

# MAINE STATE LEGISLATURE

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April 4, 1975

H. W. McKowen, Executive Secretary

Maine Insurance Advisory Board

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Attorney General

Certain buildings and contents on Indian reservations and at various University of Maine campuses

By memoranda dated November 26, 1974, the Maine Insurance Advisory Board requested opinions on the following matters:

QUESTIONS:

1. Does the State of Maine and/or the Department of Indian Affairs have an insurable interest in the buildings and contents listed below, particularly Items #171 and #175, currently insured under the State of Maine property insurance program? Yes.

<u>Item No.</u>	<u>Description - Location</u>	<u>Buildings</u>	<u>Contents</u>
170	Tribal Hall & School, Pleasant Point, Perry	\$-----	\$2,000
171	10 Houses (\$12,000 on each) at Perry	120,000	-----
172	1 House at Pleasant Point, Perry	14,000	-----
174	Office & Shed at Old Town	4,000	3,000
174A	New Office & Storage Building at Old Town	30,000	3,500
175	16 Houses (\$12,000 on each) at Princeton	192,000	-----
176	Ash Stripping Building at Princeton	7,000	9,000
177	Parish & Tribal Hall at Princeton	11,000	-----

2. Does the Maine Insurance Advisory Board have authority to provide insurance advice and services for the University of Maine? Yes.

3. Does the State of Maine have an insurable interest in buildings and contents, including machinery, furniture and fixtures at the various University of Maine campuses? Yes.

4. Can insured losses appropriately be paid to the University of Maine from the Self-Insurance Fund? Yes.

DISCUSSION:

I. Title 5 M.R.S.A. Chapter 152 (Sections 1725, et seq.) refer to "state property." The central provision is Section 1728 "Powers and duties of the board." While the term "state property" is not specifically defined in the statute, there are a number of reasons that suggest proper interpretation of that phrase requires the inclusion of the property listed above.

Title 5 M.R.S.A. § 1728(4) reads as follows:

"4. Schedules of state property. Determining and review the values of property in which the State has an insurable or legal interest and recommend limits and types of insurance protection for such property."

Thus, Subsection (4) gives a broad reading of the term "state property" by specifically including "property in which the State has an insurable. . . interest. . . ." 44 C.J.S., Insurance, § 175(b) defines an "insurable interest" as follows:

"A person usually has an insurable interest in the subject matter insured where he will derive pecuniary benefit or advantage from its preservation, or will suffer pecuniary loss or damage from its destruction, termination, or injury by the happening of the event insured against."

This general definition seems to be in line with the spirit of the statute: to prevent the State from suffering pecuniary loss in the event of damage or injury to, or destruction of, the property in question.

II. As far as the houses (listed as Items #171 and #175) are concerned, it is clear that the State would suffer pecuniary loss in the event of their damage or destruction. Many of the houses on reservations were built with funds from the Indian Trust Fund, of which the State is the legal guardian. As such, these houses could properly be considered as "investments" of funds from the Indian Trust Fund; and thus, entitled to be protected. In addition, the fact that the money to keep these houses in repair has come from general appropriation funds is further evidence that they should be considered "state property" within the meaning of Title 5 M.R.S.A. Chapter 152.

III. The same reasoning is equally applicable to the questions concerning the University of Maine. Title 20 M.R.S.A. Section 2251 sets forth the State policy on higher education as it relates to the University of Maine. In particular, subsections (5), (7), and (8) demonstrate the commitment of the State to provide funds for various projects and assist in the financial support of the University.

Appropriations of public funds are used in construction and maintenance of University buildings and their contents.

Although the University of Maine is not a "state-owned and operated institution" in the same sense as are the public schools or public hospitals (Orono v. Sigma Alpha Epsilon Society, 105 Me. 214, 219 (1909), Title 20 M.R.S.A. Section 2252 clearly makes it "an instrumentality and agency of the State for the purpose for which it was established. . . ." See 1963-64 Report of the Attorney General 193 (Opinion of December 29, 1964).

Consideration has also been given to the circumstance that the State has, for a number of years, included the University of Maine in such insurance coverage, which constitutes a contemporaneous administrative interpretation entitled to considerable weight.

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