

# MAINE STATE LEGISLATURE

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Bureau of Public Improvements, Leasing Authority  
Leases: State Property  
5 M.R.S.A. 1742

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October 3, 1977

To: Richard G. Bachelder, Director  
Bureau of Public Improvements

From: Joseph E. Brennan, Attorney General

Re: Lease of State Property

This is in response to your request for an opinion as to whether the Bureau of Public Improvements may lease State property to private individuals or groups or to municipalities or non-profit corporations. As discussed herein the Bureau of Public Improvements generally does not have the authority to lease State property regardless of the lessee.

Title 5 M.R.S.A. § 281 enumerates the powers of the Commissioner of Finance and Administration, who is generally responsible for financial planning and programming for the State. In addition to the itemized powers, the Commissioner is authorized to "exercise such other powers and perform such other duties as may be designated by statute," 5 M.R.S.A. § 281.5 (emphasis supplied). The Department of Finance and Administration has the authority, acting through the Bureau of Public Improvements (hereinafter BPI) to develop certain programs for "public improvements" including inspection of State buildings, review of operation of State Buildings, listing of

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real estate, etc.; see generally, 5 M.R.S.A. § 1742.\* Specifically, BPI has the authority to

"12. Demolish obsolete buildings. To demolish or otherwise dispose of buildings and appurtenances excluding land, belonging to the State that have become hazards, obsolete or are unjustifiably expensive to maintain. Such demolition or other disposal shall be on the recommendation of the department or agency head having jurisdiction over the buildings and appurtenances concerned and under such terms and conditions as deemed by the Governor to be in the best interests of the State;" 5 M.R.S.A. § 1742.12.

"19. Facilities required by State. To lease or approve the leasing of grounds, buildings, facilities and office space required by departments and agencies of State Government. No lease shall be for a period of more than 20 years." 5 M.R.S.A. § 1742.19.

There is no explicit authority to lease or otherwise convey any such land or facilities already held by the State except in regard to obsolete buildings under the conditions specified by § 1742.12 with approval of the Governor. By way of comparison, many other state

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\* "Public improvements" is defined as follows:

"Whenever the words 'public improvement' or 'public improvements' shall appear in chapters 141 to 155 they shall be held to mean and include the construction, major alteration or repair of buildings or public works now owned or leased or hereafter constructed, acquired or leased by the State of Maine or any department, officer, board, commission or agency thereof, or constructed, acquired or leased, in whole or in part with state funds, and including the construction, major alteration or repair of school buildings, in excess of \$25,000, by any school administrative unit and for which state school construction aid is to be paid, provided that sections 1743 and 1745 shall not be applicable to construction, major alteration or repair of school buildings. Nothing in this section shall apply to the construction, improvement or repair of any and all ways, roads or bridges with appurtenances which, by law, are under the supervision of the State Highway Commission." 5 M.R.S.A. § 1741.

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agencies have explicit authority to convey State land and property, see, e.g., Title 30 M.R.S.A. § 4651.5 authorizing the Maine State Housing Authority to lease property; 20 M.R.S.A. §§ 3508.1, 3508.8, 3508.9, 3508.13, authorizing the acquisition, rental and disposal of school buildings; 30 M.R.S.A. §§ 4804.2, 4814, 4801.13.D authorizing rental or leasing by an Urban Renewal Authority under specified conditions; 10 M.R.S.A. § 752.7 authorizing leases by the Maine Guaranty Authority; 12 M.R.S.A. § 54 authorizing acquisition and disposition of property by the Soil and Water Conservation Commission; 6 M.R.S.A. § 42 authorizing the leasing of facilities at state-owned airports; 12 M.R.S.A. § 602 authorizing the leasing and other conveyance of State park lands with the consent of the Governor; 12 M.R.S.A. § 554 and 30 M.R.S.A. §§ 4162.4 and 4162.7 authorizing certain specified conveyance by the Bureau of Public Lands.

Where there is no explicit delegation of authority to convey state land and where there is no court decision approving such conveyances, it appears that only the Legislature, acting on behalf of the people, has the authority to convey interests in State lands, see Opinion of the Justices, 118 Me. 503 at 505, 106 A. 865 (1920); see also generally Sands, Sutherland, Statutory Construction, §§ 6302, 6501 and 6502; compare statutes cited above; State v. Fin and Feather Club, 316 A.2d 351 (1974). Accordingly, the Bureau of Public Lands and the Department of Finance and Administration cannot convey the State's interests in real estate except as provided by 5 M.R.S.A. § 1741.12 without explicit authorization or approval by the Legislature.

This opinion should not be construed to comment on the authority of any other department or bureau of State Government to engage in leasing. It is restricted to the statutory authorizations of the Bureau of Public Improvements.

Further, this opinion should not be construed to compromise existing leases. Such documents were entered into in good faith based on past practice and understanding of authority. As such, they have been approved, sometimes over the course of many years, as essential to State government. Also, where such leases have existed, it is possible that they have been ratified directly or by implication by legislative acts, which cannot be specified here, which impliedly recognize the existence of such leases in accepting benefits from the leases or otherwise.

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To clarify the matter of leasing of State property by the Bureau of Public Improvements, other than surplus or obsolete structures or areas, it may be appropriate to seek new legislation.

Very truly yours,

*Joseph E. Brennan*  
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Attorney General

.JEB:jg