

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

Inter-Departmental Memorandum Date March 8, 1973 yes ✓To Maynard F. Marsh, CommissionerDept. Inland Fisheries and Game

John W. Benoit, Jr., Deputy

Dept. Attorney GeneralSubject Baxter State Park Trust Fund; Purchase of Rights to Cut and Remove TimberSYLLABUS:

The income from the Baxter State Park Fund may legally be used to purchase rights to cut and remove timber in T. 2 and 3, R. 9 in Baxter State Park.

FACTS:

In 1961, the Maine Legislature enacted legislation accepting from Percival Proctor Baxter a gift of corporate stock and creating the Baxter State Park Trust Fund. P. & S.L. 1961, c. 21 (Effective February 16, 1961). The Act specified that the "income of the fund" \* \* \* be used by said State for the care, protection and operation of Baxter State Park. Later, in 1965, the Maine Legislature enacted a Private and Special Law accepting from Percival Proctor Baxter another gift of corporate stock, supplementing the gift accepted by the Legislature in 1961. P. & S.L. 1965, c. 30. This additional gift was accepted for use on identical terms as were specified in the 1961 Act; "for the care, protection and operation" of Baxter State Park.

In 1954 and 1962, Percival Proctor Baxter conveyed lands in T. 3, R. 9 and T. 2, R. 9, respectively, to the State subject to the right of Great Northern Paper Company to cut and remove timber until December 1, 1973.

QUESTION:

Whether the income from the Baxter State Park Fund may legally be used to purchase the rights to cut and remove timber in T. 2 and 3, R. 9 from Great Northern Paper Company?

ANSWER:

Yes.

REASONS:

The answer to the question turns on the meaning of "care, protection and operation", in the legislation creating the Baxter State Park Trust Fund; specifically whether purchase of rights to cut and remove timber is an expenditure of trust income for the "care, protection and operation" of the Park.

Definition of the terms: "Care", "protection", "operation".

"Care" may be defined as responsibility, charge, watchful regard and attention. Hervey v. Metropolitan Life Ins. Co. (1905), 100 Me. 523, 62 A. 600; Black's Law Dictionary, 4th ed., "care".

" \* \* \* "Care' is not a word of rigid and inflexible meaning but is one of broad comprehension admitting of a variation in its application to different persons and circumstances. It has no fixed and limited significance in law. Bless v. Blizzard, 86 Kan. 230; nor in its common use. An accepted definition is 'responsibility, charge or oversight, watchful regard and attention.' \* \* \* ." Emery v. Wheeler (1930), 129 Me. 428, 152 A. 624.

"Protect" means to defend, guard against and conserve. Keystone Tankship Corp. v. Willamette Iron & Steel Co., 222 F. Supp. 320, 322. The term has been defined to mean preserve in safety; intact; to keep safe and to take care of. Levin v. Mede, 189 Misc. 852, 72 N.Y.S.2d 669.

"Operation", when used intransitively, means to work, act or function, New York S. & W. R. Co. v. U.S., 200 F. Supp. 860; the doing or performing of work. Sohner v. Mason, 136 C.A.2d 449, 288 P.2d 616.

Nothing in the legal definitions of "care", "protection" and "operation" requires an interpretation that Baxter Park Trust Fund income may not legally be used to preserve and conserve Baxter Park resources. On the contrary, to conserve is to protect. To purchase standing timber, otherwise scheduled to be cut, is to conserve it; to protect it.

The purchase of rights to cut and remove timber in the Park, under the stated situation, means the expenditure of trust income would be confined to the Park.\* No funds would be spent for acquisition of realty beyond the boundaries of the Park. While the purchase of standing timber in the Park is an acquisition of realty, it is in reality more. It is self-evident that such a purchase foreclosing the cutting and removal of mature trees, would have a meaningful ecological result. Preservation of sound timber, by purchase or otherwise, would guard against damage from erosion. Conservation would be realized; and to conserve is to protect.

---

\* We do not mean to intimate what our decision would be if the trust income was proposed to be spent for acquisition of realty outside the Park. That is not a question presented at this time.

There exists a pre-eminent public purpose in the State's preservation of forest areas. No words better describe the principle than those in State ex rel. Owen, Attorney General v. Donald, Secretary of State (1915), 160 Wis. 21, 151 N.W. 331:

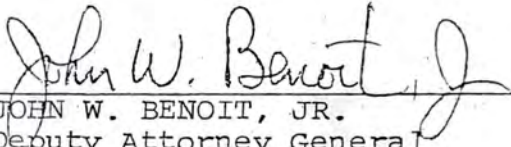
" \* \* \* .

"First, the acquisition, preservation, and scientific care of forests and forest areas by the state, as well as the sale of timber therefrom for gain in accordance with the well-understood canons of forest culture, is pre-eminently a public purpose. It would be a mere affectation of learning to dwell upon the value to a state of great forest areas. That has been established long since and is not open to question. The lamentable results which have followed the cutting of forests over large areas, the serious effects of such cutting upon climate, rainfall, preservation of the soil from erosion, regularity of river flow, and other highly important things which go to make up the welfare of the state, are matters of history. They need not be descanted upon."  
151 N.W. at 377.

The State, as trustee of the Baxter State Park, has the ordinary duty to protect and preserve the Park. It has been judicially decided that a trustee may make and incur expenditures reasonably requisite to the protection and preservation of the trust estate, including the payment of an "encumbrance." Pratt v. Thornton, 28 Me. 355, 48 Am. Dec. 492; Racine & M. R. Co. v. Farmers' Loan & T. Co., 49 Ill. 331, 95 Am. Dec. 595. In the present situation, Great Northern Paper Company has the right to cut and remove timber in a specific area of the Park. As such, a burden exists upon certain of the land in the Park. That which constitutes a burden upon land, depreciative of its value, which, though adverse to the interest of the landowner, does not conflict with his conveyance of land, is an "encumbrance." Snohomish County v. Seattle Disposal Company, 70 Wash. 2d 668, 425 P.2d 22; and Tenbusch v. L. K. N. Realty Co., 107 Ohio App. 133, 149 N.E.2d 42. It has been noted earlier herein that the expenditure of funds will not result in the purchase of realty outside the Park. The "encumbrance" exists within the Park and satisfaction thereof directly results in protection and preservation of Park realty. State ex rel Owen, Attorney General v. Donald, Secretary of State, supra. See also: Union P. R. Co. v. Durant, 95 U.S. 576, 24 L.Ed. 391; Walden v. Bodley, 14 Pet. (U.S.) 156, 10 L.Ed. 398; and Petrie v. Badenoch, 102 Mich. 45, 60 N.W. 449. (decisional law supporting a trustee's expenditure of trust funds for the purchase of an outstanding title against the trust property in order to protect it.)



In conclusion, the income from the Baxter State Park Fund may legally be used to purchase rights to cut and remove timber in T. 2 and 3, Range 9, in Baxter State Park. Such acquisition protects and preserves Baxter State Park.

  
\_\_\_\_\_  
JOHN W. BENOIT, JR.  
Deputy Attorney General

JWBJr./ec