

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
ATTORNEY GENERAL

For the Years  
1967 through 1972

*ANSWERS:*

- (1) Yes.
- (2) No.

*REASONING:*

- (1) Section 4801 states:

“ . . . a lot of land which is not served by public or private community sewer . . . shall not be used for single family residential purposes unless such lot of land contains at least 20,000 square feet; and if the lot abuts on a public road, lake, pond, river, stream or seashore it shall further have a minimum frontage of 100 feet.”

A plain reading of section 4801 makes it clear that “the lot” referred to in the second phrase of the section means any “lot of land which is not served by public or private community sewer . . . .” The section does not contain any language to indicate the requirements of 20,000 square feet and 100 foot frontage are alternative requirements.

(2) Section 4801-A provides that the Department of Health and Welfare may waive the requirements of section 4801 as they relate to “the minimum frontage of a lot abutting on a public road.” A plain reading of that section makes it clear that the minimum frontage requirement cannot be waived as to lots located anywhere but on a public road.

E. STEPHEN MURRAY  
Assistant Attorney General

July 17, 1972

James S. Erwin, Attorney General

Baxter State Park Trust Fund Income

*SYLLABUS:*

All income, produced in any manner and however characterized, from the Baxter State Park Trust Fund, must either be expended solely “for the care, protection and maintenance” of Baxter State Park or accumulated in that Fund pending such expenditure. Allocation of any such income to any other purpose, including to the General Fund, is improper.

*FACTS:*

It appears that subsequent to the gift in trust of certain land known as Baxter State Park to the People of the State of Maine, the Honorable Percival Proctor Baxter made a gift in trust to said people of one thousand shares of the capital stock of the Proprietors of Portland Pier Corporation. That gift was accepted by said people by enactment of Chapter 21, Private and Special Laws of 1961, in the following pertinent words:

“ . . . to be held IN TRUST forever for the benefit of the people of the State of

Maine and to be known as Baxter State Park Trust Fund the principal thereof to be invested and reinvested, the income therefrom to be used by said State for the protection and operation of said 193,254 acres of forest land known as BAXTER STATE PARK.”

It further appears that Governor Baxter subsequently made a gift in trust to said people of one thousand shares of stock of the Congress Realty Company. That gift was accepted by said People by enactment of Chapter 30, P & S Laws of 1965, in the following pertinent words:

“to be held IN TRUST forever for the benefit of the people of the State of Maine and to be added to Baxter State Park Trust Fund the principal thereof to be invested and reinvested, the income therefrom to be used by said State for the care, protection and operation of said 201,018 acres of forest land known as BAXTER STATE PARK as provided in Laws of Maine (1961), Chapter 21, and administered according to the provisions of said Baxter State Park Trust Fund.” Paragraph 1 of the Third Clause of the Governor Baxter 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).

On July 12, 1961, Governor Baxter wrote the following letter to State Treasurer Carpenter:

“Will you please keep in mind that I want the ‘BAXTER STATE PARK TRUST FUND’ recently created by the Legislature to be kept as a *separate and distinct Fund with the securities and income therefrom to be held together* and not mixed or involved in any way with other State Trust Funds. Also I ask you to have none of this Fund used for any purposes until I am consulted and approve.

“After my decease of course the State will carry on as best it can in accordance with my wishes.

“I write this letter so that you will have a definite record of my wishes and am sending a copy to Governor Reed and our Executive Councilors for their record.” (Emphasis supplied.)

On July 12, 1961, Governor Baxter wrote the following letter to Governor Reed and Executive Councilors:

“The ‘BAXTER STATE PARK TRUST FUND’ recently created by the Legislature will *produce and accumulate* income from time to time and that with maturing securities will need to be wisely re-invested.

“I am enclosing you a copy of my letter to Treasurer Carpenter so that he will understand my wishes in this matter.

“There will be no need of using this Fund at present. Before any purchases or payments are made I should like to be consulted.

“This Fund will grow and I want to keep in close touch with it. Please have both these papers inscribed on the Council records.” (Emphasis supplied.)

On February 8, 1968, Governor Baxter sent the following letter to State Comptroller Cranshaw:

“In regard to the naming on the States’ books of the charitable funds that came from me and of which you have charge, I make the following suggestions so there will be no confusion.

"I understand you have Ninety Thousand Dollars (\$90,000.) more or less, which you now carry as 'Mackworth Island Deaf School Fund'. This fund came as a gift from me and I want to close it for I consider the Deaf School as complete except for one item of Eight Thousand Dollars (\$8,000.) which I have already approved for some special equipment which will not occur again.

"Hereafter my gifts will go to one account only which you now have 'Baxter State Park Fund', a project which I intend to increase from time to time.

"In other words, I want to build up the 'Baxter State Park Fund' and drop the other 'Mackworth Island Deaf School Fund'. This leaves just one account for my gifts."

*QUESTION:*

Whether any of the income, including short term earnings, accruing from the Baxter State Park Trust Fund while in the custody of the State of Maine can lawfully be deposited in the General Fund of the State for general State expenditure?

