

MAINE STATE LEGISLATURE

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10576 L.D. 37
STATE OF MAINE

Inter-Departmental Memorandum Date January 17, 1977

To Lee M. Schepps, Director Dept. Bureau of Public Lands
From Joseph E. Brennan, Attorney General Dept. Attorney General
Subject L.D. 37 - Consistency with Public Lands Laws

You have requested our review of L.D. 37, An Act to Revise the Eastport Public Landing Authority Law, (a copy of which is attached hereto) in order to ascertain whether such proposed legislation poses any potential conflicts or inconsistencies with the laws presently in effect (particularly 12 M.R.S.A. §§514-A and 551 et seq.) regarding the powers and duties of the Bureau of Public Lands (the "Bureau") respecting the custody, management, disposition, and receipt of moneys upon such disposition, of submerged and inter tidal lands, title to which is vested in the State of Maine.

Upon review of L. D. 37 and the above cited statutes, we find that there is potential for uncertainty and conflict in interpretation among such present and proposed laws. L.D. 37 vests in the Eastport Port Authority "the authority to acquire, construct, operate, maintain, repair and replace piers, terminal and warehouse facilities on the land and in the waters within the limits of the City of Eastport" (emphasis added). In further shaping the grant of such powers, L.D. 37 provides that such Authority "shall further have the right to construct suitable buildings, filling stations, restaurants or other structures, and have the authority to lease same, upon the terms as the directors [of the Authority] . . . may determine to be in the best interests of the Authority, the proceeds from leases to accrue to the credit of the Eastport Port Authority."

Whereas we do not interpret the grant of such powers to the Eastport Port Authority to incorporate a conveyance of title to the submerged lands owned by the State within the limits of the City of Eastport* , yet the above cited language might be interpreted as granting to such Authority certain rights and interests, less than fee simple title, in the State-owned lands beneath the waters within the City's limits, as well as the authority to build upon and lease the same, with the proceeds of any such lease to inure to the Eastport Port Authority. Such an interpretation would appear to be inconsistent with the intent of those laws which vest in the Bureau the authority for "the care, custody, control and the responsibility for the management of all lands owned by the State, including . . . subtidal lands . . ." 12 M.R.S.A. §552(1)(A).

*See page 5 of our memorandum, dated September 9, 1976, to Richard Barringer relating to the leasing of submerged lands to the Pittston Company.

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In this regard, the Bureau is given the power to lease and grant rights, subject to statutorily delineated terms and conditions, in submerged and intertidal lands which are owned by the State (12 M.R.S.A. §514-A), and to receive, on behalf of the State, all moneys accruing from such disposition of rights (12 M.R.S.A. §553(E)). Since this potential inconsistency between L.D. 37 and the current public lands law is based upon only one possible interpretation of the intent of L. D. 37, we cannot say with certainty whether L. D. 37 in fact alters, or intends to alter, the custodial powers and duties of the Bureau with respect to the State's submerged lands within the City limits of Eastport.

We therefore recommend that, assuming that it is not the intent of the framers of L. D. 37 that such Act should impair or modify the powers and duties of the Bureau with respect to lands belonging to the State, language to that effect be incorporated in L. D. 37. In accordance with your request, we have prepared and attach hereto a new Section 5 which may be added to L. D. 37 in order to make clear that no such conflict is intended. Of course, if it be the intent of the framers of L. D. 37 that such Act modify those statutes pertaining to the custody of the Bureau over the State's lands within the Eastport City limits, then we would recommend that language clearly delineating the extent of such modification be incorporated into the Act. Should that be the case, we will, of course, offer any assistance that may be requested in the preparation of such language.



JOSEPH E. BRENNAN
Attorney General

JEB/bls

Notwithstanding any other provision contained in this Act, the powers and authority herein granted to the Eastport Port Authority shall not be construed as constituting a conveyance to the Eastport Port Authority of any right, title or interest in real or personal property of the State of Maine or of any agency or instrumentality thereof and shall not impair, modify or otherwise affect the powers and duties of the Bureau of Public Lands respecting the custody, management, control, disposition and receipt of moneys upon such disposition, of the State's submerged, intertidal and other public lands pursuant to 12 M.R.S.A. §551 et seq, 12 M.R.S.A §514-A and the rules, regulations and policies adopted by such Bureau in accordance with such laws.