

# MAINE STATE LEGISLATURE

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October 24, 1974

Thomas Dickens, Director

Parks and Recreation

Lee M. Schepps, Assistant

Attorney General

Marking of waters of the state for hazards.

This is in response to your memo of September 5, 1974. In that memo you raised a question concerning the continuing problems surrounding the navigational marker program under Title 38 M.R.S.A. § 321, et seq. In your memo, you inquired specifically whether or not the Bureau of Parks and Recreation could directly pay for insurance policies which would cover private groups (such as lake associations) to assume, on behalf of the Bureau, the function of placing and maintaining navigational aids on lakes. The answer is no.

The Bureau is authorized to exercise its power to place navigational aids on lakes directly (through its own employees) or through agents or contractors (such as towns or a lake association). It is a matter of common practice for the Bureau, like other agencies of the State, to perform certain of its powers or to discharge certain of its responsibilities through special services contracts. Contracts with private entities relating to trash removal, snowplowing and similar minor activities are not unusual.

It seems clear that if the Bureau is authorized to discharge a given duty by contracting for the service rather than by its own employees, then the Bureau is authorized to pay reasonable amounts for the service. If the contractor elects to use the money paid under the contract with the Bureau to purchase insurance, there is no law which prevents him from doing so. It would be improper for the State to purchase such insurance directly, however.

Of course, all contractual activities of the Bureau are subject to certain review procedures by the Department of Finance and Administration and other applicable procedures. In addition, we have made no effort to ascertain whether insurance coverage is available and, if so, under what conditions or at what cost.

Please let me know if we can be of further assistance.

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LEE M. SCHEPPS  
Assistant Attorney General

LMS/bls