

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date July 8, 1976To Lee M. ScheppsDept. Public LandsFrom David T. Flanagan, AssistantDept. Attorney GeneralSubject Bangor Triangle

The Bureau of Public Lands asks for a determination of the validity of P.L. 1975, c. 777, §16 which authorizes the Director of the Bureau of Public Lands to convey a parcel of State owned land in Bangor. The problem arises because c. 777 was enacted as emergency legislation containing a clause providing "In view of the emergency cited in the preamble, this Act shall take effect when approved, unless otherwise indicated." This provision is in conflict with Me. Const. Art. IV, pt 3, §16, which provides in part "An emergency bill shall include only such measures as are immediately necessary for the preservation of the public peace, health or safety; and shall not include. . . (3) provision for the sale or purchase or renting for more than five years of real estate."

QUESTION: Can the Bureau of Public Lands lawfully and effectively convey the real estate which is the subject of P.L. 1975, c. 777, §16, notwithstanding the emergency nature of the Act of which the authorization is a part?

ANSWER: Yes. Since emergency provisions are severable, the conveyance can be validly made provided it occurs more than 90 days after the recess of the session of the Legislature at which the legislation was enacted.

REASONING: Both the statutory and case law supports the conclusion above. 1 M.R.S.A. §71(8) provides by statute a rule of construction that "The provisions of statutes are severable. . . if the application of a statute or session law to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application."

There can be no question but that the Legislature has the authority to set the terms and conditions under which land owned by the State may be conveyed. Were P.L. 1975, c. 777, §16 enacted without an emergency clause, there would be no doubt of its validity.

Since it is the application of the emergency clause to the above provision that renders the result unconstitutional, the defect may be cured by severing the application of the emergency clause from §16. State v. Norton, 335 A₂ 607 (Me. 1975).

Even in the absence of such a statutory severability provision, the controlling precedent reaches the same result. In Lemaire v. Crockett, 116 Me. 263, 101 A 302 (1917) the Supreme Judicial Court construed this same provision of Constitution in connection with emergency legislation abridging home rule in contravention of the provisions of this section.

The Law Court held, at 268, that:

"There is a clear distinction which must not be overlooked, between the Legislative power to pass the act and the power to pass it as an emergency measure. The first is permitted. The second is prohibited. The attempt to do so in this case was futile. The emergency clause is clearly invalid.

This invalidity however effects only the emergency clause and the date when the law may take effect. Instead of becoming a law immediately upon approval by the Governor, it will not take effect until 90 days after the recess of the Legislature thus becoming a non-emergency act and permitting, in the meantime, the invoking of the referendum. The act itself is valid. It was within the constitutional power of the Legislature to pass it. The emergency clause is invalid. The Legislature was expressly prohibited from attaching it. The two are clearly separable. The one stands, the other falls."

Obviously, from the above holding, the purpose of delay is to enable citizens the opportunity to stop legislation from ever going into effect by resort to the referendum process provided by Me. Const. Art. IV, Pt. 3, §17. That purpose can be achieved without destroying otherwise valid legislation simply by delaying its implementation until 90 days after the Legislature's recess.

Finally, it should be noted that this same analysis applies to P.L. 1975, c. 777, §17, authorizing the Bureau of Public Improvements to sell the Vickery-Hill building and surrounding State-owned land.