

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date October 24, 1975

To Maynard F. Marsh, Commissioner

Dept. Inland Fisheries & Wildlife

From Joseph E. Brennan

Dept. Attorney General

Subject Land acquisitions under Chapter 118, Private and Special Laws of 1973

You have asked whether consent of the Governor and Council is required before the Commissioner of the Department of Inland Fisheries and Wildlife may acquire lands and water or any interest therein on behalf of the State of Maine, pursuant to the Inland Fisheries and Game Acquisition Act, ch. 118, Private and Special Laws of Maine of 1973. We answer in the negative.

Section 2 of the Act contains the Legislature's express delegation of authority to acquire interests in lands or water under the Act, and Section 3 describes the considerations that must be taken into account when such acquisitions are made. The only State official mentioned in either section is the Commissioner of Inland Fisheries and Game. In this respect, the two sections are similar in approach to many other statutes authorizing various State officials to acquire interests in land. See, e.g., 12 M.R.S.A. §6(3) (Soil and Water Conservation District authorized to acquire interests in land consistent with its legislative purposes); 12 M.R.S.A. §901 (Baxter State Park Authority authorized to expend sums for the acquisition of additional park land); 12 M.R.S.A. §1701 (Maine Forest Authority authorized to purchase real property for recreation and reforestation purposes). The Act is thus different from those statutes which authorize a State official to acquire interests in land only with the consent of the Governor and Council. See, e.g. 12 M.R.S.A. §602(1) (Bureau of Parks and Recreation authorized to acquire land, but only with the consent of Governor and Council.) It is clear then, that in omitting any reference to the Governor and Council in the section of the Act delegating the authority to acquire, the Legislature intended that the Commissioner alone have the authority to decide on particular acquisitions.

This conclusion is further supported by the fact that reference is made to the Governor and Council in other sections of the Act, namely those concerning the issuance and sale of bonds to finance the Fund from which the acquisitions are to be made, and the distribution of the proceeds of such sales, (Sections 7 and 9), but not in Sections 2 and 3. It should be noted here, moreover, that Sections 7 and 9 provide that the issuance and sale of the bonds is to be made not with the "consent" of the Governor and Council, but only under their "direction", and that the proceeds of the sales are to be made not with their "consent", but "upon warrants drawn by" them. These words suggest that the Legislature intended that the Governor and Council should exercise only supervisory authority over the manner of such issuance, sale and payment of proceeds, but that they should not have a voice in determining whether such

activities should take place at all, that being left to the State Treasurer, presumably upon consultation with the Commissioner. This is the only way in which these provisions can be read in the context of the entire statute (containing as it does, no mention of the Governor and Council in the sections delegating the authority to acquire), for if the Governor and Council's affirmative consent was required before bonds could be issued or sold, or the proceeds of such sale paid out, the Governor and Council would be able to prevent the Commissioner from making the acquisitions which it is clearly within his sole discretion to make.


It has been pointed out, however, that Section 4.5 of the State of Maine Manual of Financial Procedure appears to require the approval of the Governor and Council for all real estate acquisitions by the State. The section provides that:

"Under the law, or by other regulation, it is necessary for department or agency heads to obtain the approval of the Governor and Council for certain types of expenditures from State funds. . . Items of a general nature falling within this category. . . are as follows:

* * *

9. Acquisition of land or real estate unless specifically exempted by law."

It will be immediately observed, however, that the wording of the section does not impose any requirement of such approval; it merely states that under the law certain types of transactions may require the approval of the Governor and Council, and then goes on to specify the procedures to be followed when such a situation arises. If under the law, the approval of the Governor and Council is not required for an acquisition, the provisions of this section do not apply. In any event, the section could not be read to attempt to create in the Governor and Council the power to disapprove all acquisitions of real estate, since to interpret it in that manner would be to violate the general constitutional principle that administrative rules cannot alter statutory law. See, generally, Cooper, State Administrative Law, ch. IX, section 3 (1965).


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