

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

STATE OF MAINE

Inter-Departmental Memorandum Date July 31, 1975

To A. Lee Tibbs, Director

Dept. Baxter State Park

From Martin L. Wilk, Deputy

Dept. Attorney General

Subject Baxter State Park Authority

SYLLABUS:

The Baxter State Park Authority has the authority to utilize the Baxter State Park Trust Fund income, without seeking the prior approval of the Governor, to construct a new headquarters building or such other facilities as may be necessary for the maintenance and operation of Baxter State Park when such construction is consistent with the provisions of the deeds of trust from Percival Proctor Baxter to the State of Maine.

FACTS:

Percival Proctor Baxter gave the 201,018 acres of Baxter State Park (hereinafter "the Park") to the State of Maine to be held in trust for state forest, public park and public recreational purposes.

Baxter also provided the State with trust funds for the care, protection and operation of the Park, see Private and Special Laws of 1961, Chapter 21; Private and Special Laws of 1965, Chapter 30; Clause THIRD of Intervivos Trust dated July 6, 1927, as amended.

The Baxter State Park Authority (hereinafter "the Authority") consists of the Director of the Bureau of Forestry, the Commissioner of Inland Fisheries and Game, and the Attorney General. The Authority has authority over the control and management of the Park, and is designated by statute to receive "moneys available

from trust funds established by the donor of the park" and other income derived from the Park for "maintenance and operation of the Park," 12 M.R.S.A. § 901.

The Authority proposes to utilize Baxter Park Trust Fund income to construct an "administration building" in the Millinocket area to serve as a general administrative headquarters providing office space for the Park staff. The building would also serve as a convenient place for the public to obtain information concerning the Park.

QUESTIONS AND ANSWERS:

1. Is the Authority required to seek the approval of the Governor or Legislature of the Park budget? No.

2. Is the Authority required to seek the approval of the Governor to utilize Baxter State Park Trust Fund income to construct a new headquarters building or other facility which the Authority properly considers necessary for the maintenance and operation of the Park? No.

REASONING:

The State of Maine is the Trustee of the lands of Baxter State Park, and of the Baxter State Park Trust Fund established to provide for the "care, protection and operation of the Park," pursuant to Private and Special Laws of 1961, Chapter 21. The State is also a beneficiary of the Intervivos Trust of Percival Proctor Baxter dated July 6, 1927, as amended, which provides funds to be used in part for "the care, protection and operation of the forest land known as Baxter State Park. . . ." The

State has delegated its powers and responsibilities under these trusts to the Baxter State Park Authority by the enactment of specific legislation establishing the Authority and setting forth its powers and responsibilities, see 12 M.R.S.A. § 900, et seq; Public Laws of 1931, Chapter 281.

From the inception of the Authority's existence, there has been no specific statutory provision requiring that its budget for the use of trust funds must be approved by either the Governor or the Legislature. In 1973, the Legislature adopted certain new general budgetary provisions. These included a requirement that a "Part 3" budget be submitted to the Legislature which was to include information regarding "Special Revenue Fund allocation bills as may be needed to authorize all operating expenditures of the State Government," 5 M.R.S.A. § 1664, P.L. 1973, c. 744, as well as a provision for gubernatorial review of "all budgets regardless of source of funds," for purposes of preparing a budget document for transmittal to the Legislature, 5 M.R.S.A. § 1666, P.L. 1973, c. 732. Had these provisions remained in effect, it is arguable that the Authority would be required to submit its budget to the Governor for review on the theory that its budget involved a "Special Revenue Fund."


However, in 1975 the 107th Legislature amended § 1664 by deleting the reference to "Special Revenue Fund" appropriations and substituting in its place a specific listing of those appropriations which were to be included in Part 3 of the budget document, P.L. 1975, c. 515. This amendment does not

refer to or include any fund under the supervision and control of the Authority.

Pursuant to this revision, it is clear that the Baxter State Park budget does not require legislative approval; nor does it require gubernatorial review. Although section 1666 still provides that the Governor shall review all budgets regardless of the source of funds, when this section is read in the context of the budget provisions as a whole and of the specific legislation dealing with the Park Authority's powers, it is evident that this review does not include the Baxter budget. The Governor's review is concerned with "budgetary recommendations made to the Legislature" in the "Budget document in the form required by law," see P.L. 1975, c. 515. Furthermore, the Governor's authority to revise the budget estimates is predicated on his alterations being necessary "in view of the needs of the various departments and agencies and the total anticipated income of the State Government during the ensuing biennium," 5 M.R.S.A. § 1666. Because the income from the Baxter trust is different in kind from other state income and its potential use is specifically directed to purposes related to the Park, there is no need for the Governor to review the Park budget in relation to the needs of other state agencies or the general income level of the State. Moreover, the general requirements of Title 5 M.R.S.A. § 1664 and § 1666, even though enacted later in time, would not supersede the authority of the Park Authority pursuant to pre-existing specific legislation dealing with the financial

and managerial control of the Park, see generally Finks v. Maine State Highway Commission, 328 A.2d 791 at 795 (1974); Opinion of the Justices, 311 A.2d 103, 108 (1973). Accordingly, the budget of the Park Authority does not require gubernatorial or legislative approval.

Similarly, the decision of the Park Authority to utilize the Baxter Trust Fund income to construct a headquarters building necessary to the operation of the Park does not require gubernatorial concurrence or approval. The Authority's decisions are governed by the terms of the trust establishing the Park and its funding; the Governor has no role in the administration of the trust.



MARTIN L. WILK
Deputy Attorney General

MLW/ec

Copies to:
William Cross, Business Mgr., Baxter State Park
Fred E. Holt, Commissioner, Forestry
Maynard F. Marsh, Commissioner, Inland Fisheries & Game