

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

November 3, 1977

To: John P. O'Sullivan, Commissioner, Department of
Finance and Administration

From: Donald G. Alexander, Deputy Attorney General

Re: Sale of Land by the Department of Inland Fisheries
and Wildlife

This responds to your memorandum of October 25, 1977. The statute in question, 12 M.R.S.A. § 1959, provides as follows:

"The Governor, on recommendation of the commissioner, may sell and convey on behalf of the State the interest of the State in property taken or acquired by purchase under chapters 301 to 335 and deemed no longer necessary for the purposes hereof. The proceeds from such sales shall be credited to the funds of the department."

This section, in effect, authorizes sale of property purchased by the Department of Inland Fisheries and Wildlife or its predecessors where such sales are approved by the Governor.

FACTS:

You indicate that in three instances bids have been received on property put up for sale by the Department of Inland Fisheries and Wildlife. Subsequent to the opening of the bids, a letter of acceptance was sent to each of the three respective high bidders, the letter being on instructions of the Department of Inland Fisheries and Wildlife but sent by the Bureau of Purchases. Each letter requested payment in full within 30 days. Payments were made by the respective high bidders in the amount of the total price. The checks representing the payment were then


deposited to the credit of the State of Maine. Thus the proceeds of those checks are currently in accounts for use of the Department of Inland Fisheries and Wildlife. The Governor took no part in these actions and gave no approval.

QUESTION:

Your question is, based on these facts, are there any legal obstacles confronting the Governor when he determines whether or not to approve the sale, and do the actions indicating approval of the sale by the State, including sending of letters to the successful bidders and cashing of the checks, prejudice or preclude the Governor's discretion in the matter?

ANSWER:

The law in question places exclusive authority and ultimate discretion in the Governor to decide to sell the properties in question. As the Governor has exclusive authority, it would be the view of this office that any approval of the sale, and any acts intended to confirm the sale, before actual approval by the Governor were ultra-vires acts which could not commit the State to the sale or prejudice the Governor's decision. For that reason, it would be our view that a suit by individuals to try to compel the State to sell the property, where gubernatorial approval of the sale was lacking, but based on the letter appearing to confirm the sale and cashing of the checks by the State would not be likely to succeed to the extent of requiring the State to convey the property. Obviously, the money should be returned to the successful bidders as soon as possible if they are not to receive the property. With the money returned, we see no obstacles confronting the Governor in exercising his full discretion to make determinations regarding sales of the property.


DONALD G. ALEXANDER
Deputy Attorney General

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