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Baxter State Park; Liability
Tort Claims; Public Recreation Usage
14 MRSA 8103-2-F

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August 2, 1977

To: Lee Tibbs, Baxter State Park Authority
From: Sarah Redfield, Assistant Attorney General
Re: Horse Mountain Lookout Tower

This is in response to your request of June 20, 1977, for an opinion as to the advisability of the Baxter State Park Authority's acquiring the Horse Mountain Lookout Tower in Township 6, Range 8 and as to the responsibility and liability of the Authority for the safety of persons using the tower. You have indicated that the tower is the property of the Bureau of Forestry, was originally erected by that Bureau for fire protection purposes, that the Bureau no longer uses it for such a purpose and now wishes to divest itself of ownership. For purposes of this opinion, I have assumed the ownership pattern to be as you have described. It is my understanding that the Authority would maintain the structure for its historic interest as well as for its value to Park visitors as a unique observation point for viewing the Park.

You have also indicated that an agreement now exists between the Bureau of Forestry, the Baxter State Park Authority and the Boy Scouts of America whereby the Boy Scouts agree to maintain the tower. Inasmuch as no copy of this agreement appears to be available for review, this opinion does not address the current or potential relationship between the Authority and the Boy Scouts or any liability or removal from liability which might result to the Authority pursuant to such an agreement. However, I would suggest that if the Authority intends to have the Boy Scouts continue to maintain the tower, there should be a written agreement to that effect, which agreement indicates the respective rights, responsibilities, and liabilities of the parties. It should be noted that the State's immunity would not protect the Boy Scouts against tort claims.

As to the general question of the advisability of the tower's becoming the property of the Authority, this is primarily a policy question to be addressed by the Authority though their decision should be guided by the applicable trust provisions. Should the Authority wish to retain the tower, it would, of course, as a matter of public responsibility be obligated to safely maintain and operate the structure. However, pursuant to the provisions of the Maine Tort Claims Act, 14 M.R.S.A. § 8101, et seq., it would be immune from liability for claims resulting from its ownership and maintenance of the structure.

The land on which the Horse Mountain Lookout Tower was erected was deeded to the State by Governor Baxter as indicated by the provisions of Chapter 1 of the P. & S.L. of 1949 and Chapter 3 of the P. & S.L. of 1955. This land is subject to the following trust restrictions:

"TO HAVE AND TO HOLD the above described premises with all the privileges and appurtenances thereto to the State of Maine as TRUSTEE to be forever held in Trust for the PEOPLE OF MAINE upon the following conditions, that the premises herein donated and conveyed to the State of Maine, 1-- shall forever be kept for and as a State Forest and Public Park and for Public Recreational Purposes, 2--shall forever be kept in their natural wild state and as a sanctuary for wild beasts and birds, 3--that the use of fire-arms, trapping and hunting, not including fishing, shall forever be prohibited upon or within the same, 4--that air-craft forever be forbidden to land on the ground or on the waters within the same,"

In interpreting these provisions, Governor Baxter has indicated in pertinent part,

"The State is authorized to build trails and access roads to camp sites, to use timber from this area for fire control and firewood and to construct shelters and lean-tos for mountain climbers and other lovers of nature in its wild state.

"This area is to be maintained primarily as a Wilderness and recreational purposes are to be regarded as of secondary importance and shall not encroach upon the main objective of this area which is to be 'Forever Wild.'"

P. & S.L. 1955, c. 2.

These priorities have been confirmed by the Legislature's statement of purpose for the Authority, see generally 12 M.R.S.A. § 900. The Authority, as the agency charged with the maintenance and control of the Park, should be guided by these principles in deciding whether the maintenance of a structure such as the fire tower is consistent with the terms and intent of the trust, see 12 M.R.S.A. §§ 901, 906.

Should the Authority determine it is appropriate to maintain the tower, its liability is governed by the Maine Tort Claims Act. As a governmental entity, as that term is defined by Title 14 M.R.S.A. §§ 8102.2, 8102.4, the Authority is immune from liability for any claim which results from the construction, ownership, maintenance or use of unimproved land, 14 M.R.S.A. § 8103.2.F(1). It is similarly immune from any claim resulting from the construction, ownership, maintenance or use of "land, buildings, structures, facilities or equipment designed for use primarily by the public in connection with public outdoor recreation," 14 M.R.S.A. § 8103.2.F(3).

While the tower was apparently not originally designed for use primarily by the public in connection with public outdoor recreation, the Authority now plans or intends to retain the structure for this purpose. The common meaning of the word "design" includes such planning, intention or purpose, see, e.g., American College Dictionary. In interpreting a statute "words are to be interpreted in the sense in which they are commonly understood, according to the common meaning of the language. . . taking into consideration the context and the subject matter relative to which they are employed." Merchants Case, 106 A. 117, 118 Me. 96, 97 (1919). In the present context, where the use of land is contemplated and where the State is likely to have acquired structures formerly designed or used for one purpose with the intent to use them to facilitate outdoor recreation, such an interpretation is appropriate. Accordingly the use of the tower as contemplated by the Authority would be within the immunity provision.

If you should require any further advice in this matter, please let me know.


SARAH REDFIELD
Assistant Attorney General

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