. L. 89-665, with respect to either public or private properties?

ANSWER:

No.

REASONING:

Pub. L. 89-665 contemplates the acceptance of Federal funds for the purpose of acquiring and developing "any district, site, building, structure, or object that is significant in American history, architecture, archeology, and culture . . . in order to assure the preservation for public benefit of any such historical properties" (16 U.S.C. § 470-a (a) (2).)

12 M.R.S.A. § 602, subsec. 9 empowers the Commission "to accept and receive funds from the Federal Government for all purposes relating to *parks* and *recreational* areas" (italics supplied.). The Legislature has distinguished between "memorial"[1] (meaning land or structures with "historical, archeological or scientific interest or value") and "park"[2] (meaning areas of "recreational value"). Thus, since 12 M.R.S.A. § 602, subsection 9 does not specifically authorize the Commission to accept funds for purposes relating to "memorials", the Commission is without authority to accept such funds.

Even if the Commission were authorized to accept Federal funds for purposes relating to "memorials", it would be unable to accept such funds for use in connection with a private "memorial" for the reasons that: (1) 12 M.R.S.A. § 602 grants the Commission "jurisdiction, custody and control in, over and upon all state parks and memorials and national parks which are under control and management of the State"

1) 12 M.R.S.A. § 601, subsec. 1.

2) 12 M.R.S.A. § 601, subsec. 2.

and thus the Commission has no "jurisdiction" over "private memorials"; (2) 12 M.R.S.A. § 601, subsection 1 defines "memorials" to include only land and buildings established "for public use"; and (3) in order to "aset apart and publicly proclaim areas of land in this State including improvements, or other structures thereon, . . . as . . . memorials" the Commission must have acquired "title"[3] to the said land and structures. (See 12 M.R.S.A. § 602, subsection 3.)

E. STEPHEN MURRAY
Assistant Attorney General

January 8, 1971
Labor and Industry

Madge E. Ames, Director
Div. of Minimum Wage

Farnsworth Library and Art Museum

SYLLABUS:

Employees of the Farnsworth Library and Art Museum are "engaged in . . . a program controlled by an educational non-profit organization", provided that their employment directly related to the basic functions of the organization.

FACTS:

The William A. Farnsworth Library and Art Museum, Rockland, Maine, is a non-profit organization offering to the general public the opportunity to view works of art and a reference library. The museum employs certain personnel without paying minimum wage. Title 26 M.R.S.A. §624 prescribes the minimum wage to be paid "employees". Section 663 (3) (E) exempts from the definition of "employee"

> "Any individual engaged in the activities of a public supported non-profit organization or in a program controlled by an educational non-profit organization . . . ."

QUESTION:

Are employees of the Farnsworth Museum "engaged in . . . a program controlled by an educational non-profit organization"?

ANSWER:

Yes, provided their employment directly relates to the basic functions of the organization.

3) Acquisition of an "interest" or "easement" by the Commission would not be acquisition of "title". See "easement", "interest" and "title", *Black's Law Dictionary*, pp. 599, 950 and 1655 (4th ed. 1951).