

# MAINE STATE LEGISLATURE

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yes  
January 2, 1973

John L. Martin, Chairman

Land Use Regulation Commission

George C. West, Deputy

Attorney General

Baxter State Park Authority Has Control and Management of Baxter State Park Paramount to Another State Agency.

SYLLABUS:

The Maine Land Use Regulation Commission has no authority to require Great Northern Paper Company to obtain a development permit from the Commission prior to exercising cutting rights in Baxter State Park. Moreover, the Baxter State Park Authority has paramount control and management of the Park.

FACTS:

"Baxter State Park", named in honor of the generous donor of all the lands that comprise the Park - Honorable Percival Proctor Baxter - consists of Townships 2, 3, 4, 5 and 6, Range 9 W.E.L.S. and Townships 3, 4, 5 and 6, Range 10 W.E.L.S., Piscataquis County, and Township 6, Range 8 W.E.L.S., Penobscot County. (See 12 M.R.S.A. § 901 and paragraph Sixth of Mr. Baxter's Will dated September 9, 1966). The 201,018 acres making up Baxter State Park were granted "in Trust for the benefit of the people of Maine" in various deeds. The successive grants were accepted by the Legislature in the form of Private and Special Laws.

When Mr. Baxter conveyed certain of the Park lands to the State in Trust, the deeds excepted and reserved to Great Northern Paper Company the right to cut and remove merchantable timber and standing growth in specified southern areas of the Park. Recently, Baxter State Park Authority entered into an agreement with the paper company transferring the company's cutting rights to a northern area of the Park considered by the Authority to be in the best interests of the people of Maine.

In 1969, the "Maine Land Use Regulation Commission" was created by the Legislature. P.L. 1969, c. 494. The Commission views cutting operations as "developments" for which a permit is required from the Commission. That being so, the Commission asks whether it has jurisdiction to require Great Northern Paper Company to obtain a development permit before exercising cutting rights under the beforementioned agreement with the Authority.

QUESTION:

Does the Maine Land Use Regulation Commission have authority to require Great Northern Paper Company to obtain a development permit from the Commission before exercising cutting rights in Baxter State Park?

ANSWER:

No. Moreover, the Baxter State Park Authority has paramount control and management of the Park.

REASONS:

1. The Maine Legislature recognizes that the Baxter State Park Authority exists to preserve the terms of the deeds of Trust creating the Park. The legislative expression to that effect appears in P.L. 1971, c. 477, § 1, amending the laws relating to the Authority in Title 12, Chapter 211, Sub-chapter III. That amendment added a new section, § 900, to the reference Title. The section is extensive and meaningful; some excerpts are as follows:

"Seldom has a more generous gift been presented to a people than has been given by Percival Proctor Baxter to the people of the State of Maine. It is incumbent upon them, the recipients, to preserve the trust impressed upon them, to ensure for themselves and for future generations the fullest use of Baxter State Park consistent with the desires of the donor.

" \* \* \* .

"While this area bears the name park, it is not to be confused with the existing park system and is to be separately administered free from any connection with the larger State Park Commission'. That system, purchased with the funds of the people, must change from time to time to accommodate changing circumstances and the varying desires of its proprietors; not so, Baxter State Park, purchased by the generosity of one man, richly endowed, and presented to the people with specific stipulations

"While I am living I fear no encroachments on the park, but as time passes and new men appear upon the scene, there may be a tendency to overlook these restrictions and thus break the spirit of these gifts."

"Solemnly cognizant of the responsibility, it shall always be the purpose of the authority to satisfy the terms of the Trust." (Emphasis supplied)  
P.L. 1971, c. 477, § 1.

Additionally, the Legislature intends that no State statute encroach upon the terms of Mr. Baxter's deeds of Trust.

" \* \* \* Nothing in section 900 or any other law shall be interpreted or construed to modify, nullify or affect in any way any of the provisions in any deed of trust made by Percival Proctor Baxter conveying land in Baxter State Park to the State of Maine." P.L. 1971, c. 477, § 3.

The above statutory excerpts recognize the supremacy of the Authority as to management of Baxter State Park in accordance with the terms of the Trust. The Park is not administered by the Park Commission subject to changing desires of the people. Clearly, the Authority has full power, not shared power, as to Park management and control.

" \* \* \* full power in the control and management of the same, under the title of Baxter State Park Authority." 20 M.R.S.A. § 901.

The Land Use Regulation Commission has no authority to require Great Northern Paper Company to obtain a development permit prior to cutting for the reason that the paper company's cutting rights were preserved in Mr. Baxter's deeds to the State in Trust. The Commission's power to grant a development permit includes the power to deny the permit altogether. If such a permit were legally required of the paper firm before exercising its cutting rights, then the terms of the Baxter deeds of trust would be affected, possibly even nullified, contrary to legislative intent pointedly expressed in 20 M.R.S.A. § 906. What Mr. Baxter asked be honored in his grants in Trust cannot be altered by the Land Use Regulation Commission.

Although the foregoing reasons answer the specific question in your interdepartmental memorandum, it seems appropriate to define the extent of the jurisdiction of the Baxter State Park Authority in light of Mr. Baxter's concern over (1) future encroachments on the park, and (2) the appearance of "new men \* \* \* upon the scene" who may have "a tendency to overlook these restrictions and thus break the spirit of these gifts." P.L. 1971, c. 477, § 1. Baxter State Park Authority has paramount jurisdiction as to the management and control of the Park, subject only to court review of the correctness of the Authority's action interpreted in light of the terms of the deeds of Trust. Baxter State Park Authority is intended by the Legislature to be a unique Authority managing and controlling a unique gift from Mr. Baxter. The important fiduciary responsibilities reposing

in the Authority are not to be diluted by the encroachment of any State agency. The Authority has, as direction for its action, the deeds in Trust from Mr. Baxter. On plural occasions, Mr. Baxter's communications to different Governors of Maine expressed the great importance attached to the Trust provisions and to the solemn pacts creating "a succession of irrevocable trusts." Note, for example, the meaningful and moving words written January 12, 1942 by Mr. Baxter to then Governor Sumner Sewall outlining the intention of making successive grants in Trust to the State so as to establish a "long list of precedents" resulting in "solemn pacts that create a succession of irrevocable trusts."

On the basis of the foregoing, the Baxter State Park Authority has exclusive control and management jurisdiction of Baxter State Park to the exclusion of State agencies, subject, however, to court review as to the correctness of the Authority's action interpreted in light of the terms in the deeds of Trust of Mr. Baxter.

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