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Ferry Beach, Saco - Utilization of Funds

P. & S. 1971, c. 140, provided funds for "Ferry Beach, Saco, Develop park site with 550 feet of ocean beach with facilities for bathing, picnicking, nature study and related activities.

The land was donated to the State by deed containing the following clause:

"It is a condition of this deed that the above described parcel is to be used forever for public recreational purposes."

You ask whether the project funds may be used for the construction of recreational facilities to be made available only to disadvantaged persons, such as physically and mentally handicapped persons from public institutions and private agencies on a reservation basis. The initial question is whether such restricted use of the premises, by only a segment of the public, is a breach of the condition of the deed.

In City of Bangor v. Merrill Trust Co., 149 Me. 160, a testator placed in trust property known as Maplewood Park, to be deeded by his trustees to the City provided the city shall accept a deed and vote that "said Park shall be forever used only for and devoted to Public Park purposes including, if the City shall see fit, semi-public purposes such as circuses, fairs, . . ." at p. 167, the court said:

"Without question there exists an obligation on the part of the City to use [the] Park for the purposes set forth in the will

". . . No one suggests that the City . . . did not accept the property upon the conditions of the will. The acceptance must be of what is given. It is the donor and not the donee who measures the extent of the gift."

"The question then becomes whether or not the leasing and use of the property for a fair and in particular for night racing . . . are permitted under the will. If not, there follows the termination of the City's interest in the property.

"If we were concerned with the use of the

property for public park purposes, taking the words in their ordinary meaning, it would be impossible to sustain the action of the City."

Further, in view of the holding, in Baird v. Board of Recreation, (N.J.Eq.) 154 A. 204, 208, (reversed 160 A.537) that the words "public park" or "public playground" in a deed conveying land to a municipality for such purposes, carry no idea of restriction to any part of the public or to any specific number of persons, but mean an area devoted to the use of all the public, it seems that the purposes of the reference project for Ferry Beach do not come within the "public recreational purposes" upon which the grantor conditioned his deed, and that the establishment of such a limited use of the land would give the grantor a right of entry for condition broken.

If a modification of the conditions of the present deed should be made by further deeds between the State and the grantor, to limit use of the land to the use you suggest, I see nothing in P. & S.L. 1971, c. 140, to prevent such use of the funds allocated therein.

LVWJr/mf

NOT A FORMAL OPINION