

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date July 28, 1977

To William Cross

Dept. Baxter State Park

From Sarah Redfield, Assistant

Dept. Attorney General

Subject Medway Garage

This is in response to your request for an opinion as to the proper procedure for the sale of the Medway garage facilities. It is my understanding that this property was originally purchased with monies from the Baxter State Park Trust Fund and that it is the intention of the Baxter State Park Authority (hereinafter "BSPA" or "Authority") to apply the proceeds from this sale to its purchase of the Vincent garage property in Millinocket. In the case of each garage, the property is used to facilitate the administration and management of Baxter State Park (hereinafter "the Park"). After reviewing the relevant provisions of the trust and statutes, it is my opinion that the Authority may proceed with the sale of the Medway garage, with or without the approval of other state agencies or the Governor, so long as the Authority acts in a manner consistent with its fiduciary responsibilities.

The Trusts.

The lands of Baxter State Park were given to the State through a series of deeds to be held in trust forever for the benefit of the people of the State. In addition to gifts of land, Governor Baxter provided the State with monies from two trust funds.

The first trust fund, known as the Baxter State Park Trust Fund, was established pursuant to Chapter 21 of the Private and Special Laws of 1961, see also P. & S.L. of 1965, c. 30. Monies were given to the State as trustee for the benefit of the people of the State, "the principal thereof to be invested and reinvested, the income therefrom to be used by said State for the care, protection, and operation" of Baxter State Park, P. & S.L. 1961, c. 21.

The second trust fund was established by the terms of an inter-vivos trust dated July 6, 1927, and subsequently amended. The Boston Safe Deposit and Trust Company is trustee and the State of Maine a beneficiary. Pursuant to this instrument, funds from the trust principal may be used for the acquisition of additional park lands; the income is to be paid into the Baxter State Park Trust Fund "for the care, protection and operation of the forest land known as BAXTER STATE PARK. . . ."

The Statutes.

The Legislature created the Baxter State Park Authority to supervise and administer Baxter State Park. The Authority has "full power in the control and management of the Park," see generally 12 M.R.S.A. § 901. The Authority is designated to receive monies "available from trust funds established by the donor of the park and shall include fees collected, income from park trust funds invested by the Treasurer of the State and other miscellaneous income derived from the Park maintenance and operation of the park." In addition, the Authority is designated as the state agency to receive funds pursuant to the Baxter intervivos trust "for the purchase or other acquisition of additional land for said Baxter State Park, and the Authority is authorized to expend such sums so received for such purposes." In essence, this statutory provision reiterates the trust provisions and authorizes the BSPA to exercise full control in operating the Park in accordance with the various trust instruments.

There appear to be no specific statutory requirements applicable to the sale of land by the Authority, cf. 12 M.R.S.A. § 4169, as to the limitation sale of land by the Bureau of Public Lands to sale only with the approval of the Legislature.

Authority to Buy and Sell Land.

The power of the BSPA is derived from statute and in turn from the trust instruments. Its power to control and manage the Park is paramount to powers of other state agencies in relation to the Park. (See the previous opinions of this office as follows: December 15, 1967, from Jerome S. Matus to the BSPA defining the Authority's power to purchase certain property without the approval of the Governor and Executive Council; January 2, 1973, from George C. West to John L. Martin as to the paramount jurisdiction of the BSPA over other state agencies, in this instance, LURC; July 31, 1975, from Martin L. Wilk to A. Lee Tibbs as to the power of the BSPA to utilize Baxter State Park Trust Fund income to construct a headquarters building without gubernatorial concurrence or approval; September 17, 1975, from John W. Benoit to A. Lee Tibbs as to the inapplicability of the executive order concerning motor vehicles to the BSPA.) Nevertheless, the power of any state agency is limited to that conferred upon it by the Legislature. In this instance, the power of the Authority is further limited by the trust provisions.

Although the statute is silent in regard to the sale of property, it may be implied that the Authority has such power where the property involved was acquired for administrative and management purposes. Pursuant to the second paragraph of § 901 the Authority is specifically authorized to expend sums to acquire additional Park lands. (See also 12 M.R.S.A. § 1701 concerning the Maine

Forest Authority powers in this regard.) There is no authorization here to sell lands, 12 M.R.S.A. § 901. The statute is appropriately silent in this regard inasmuch as it was clearly the intent of this section that Park lands be held "forever," see e.g., P. & S.L. of 1931, c. 23.

