

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date June 21, 1972

To James S. Erwin, Attorney General

Dept. _____

From Charles R. Larouche, Assistant

Dept. _____

Subject Baxter State Park Authority

In accordance with an instructional memorandum of Deputy Attorney General George West, dated June 14, 1972, I submit this opinion on the following questions:

Can the Baxter State Park Authority build a house in Millinocket without Governor and Council approval?

Can the Baxter State Park Authority buy land in Millinocket for the above house to set on without Governor and Council approval?

Answer: Affirmative to both questions, subject to the limitations stated hereunder.

Paragraph 1 of the Third Clause of Governor Baxter's Trust reads:

"1. To pay the net income therefrom at least as often as quarterly to the 'BAXTER STATE PARK TRUST FUND' created by Chapter 21 of the Private and Special Laws of 1961 enacted by the Legislature of the State of Maine for the care, protection and operation of the forest land known as BAXTER STATE PARK, and for other forest lands hereinafter acquired by the State of Maine under the provisions of this TRUST for recreational or reforestation purposes." (Emphasis supplied).

12 M.R.S.A. § 901 describes Baxter State Park and provides in pertinent part:

"They shall be under the joint supervision and control of, and shall be administered by the Forest Commissioner, the Commissioner of Inland Fisheries and Game and the Attorney General, and the said commissioners and Attorney General shall have full power in the control and management of the same, under the title of Baxter State Park Authority. The authority shall make payments to the Maine Forestry District in lieu of taxes on the basis of 6¢ per acre per year for all land within the Baxter State Park area for the prevention, control and extinguishment of forest fires. The

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authority shall receive moneys available from trust funds established by the donor of the park and shall include fees collected, income from park trust funds invested by the Treasurer of State and other miscellaneous income derived from the park for maintenance and operation of the park." (Emphasis supplied)

It appears from the foregoing Trust provision that the Baxter State Park Trust Fund is to be used for the "care, protection and operation" of that Park. It appears from the foregoing statutory provision that the Baxter State Park Authority is the agency empowered to receive the funds for such purposes. It finally appears from the quoted statute that Baxter State Park Authority has been given "full power in the control and management" of that Park. It would seem, therefore, that Baxter State Park Authority can expend the Trust funds in its unfettered discretion, subject to no requirement of prior approval by anyone. Such expenditures must, of course, be for the purposes enumerated in the Trust, i.e. "care, protection and operation" of that Park.

Accordingly, if the Baxter State Park Authority concludes that a house in Millinocket will effectuate the purpose of either caring for, protecting or operating that Park, it can lawfully purchase the land which it deems required for that purpose and thereupon erect the requisite house, expending therefor such of the moneys which it has received pursuant to the foregoing Trust and statutory provisions as it deems appropriate.

However, prior to a final determination of the questions posed, we must consider whether or not sections 1741-1750 of 5 M.R.S.A., which impose restrictions upon "public improvements", are applicable to the Baxter State Park Authority. The definition of "public improvement" contained in 5 M.R.S.A. § 1741 is capable of including the Baxter State Park Authority, if that definition is given a broad, literal construction, i.e., "buildings . . . hereafter constructed . . . by the State of Maine or . . . any agency thereof . . ." This statute provides no definition for the word "agency." If the word "agency" is given its broadest meaning, it would certainly include Baxter State Park Authority, since it is an agency of the State to administer that Park. However, it is most extraordinary agency in that it exists solely to carry out the terms of a Trust. It is an instrumentality of the State that must truly be deemed sui generis. Accordingly, it cannot be lightly inferred that the Legislature intended to include it within the sweep of the term "agency" as used in 5 M.R.S.A. § 1741. The thrust of that statute seems to be toward instrumentalities of the State which either utilize public funds or conduct public business; Baxter State Park Authority does neither.

These circumstances require a close examination of a statute which expressly governs Baxter State Park Authority. 12 M.R.S.A. § 900 repeatedly stresses the unique nature of the Park created by this Trust and the correlative uniqueness of the Authority created to administer this unusual Trust. For example, 12 M.R.S.A. § 900 emphatically declares that this Park:

" is to 'be separately administered free from any connection with the larger State Park Commission'

"Solely cognizant of the responsibility, it shall always be the purpose of the authority to satisfy the terms of the Trust."

It seems clear from this that the Legislature intended Baxter State Park Authority to be a unique authority and that the effectiveness of the discharge of its fiduciary responsibility should not be diluted by the encroachment of any other State agency. Accordingly, it is clear to me that when the Legislature, in the ensuing section (12 M.R.S.A. § 901) said that the Baxter State Park Authority "shall have full power in the control and management" it meant precisely "full power" and not "shared power" nor "subject to Bureau of Public Improvement supervision."

Therefore, when these two statutes are read together, as they must since they are in pari materia, it is clear that the word "agency" as used within 5 M.R.S.A. § 1741 does not include Baxter State Park Authority.

Accordingly, it is my opinion that the approval of the Governor and Council is not necessary for the purchase of land on which to build a house or for the construction of such house by the Baxter State Park Authority.



CHARLES R. LAROUCHE
Assistant Attorney General