*ANSWER:*

Negative.

*REASONS:*

It is clear that the Baxter State Park Trust Fund was established for one purpose only, i.e., for the *care, protection and operation* of the forest land known as Baxter State Park. The special Acts of 1961 and of 1965 expressly acknowledge this limited purpose in accepting the gifts of Governor Baxter to the Baxter State Park Trust Fund. Each Act also expressly declares that the principal is to be "invested and reinvested, the income therefrom to be used by said State *for the care, protection and operation* of said 201,018 acres of forest land known as BAXTER STATE PARK as provided in Laws of Maine (1961) Chapter 21, and administered according to the provisions of said Baxter State Park Trust Fund." Chapter 30, P & S L., 1965. Governor Baxter anticipated that this Fund would "*produce and accumulate income* from time to time." Letter to Governor Reed, July 12, 1961.

Black's Law Dictionary, Fourth Edition, defines the word "income" as follows:

"The return in money from one's business, labor, or capital invested; gains, profits, or private revenue. In re Slocum, 169 N.Y. 153, 62 N.E. 130.

"The gain derived from capital, from labor or effort, or both combined, including profit or gain through sale or conversion of capital; income is not a gain accruing to capital or a growth in the value of the investment, but is a gain, a profit, something of exchangeable value, proceeding from the property, severed from the capital, however invested or employed, and coming in, being derived, that is, received or drawn by the recipient for his separate use, benefit, and disposal. *Goodrich v. Edwards*, 41 S.Ct. 390, 255 U.S. 527, 65 L.Ed. 758. The true increase in amount of wealth which comes to a person during a stated period of time. *Commissioner of Corporations and Taxation v. Filoon*, 310 Mass. 374, 38 N.E.2d 693, 700."

"Short term" income produced from the Trust Fund investment income is clearly "produced" by and "derived" from the Trust Fund. The donor of the Trust impressed upon this Trust the requirement to expend the "income" from this Trust Fund,

produced in any manner and however characterized, for the one expressed purpose only and to “accumulate” the income produced by that Fund pending such expenditure.

Accordingly, it is clear beyond cavil that *none* of the “income” produced by such Trust Fund, whether it be termed direct investment income, short-term income, or by any other characterization, can be diverted to any other purpose, including to the General Fund of the State. Such diversion to the General Fund is neither an application for the sole expressed purpose of this Trust Fund, nor is it an “accumulation” in a “separate and distinct Fund” as required by the donor of this Trust. Such diversion would constitute a breach of trust.

CHARLES R. LAROCHE  
Assistant Attorney General

July 26, 1972  
Land Use Regulation Comm.

James S. Haskell, Jr.

Maine Land Use Regulation Commission Law; Subdivision Permits.

*SYLLABUS:*

Only persons who had commenced use of or construction on or sold an interest in any subdivision located in the unorganized and deorganized townships and mainland and island plantations of the State before September 23, 1971 are not required to receive a permit prior to such use, construction or sale from the Maine Land Use Regulation Commission.

*FACTS:*

12 M.R.S.A. § 682.2. defines “subdivision” as follows:

“A subdivision is a division of an existing parcel of land into 3 or more parcels or lots, within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, or by a sale of the land by metes and bounds or by leasing.”

12 M.R.S.A. § 682.7. defines “development” as follows:

“Development shall mean any land use activity or activities directed toward using, reusing, or rehabilitating air space, land, water or other natural resources.”

12 M.R.S.A. § 685-B.1.B. states:

“No person shall commence development of or construction on any subdivision or sell or offer for sale any interest in any subdivision without a permit issued by the Commission.”

*QUESTION:*

Under what circumstances is a person not required to apply for a permit from the Commission prior to engaging in development of or construction on or prior to selling or offering for sale any interest in a subdivision.

# STATE OF MAINE

*Filed Sept 12, 1975*

Inter-Departmental Memorandum Date August 16, 1972

To James S. Erwin, Attorney General

Dept. Attorney General

Marie H. Mitchell, State Controller

Dept. Bureau of Accounts and Control

Rodney L. Scribner, State Budget Officer

Bureau of Budget

Subject Accounting and Budgeting for the Baxter State Park Authority

Pursuant to our discussions with Charles Larouch, we offer the following:

1. The establishment of a special revenue account for the Authority was done to conform to generally accepted governmental accounting principles. No diversion of trust fund assets will be made as a result of this change. Also, we can assert that no interest will be earned by the General Fund of the State on any trust fund assets.
2. The filing of budget forms and work programs by the Authority will not result in the exercise of financial controls by the Bureau of the Budget. These forms are for the recording of financial data and estimates only.

We intend to comply with the letter and the spirit of 12 MRSA 901 which states " - - - 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 (Baxter State Park), under the title of Baxter State Park Authority".

Marie H. Mitchell  
State Controller

Rodney L. Scribner  
State Budget Officer

MMH:RLS:dc  
cc:M.F.W.