STATE OF MAINE

Inter-Departmental Memorandum Date May 6, 1974

To Frank Farren, Jr., Supv. Snowmobile Program Dept. Parks and Recreation

From Lee M. Schepps, Assistant Dept. Attorney General

Subject Grants from the Snowmobile Trail Fund

This is in response to your memorandum of April 25, 1974, in which you raised two questions.

M.R.S.A.

Title 12/ § 1972 establishes the Snowmobile Trail Fund and provides that the Bureau of Parks and Recreation "may make grants in aid to political subdivisions, educational institutions, regional planning agencies, snowmobile groups and others for the construction and maintenance of snowmobile trails and for research, development and planning of snowmobile trails, on such terms as the Bureau determines necessary" with funds from the Snowmobile Trail Fund. Pursuant to the provisions of that statute, the Bureau of Parks and Recreation has made certain grants to certain snowmobile clubs. Your memorandum asks two questions which I answer in the order in which you ask them.

Your first question was whether or not the Bureau is permitted to leave unexpended funds with a snowmobile club "to be drawn against future grants with the stipulation that in the case of dissolution the money would return to the State". You inquired whether or not this procedure would be legal under the form of grant agreement which you used and under the statutes. I answer in the negative. The agreement which you used rests squarely upon the assumption that the grant is to be used for the construction and/or maintenance of snowmobile trails for a single season. The grant agreement includes a requirement that a report is required to be submitted not later than May 1st following the date of the agreement to show "what the money awarded under this grant was spent for." It is apparent that the agreement presupposes an annual grant program with an actual expenditure of funds awarded. Even if this were not implicit in the agreement, it would be required by the statute and under generally accepted practices for grants in aid from public funds. Leaving unexpended funds in the hands of a private snowmobile group "to be drawn against future grants" is a commitment by the Bureau to the making of a future grant to a particular applicant. This is not consistent with the grant in aid which was made to any particular applicant and is not consistent with the program contemplated by Title 12 M.R.S.A. § 1972 which presupposes a review and affirmative determination by the Bureau of Parks and Recreation respecting the legality and administrative suitability of particular applications for grants from a limited fund. Of course, the illegality of the proposal renders unnecessary any elaboration upon the fact that leaving unexpended public grant money in the hands of private citizens as a draw against future grants for an indefinite period of time appears to this writer to fall short of generally accepted standards applicable to the administration of public funds and to invite misapplication of public funds by private grantees and public criticism.

AN INFORMAL OPINION

Your second question was whether or not it is legal for a portion of the grant "to be used in the purchase of minor equipment that is directly associated with grooming." You do not define "minor equipment" and, of course, if you are referring to "minor equipment" which is truly insubstantial and expendable and is necessary to accomplish the purposes of the grant, those expenditures are necessary and proper and would be justified. I would point out, however, that there are problems with respect to the use of grant money to purchase any "minor equipment" which is substantial or is not expendable. The primary legal consideration applicable to the situation relates less to the purchase of the equipment than to the ownership of the equipment. There is a constitutional requirement that public funds be used solely for public purposes. I could foresee serious problems if more than inconsequential expenditures of public funds from a grant were made by a grantee to purchase equipment of which the grantee retained ownership at the expiration of the grant. Equipment purchased with public funds should be owned by and used exclusively for the benefit of the public. Your question, however, was whether or not "minor equipment" could be purchased with grant money. There is nothing in Title 12 M.R.S.A. § 1972 which expressly prohibits the use of grant money for the purchase of "minor equipment" to accomplish the purposes of the grant.

Assuming that the State is to retain ownership of all such equipment, I therefore know of no legal bar to the activity contemplated by your question. I would point out to you, however, that there is an analogous situation in State government which casts certain questions upon the administrative propriety of activities which may be contemplated by your question. The Bureau of Accounts and Control within the Department of Finance and Administration reviews the purchase of services by various agencies of the State. In their review, it is not customary for them to approve the expenditure of public funds to purchase services from private entities which use the public funds to acquire equipment necessary to perform the services. To some extent, it may be a subtle distinction, but the entity which is providing services to the State is normally expected to possess the equipment necessary to perform those services at the time it enters into the contract with the State. I would assume that at least one purpose behind such a policy is to insure that entities which perform services for the State are competent and qualify independent of reliance upon a particular State contract. This is a matter of administrative policy to which your attention is directed.

To repeat, the language of the statute is broad but its breadth can, and from your questions may well give rise to abuses unless there is careful and vigilant administration of the program and monitoring of the grants. I would suggest all of your agreements be amended by the addition of explicit provisions covering these matters.

I hope this is responsive to your request.

INFORMAL OPINION

LEE M. SCHEPPS
Assistant Attorney General

LMS:mfe
bcc: Thomas Dickens

Tom: Please take note of this. There is a substantial risk of abuse of public funds in this program.