

MAINE STATE LEGISLATURE

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January 24, 1974

C. Norman Manwell, Supervisor
Acquisition and Development
Lee M. Schepps, Assistant

Parks and Recreation
Attorney General

Revenue Sharing of Park Fees with Municipalities in Specified Instances

This is in response to your memorandum of January 14, 1974.

Title 12 M.R.S.A. § 602, sub-§ 4 provides that 15% of all day use and camping fees received under that subsection "in any state-owned land under jurisdiction of the [bureau] shall be apportioned and paid to all municipalities having such land within their boundaries." The section then goes on to provide a formula for establishing the amount to which each municipality is entitled. In the formula, units are assigned for each "front foot" or acre of land involved.

In your memorandum, you asked whether or not the frontage and acreage in five separate and diverse parcels of state-owned property are to be included for purposes of calculating the amount to which the municipalities are entitled under the above Act. These parcels range from the Regional Medical Center at Lubec (in which a portion of a state boat facility has been leased for nominal consideration to a publicly funded medical facility), to the park at Lisbon, Maine (in which the state is the owner of the land but has leased it to the town for a park and has retained virtually no control over what occurs on the park) to the town of Eliot (in which the town operates a state-owned facility under rather tight controls by the bureau). Under the statute, all land is to be included in the calculation of the revenue sharing provisions if it is (i) state-owned land and (ii) it is "under jurisdiction" of the bureau. All of the land specified in your memorandum is state owned. The question, therefore, devolves to whether or not the Bureau of Parks and Recreation has "jurisdiction" over the specified facilities.

While the word "jurisdiction" is a term of large and comprehensive import, it is normally thought of in terms of judicial action or the authority, power or right to exercise judicial authority. Black's Law Dictionary. As a result, the definition is difficult to apply to the various parcels specified in your memorandum. Among those parcels, you have delegated to the Town of Eliot, the Town of Lisbon and the University of Maine the power to adopt "rules and regulations" governing activity occurring on the parcel of land. On the other hand, the bureau retains full control to exercise its powers under the various license agreements and one of the agreements is terminable by the state upon giving a specified minimum notice. Moreover, the state has retained very tight fiscal controls over some facilities (keeping all revenues which exceed expenses) and has retained no fiscal control in others. Finally, one parcel involves occupancy of a state memorial by a private group subject to extremely tight control by the bureau and another is occupied by a public entity with very little control by the bureau.

NOT A FORMAL OPINION

January 24, 1974

In view of the foregoing, we are unable to discern any practical way of making a distinction between the various parcels on the basis of the term "jurisdiction" by the bureau. Accordingly, we read the word "jurisdiction" by the bureau as synonymous with the term "custody and control" by the bureau. All of the state-owned parcels specified in your memorandum are in the custody and control of the Bureau of Parks and Recreation in contradistinction to other agencies or instrumentalities of the State.

It seems appropriate to point out that it may be highly desirable to seek legislation which would clarify the subject act. The Legislature may have intended to include in the revenue sharing calculations only state parks, memorials and boating facilities operated by the Bureau of Parks and Recreation directly or through its licensees or lessees, excluding municipal licensees or lessees. If the statute were written in that manner, the towns involved would be entitled to the inclusion for revenue sharing purposes of none of the lands specified in your memorandum except the Ruben Colburn Estate and the Camden Hills State Park.

The way the enactment presently reads, however, we see no practical alternative to including within the revenue sharing calculations all state-owned lands which are in the custody or under the control of the Bureau of Parks and Recreation as against other agencies or instrumentalities of the state, even if the custody and control by the Bureau is in the form of the lessor or licensor under an agreement.

Please let me know if we can be of further assistance in connection with this matter.

LEE M. SCHEPPS
Assistant Attorney General

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