The garage property, however, is not Park property in the same sense as the lands now within the Park. It is property used by the Authority and its staff to facilitate the maintenance and operation of the Park. As such, it is logically subject not to the mandates imposed by the second paragraph of § 901 but to the requisites of the first paragraph thereof. Again, there is no explicit statement of power to sell administrative facilities (or, for that matter, power to purchase). The issue is, then, whether such authority may be implied. Given the particular statute in question, the power to sell property purchased for administrative purposes may be implied. In State of Maine v. Fin & Feather Club, 316 A.2d 351 (Me., 1974), the Maine Supreme Judicial Court construed the power of the Authority in regard to its ability to negotiate and terminate leases within the Park. In upholding this power, the Court provided the following guidance:

"Public bodies may exercise only that power which is conferred upon them by law. The source of that authority must be found in the empowering statute, which grants not only the expressly delegated powers but also incidental powers necessary to the full exercise of those invested. . . . An authorizing statute grants such powers as may be fairly implied from its language. These powers are:

- "1. those necessarily arising from powers expressly granted
- "2. those reasonably inferred from powers expressly granted
- "3. those essential to give effect to powers expressly granted.

"The public body may employ means appropriate for the purpose of carrying out the authority directly conferred upon it. Lynch v. Commissioner of Education, 317 Mass. 73, 56 N.E.2d 896 (1944) (statute conferring 'general management' of institution upon state department confers authority to deal with all details of control and administration of such institution)." 316 A.2d 351, 355.

The Court then concluded that

"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 administration of Baxter State Park was specifically exempted from any supervision or connection with the State Park Commission. Id. 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 351, 355.

The Court found that the Authority's negotiation and termination of leases were managerial decisions consistent with the broad delegation of power and as such were decisions with which the Court would not interfere:

"The grant of authority to the members of the Baxter State Park Authority is broad with emphasis on the goals of management rather than the methods. A general grant of power, unaccompanied by definite directions as to how the power is to be exercised, implies the right to employ means and methods necessary to comply with statutory requirements. . . . " 316 A.2d 355, 356.

In view of the broad grant of supervisory and administrative control and the court's approval thereof (albeit in the context of a lease of park land rather than the sale of facilities and property outside of the Park), it appears that the power to sell the garage and use the funds to replace it with another such facility may be implied from the statute.

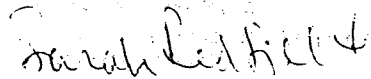
The power to sell such property pursuant to the trust instruments may also be implied. The applicable trust documents are silent as to both purchase and sale of administrative properties. Where there is no express authorization or prohibition and where the trust instruments do not use language which is interpreted to authorize or prohibit the sale of property, resort is had to the intent of the settlor and to analysis of the purposes of the trust to determine whether there is a power of sale, see generally III Scott on Trusts §§ 190-190.2 (3d edition, 1967). In this case, the trust's purpose was to provide funds for the care, operation and management of the Park. The settlor of the trust repeatedly expressed his approval of and faith in the decisions of the BSPA as created by the Legislature. (See, e.g., the letter

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from Baxter to the BSPA of February 16, 1967, in which he expressed his adamant opposition to L.D. 460 which would have changed the structure of the Authority.) With these factors in mind, it appears that a decision by the Authority to sell the Medway garage and to purchase another facility adjacent to its headquarters would be consistent with the purposes of the trust.

In summary, although the Authority would be completely without power to sell any park lands, its decision to sell the Medway garage, a facility in Millinocket purchased and used solely for administrative purposes and convenience, is consistent with the trust and within the powers implied by the statutory direction to administer this trust. Accordingly, it may proceed on its own to sell the Medway garage in a manner consistent with its fiduciary responsibilities, i.e., consistent with the duty of the trustee to use reasonable care and skill, see III Scott, supra, § 190.6.

This opinion is limited to the particular facts and in the somewhat unique context of operations of the Baxter State Park Authority. Its reasoning would not necessarily apply to a regular state agency with no trust responsibility. Such agencies can only take actions specifically authorized by statute.



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