Deeds: Restrictions on State Property: Applicability of use restrictions

# STATE OF MAINE

## Inter-Departmental Memorandum

Date June 30, 1977

To Richard Bachelder, Director — Dept. Bureau of Public Improvements

From Kay R. H. Evans, Assistant — Dept. Attorney General

Subject Demolition of Nash School

From your memo of May 27, 1977, it appears that the State has recently taken title to a piece of property to which a certain restriction in a predecessor deed relates. You ask whether the State is bound by that restriction, the import of which is to require the State to, in a specified time, demolish a building on the property and create a green area. In our opinion, the question as to the enforceability of such a restriction is not absolutely settled in Maine property law. However, the present condition and trend of that law indicate a high probability that such a restriction would be enforced, particularly in the light of the actual events by which the property came into the State's possession. Further, certain provisions of 5 M.R.S.A. Chap. 14-A, Capitol Planning Commission, underline the State's responsibility to act in accordance with the deed restriction.

OPINION:

By Quit-Claim deed dated October 1, 1975, the City of Augusta transferred to the Maine State Employees Credit Union title to a piece of property described in the deed (hereinafter referred to as the Nash School property). After the description, the deed contains the following language:

> Subject to the following restrictions:
>
> 2. It is understood and agreed by the grantee, its sucessors and assigns, that if the State of Maine or any agency thereof purchases the property from the Grantee at any time, that the State within three years from the date of this deed, or in the event that it purchases said property following said three years, then and in that event forthwith shall demolish the building and convert the area to a green area in accordance with the approved Master Plan for the Capitol Complex.

On December 2, 1976, by Warranty deed in which the above language did not appear, the Credit Union transferred the Nash School property to the State of Maine. Both deeds were recorded and are within a common chain of title, such that the State, as subsequent purchaser, had notice of the restrictions contained in the earlier deed, notwithstanding the absence of the restriction or any reference thereto in the deed by which it took title.

Such a restriction, in which the parties express their intention to limit the use and enjoyment of property, is generally enforceable in Maine without regard to the form or nature of the restriction. Brown v. Fuller's Heirs, 347 A.2d 127 (Me., 1975).*

There are certain exceptions to the enforcement of such restrictions. One exception, relevant here, is that such a restriction will not be enforced when it is imposed for the benefit of land in which the person creating the restriction has no legally-recognized interest at the time the restriction is created. In plainer language, this ordinarily means that, to be enforceable, a restriction must benefit property then owned by the person creating the restriction. Here, the City of Augusta is the creator of the restriction. It might be argued that the City owns no property which would be directly benefitted by the enforcement of the restriction, since it apparently has no adjoining or nearby buildings which overlook or the occupants of which might readily use the "green area" called for in the restriction. However, the City and the population it represents would benefit indirectly, in ways impinging on its property, from performance by the State of the actions required by the restriction. It is our opinion that this exception would be unlikely to be applied to prevent enforcement in this case.

Brown v. Fuller's Heirs, cited above, states that a purchaser of property burdened by a restriction of which he has notice is liable to abide by those restrictions "to the same extent and in the same manner as the person from whom he made the purchase." 347 A.2d at 129. If this limitation were applied literally, the State might take the property free of the restriction. The State could not be required to do anything beyond that required of the Credit Union, and the Credit Union is clearly not required to demolish the building and create a green area. However, it is clear, from an explanatory footnote to Brown v. Fuller's Heirs (n. 2, , p. 129),

---

* Brown involved the more traditional negative restrictions on use of property which prohibited certain acts, rather than the positive restriction requiring action, as in this case.

from the cases cited therein, and from other cases dealing with the enforcement of such restrictions, that the above limitation is not strictly applied. Holders of property subject to restrictions are frequently required to perform actions different in nature and quantity from that required of previous or subsequent holders of the same property. Probably the rule is more accurately stated to be that the actions required of successive holders of property by a restriction thereon must all relate in a general way to an end intended to benefit property owned by the creator of the restriction. Here, though the Credit Union was not required to demolish Nash School and create a green area, it was required, in the event the State did not purchase the property, to subject any exterior alterations to the approval of the Capitol Planning Commission, which body is directed by statute to work cooperatively with the City of Augusta in shaping the development of the Capitol area. 5 M.R.S.A. § 301. Thus the City, by restrictions in its Quit-Claim deed applicable specifically to its grantee and successors thereof, has sought to protect its interest in the land being conveyed, which interest relates to the presence of green areas within the City and to the development of the Capitol area.

Available records indicate that the City, aware of negotiations between the State and the Credit Union which, if successful, would result in an exchange of the Nash School property for another owned by the State, provided for that eventuality before the property left its possession. Thus, the State's notice of the restriction in question did not derive solely from that provided by the recording system. The State, pressing its interest in maintaining the integrity of the Capitol Area plan, was aware of the restrictions and indicates its support for them, via letters dated July 21, 1975, to the City Government from the Governor and the Chairman of the Capitol Planning Commission, well before the actual transfer from the City to the Credit Union. This notice of and apparent support for the restrictions, coupled with legislative intent that the State's agency work cooperatively with the City, 5 M.R.S.A. § 301, and consider

> . . . the ordinances, plans, requirements and proposed improvements of the City of Augusta. . . .

5 M.R.S.A. § 299(2), increase the likelihood that the State would be unable to avoid enforcement against it of the restriction in question.

In providing this advice, we do not address the issue of enforceability of a restriction which was many years old, or one which the State did not actively participate in developing, or one which the State did not have notice of the restriction. This opinion is limited to the facts of this case: a recent restriction which the State participated in developing to serve the State's interest as the State then (1975-1976) perceived those interests.

Kay R. H. Evans

KAY R. H. EVANS
Assistant Attorney General

KRHE/ec