December 19, 1972

C. Norman Manwell, Supervisor — Parks & Recreation

Lee M. Schepps, Assistant — Attorney General

Sharing of Park Fees with Municipalities

I have received your memorandum of December 12, 1972, and will respond to the questions raised therein in the order in which they were asked:

1. This paragraph of your memo apparently calls for no response although I would note that insofar as I can tell from your description and subject to remarks made in my memo of May 30, 1972 on this subject, your approach to the problem appears to be legally tenable.

2. The term "ocean" meant, at common law, that portion of the high seas outside the boundary of any country. It obviously means something broader than that in Title 12 M.R.S.A. § 602, sub-§ 4. In view of the highly developed definition of "coastal wetland" which is embodied in the Wetland Control Act (Title 12 M.R.S.A. § 4701, et seq.), I am inclined to believe that the legislature meant something narrower than "coastal wetland" when they selected the word "ocean." As in the question of what constitutes a "major river" under Title 12 M.R.S.A. § 602, sub-§ 4, the term "ocean" is probably capable of no precise legal definition or, if it is, the definition is not readily apparent from the statute. I would consider amendatory legislation to clarify the matter and, in the interim, handle each case on the basis of its relative merits. As you noted, the purpose of the act was to reimburse municipalities for lost tax revenue and the value of the frontage ought logically to be a factor in determining the extent of "ocean" frontage. A more compelling factor, however, would be an assessment of the characteristics of the body of water on which the park has frontage.

3. While the purpose of the act was to reimburse municipalities for lost tax revenues, the act uses the word (ostensibly as a test of valuation) "frontage" and not the word "value." Accordingly, a long narrow strip of frontage (on a major river, for example) which strip is owned by the State and is under the jurisdiction of the Department of Parks and Recreation, would be included even though its assessed value is low or its development prospects are limited. Obviously, amendatory legislation might clarify this point. One cardinal reason for clarification involves, as you mentioned, the question of whether islands owned in their entirety by the State are to be included, foot for foot, in the computations of credits under the act. Under the present wording, the total shoreline of all islands having such frontage must be included.

NOT A FORMAL OPINION

4. The frontage should be calculated from normal high water mark. As you noted, the purpose of the act was to compensate the town for lost taxable valuation. Coastal property is normally valued to high water mark and, in any event, by virtue of the Colonial Ordinances, the public already had an easement in the intertidal zone which predated this act. As a result, valuation for purposes of municipal taxation must have focused upon the property above high water and not on the underlying fee simple interest of the riparian in the intertidal zone.

5. The word "municipalities", as used in the act, includes plantations. See Title 1 M.R.S.A. § 72.12.

6. This section of your inquiry appears to be directed primarily at facilities owned by the State but leased to and operated by the municipality in which it is located. Because revenues from those facilities are collected and, in general, retained by the municipalities, and because jurisdiction over the facilities is contractually vested in the municipalities, it seems clear that the facilities are not under the jurisdiction of the State Department of Parks and Recreation for purposes of this act.

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