

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date September 17, 1975

To A. Lee Tibbs, Director

Dept. Baxter State Park Authority

From John W. Benoit, Jr., Deputy

Dept. Attorney General

Subject Question of Applicability of Executive Order #10 to Baxter State Park Authority

This is a response to your request for an opinion as to the applicability of Executive Order #10 to the Baxter State Park vehicles. Specifically, the Commissioner of Finance and Administration, pursuant to the Executive Order, has declined to grant an exception from Executive Order #10 to the Baxter State Park Authority (hereinafter "Authority") concerning two of the Authority's motor vehicles. As indicated by the discussion herein, Executive Order #10 does not control the decision of the Authority concerning motor vehicle use.

1. The Executive Order concerning the Authority's motor vehicles is inapplicable because of the unique nature of the Authority. The State of Maine is the trustee of the lands of Baxter State Park and of the Baxter State Park Trust Fund for the control and management of the Park. The State is the beneficiary of the inter vivos trust of Percival Proctor Baxter of July 6, 1927, as amended, which provides funds to be used, in part, for the operation of the Park. The State, through legislative enactment, has designated the Authority as the agency of the State authorized to maintain and operate the Park and to have full power in the control and management of the lands comprising the Park.

" * * * They (the lands comprising the Park) shall be under the joint supervision and control of, and shall be administered by the Director of the Bureau of Forestry, the Commissioner of Inland Fisheries and Game and the Attorney General, and the said commissioner, director and Attorney General shall have full power in the control and management of the same, under the title of Baxter State Park Authority." 12 M.R.S.A. Sec. 901 (Parenthesis and emphasis supplied.)

The Authority's decisions are governed by the terms of the trust instruments and by the statutes enacted by the Legislature. The administrative control and management of the Park may not be limited by an Executive Order such as Executive Order #10 concerning the maintenance and operation of the Authority's motor vehicles. The Maine Supreme Judicial Court in State v. Fin & Feather Club, (Me., 1974) 316 A.2d 351, noted that the Legislature had granted general powers to the Authority which were of a broad nature and greatly dependent on the discretion of the Park Authority members. The Authority is exclusively responsible for carrying out the terms of the Baxter Trust.

"The grant of power to the Park Authority in § 901 for the management and control of Baxter State Park is broad and greatly dependent on the discretion of the Park Authority members. * * * .

✓ " * * * The statute contemplates the terms of the donor's trust being most effectively accomplished by giving broad powers of control to three State officers, who would be exclusively responsible for seeing that the terms of the trust are strictly satisfied. 12 M.R.S.A. §§ 901-906." 316 A.2d at 355. (Emphasis supplied.)

2. Executive Order #10 is also not applicable to the Authority because the Legislature reserved to itself the supervision of State-owned motor vehicles. Title 5 M.R.S.A. § 7 now provides:

"The State may provide motor vehicles for the travel of state employees in a number to be determined by the Legislature. Each state department or commission head shall promulgate written policy concerning the use of state-owned motor vehicles, assigned to his department or commission, which shall include but not be limited to, a definition of the use of state-owned motor vehicles which constitute use in the conduct of state business and which distinguishes such use from private use. . . . The Legislative Council shall biennially study and review state motor vehicle needs and uses and shall report its findings to the Legislature. Department and agency heads shall justify the purchase of motor vehicles as part of request for appropriations before the Joint Standing Committee on Appropriations and Financial Affairs." (Emphasis supplied.)

This section indicates that control of State-owned motor vehicles rests ultimately with the Legislature; with policy being set by State department and commission heads. Prior to 1970, Maine law provided that the Governor and Council control State-owned motor vehicles. That law read as follows:

"The State shall provide no automobiles for travel of state employees. This shall not apply to the Governor, the State Police, the Department of Inland Fisheries and Game, the Department of Sea and Shore Fisheries, supervisors in the Maine Forestry District, the State Highway Commission nor to such other agencies, boards, commissions and departments of the State Government as the Governor and Council may from time to time designate.

"All state owned cars shall display a marker or insignia, approved by the Secretary of State, plainly designating them as state owned vehicles.

The Governor and Council may designate the use of certain state owned cars without the said insignia thereon."

The statutory provision quoted immediately above was repealed and replaced by the 104th Legislature at the 1970 special legislative session. P.L. 1969, c. 544. Now, Maine law evidences a legislative intention that the Governor and Council no longer control State motor vehicle policy, but rather that the function be exercised by "each State department or commission head," subject to review by the Legislative Council and the Legislature.

In conclusion, Executive Order #10 does not pertain to vehicles of the Baxter State Park Authority due to the unique nature of the Authority and for the further reason that the Legislature has reserved to itself the supervision of State-owned motor vehicles.


JOHN W. BENOIT, JR.
Deputy Attorney General

JWBJr./ec

cc: Honorable James B. Longley, Governor of Maine
John P. O'Sullivan, Commissioner of Finance and Administration