

MAINE STATE LEGISLATURE

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*Baxter State Park: Acceptance of grants & contributions
Federal grants to state
Contributions to state*

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To: Lee Tibbs, Baxter State Park Authority

From: Sarah Redfield, Assistant Attorney General

This is in response to your request of June 20, 1977 as to the Baxter State Park Authority's acceptance of grants from the federal government or private organizations to finance educational programs in the Park. Specifically you have inquired as to whether such grants could be used for programs at park headquarters and/or within the Park and as to whether they are to be restricted as to equipment, supplies or personnel. The Baxter State Park Authority is without the appropriate statutory authorization to accept such grants. Where such funds may be properly available and accepted, the Authority's use thereof would be limited by the terms of the Trust and the intent of the settlor.

The operation of the Park is governed by the provisions of Title 12 M.R.S.A. § 900 et seq. and the various trust instruments involving both land and funds. Specifically, funds for the Park are derived from two trust funds. The first, known as the Baxter State Park Trust Fund, was established by the legislature's acceptance in Chapter 21 of the Private and Special Laws of 1961 of the gift from Governor Baxter of the assets of the Proprietors of Portland Pier Corporation; see also P. & S. L. of 1965, c. 30. The second trust fund is held by the Boston Safe Deposit and Trust Co. pursuant to the terms of the Baxter intervivos trust dated July 6, 1927, as amended. The income from this fund is paid at least quarterly into the Baxter State Park Trust Fund; the principal is available to the Baxter State Park Authority and the Maine Forest Authority for the purchase of additional park or forest lands, see 12 M.R.S.A. §§ 901, 17(1). The principal of Baxter State Park Trust Fund is to be invested and reinvested and the income used for "the care, protection and operation" of Baxter State Park. The intervivos trust instrument contains a similar provision. The trust instruments neither prohibit nor authorize the use of funds from additional sources.

The statute, which provides that the Authority "shall have full power in the control and management" of the Park lands is more specific as to funds:

"The authority shall receive moneys 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 State and other miscellaneous income derived from the park for maintenance and operation of the park.

"The authority is further designated the agency of the State to receive such sums as are, from time to time, paid to the State by the trustee under clause THIRD of a certain inter vivos trust dated July 6, 1927, as from time to time amended, created by said Baxter 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." (emphasis supplied) 12 M.R.S.A. § 901.

Given the specific provisions as to funds, and lacking any authorization to accept outside grants either within the statutes or the trust instruments, the Authority may not properly seek or accept grants as indicated in your request, 12 M.R.S.A. § 901 Cf. eg. 12 M.R.S.A. § 685: see also 2 M.R.S.A. § 4. The Authority may, however, wish to consider methods whereby the Governor or other appropriate state agencies may accept such funds for the Park, pursuant to existing statutory provisions.* In this regard, the Authority may wish to consider the

* Title 2 M.R.S.A. §4 now provides regarding federal funds: "The Governor is authorized and empowered to accept for the State any federal funds or any equipment, supplies or materials apportioned under federal law and to do such acts as are necessary for the purpose of carrying out such federal law. The Governor is authorized and empowered to authorize and direct departments or agencies of the State, to which are allocated the duties involved in the carrying out of such state laws as are necessary to comply with the terms of the Federal Act authorizing such granting of federal funds or such equipment, supplies or materials, to expend such sums of money and do such acts as are necessary to meet such federal requirements." As of October 24, 1977 this section applies to the Treasurer of the State and is limited by the terms of Title 5, C-150, see P.L. 1977, C. 583;

and regarding other gifts:

"The Governor is authorized to accept in the name of the State any and all gifts, bequests, grants or conveyances to the State of Maine.", 2 M.R.S.A. § 5.

possible limitations on the use of funds which arise by virtue of the trust relationship and the law as to the interpretation of trusts. As previously indicated, the trust instruments themselves are silent as to the use of other funds for Park programs.

Where the trust contains no express provision, reference may be made to extrinsic evidence to determine the terms of the trust and the intent of the settlor, see generally II Scott on Trusts, §§ 164.1 and cases cited therein. In regard to your question there is, however, little guidance available. Records do indicate that during his lifetime, Baxter himself paid directly for many aspects of the Park's operations; see, e.g. letters from Baxter dated May 30, 1960 offering to pay for part of a Park road; dated February 28, 1961 offering funds in addition to State appropriation; September 22, 1965 authorizing expenses for gate house. The State of Maine itself also appropriated funds for the operation of the Park, see, e.g. Resolves 1953, c. 102, Resolves 1963, c. 70. See also letters from Baxter dated September 27, 1962 asking that money for the rangers come from State appropriations and not his special trust fund; and March 25, 1968 objecting to the use of trust fund moneys for the purchase of personal property at Kidney Pond Camps.

The most specific statement of the settlor regarding the expenditure of funds from outside sources was his adamant refusal to have the Park accept the money provided by the Appalachian Mountain Club (in memory of a ranger who had died in a rescue attempt) for bunkhouses and rescue equipment. Baxter sent the Authority a check for the amount involved, which funds were then returned to the Executive Secretary of the Appalachian Mountain Club, see letter from Austin Wilkins dated August 27, 1965. In sending this money, Baxter wrote that "any building or Memorial that is erected in my Park will be paid for by myself after my approval," letter to Austin Wilkins dated August 27, 1965.

From the available documentation, it appears to have been Baxter's intention that he provide the funds for the Park. In particular, he wished to assure that, at least during his lifetime, no buildings be erected other than with his approval and financial support. It is not clear, however, that he intended to preclude all outside support. Where there is no express provision and where no evidence as to the intent of the settlor is ascertainable, the trustee may act in accordance with the equitable principles established by the courts. The trustee may exercise its discretion so long as it does not violate the established duties incumbent on trustees including the duty of loyalty, the duty not to delegate, the duty to keep and render accounts, the duty to exercise reasonable care and skill in administration to preserve the trust property. See Scott, supra, § 164.

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In conclusion, the general principles of trust law, when read together with the statutory creation of powers of the Authority, indicates that the Authority itself may not accept grants from the federal government or from other sources. Where, however, such money is available through proper acceptance, the Authority may exercise its discretion consistent with its fiduciary responsibilities and with the broad grant of administrative power, see 12 M.R.S.A. § 901, State v. Fin & Feather Club, 316 A.2d 351 (Me. 1974). The discretion of the Authority should, however, be limited by the expression of Baxter's intent concerning the Appalachian Mountain Club gift, to the acceptance of funds for purposes other than the erection of structures or the purchase of equipment for use within the Park.

This opinion is a broad response to your request. If a specific proposal arises, you may wish to inquire further.



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Assistant Attorney General

SR:jg

cc: Baxter Park Authority Members
Bill Cross