

MAINE STATE LEGISLATURE

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*Legislative Committee on Property by emergency legislation
Emergency Legislation, Property Sales
Ms. Const. Art 4 § 13 sub sec. 16*

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January 13, 1978

Honorable Daniel B. Hickey
House of Representatives
State House
Augusta, Maine

Dear Representative Hickey:

This responds to your letter of January 10, 1978. In that letter you pose the question as to whether the provisions of L.D. 2043, "A Resolve Authorizing Director of the Bureau of Public Lands to Lease the Right to Lay and Maintain a Certain Right-of-Way for 40 Years," may be enacted as emergency legislation in light of the provisions of Article IV, Part Third, Section 16 of the Maine Constitution. Section 16 specifies the effective dates for enacted legislation and the conditions under which emergency legislation, effective immediately, may be enacted. The provision of the Constitution in question reads as follows:


"An emergency bill shall include only such measures as are immediately necessary for the preservation of the public peace, health or safety; and shall not include. . .
(3) provision for the sale or purchase or renting for more than five years of real estate."

The question thus becomes whether L.D. 2043 authorizes such a conveyance of real estate as cannot be approved by emergency legislation under Section 16. A review of L.D. 2043 indicates that it authorizes the State to lease a right-of-way across State-owned land. The term of the lease would be for 40 years. The effect of the lease would be to create a 40-year easement permitting use of State property in connection with construction of a nursing home. The 40-year period is necessary in light of federal guaranty requirements for the nursing home.

The constitutional provision recognizes rentals as one of the types of conveyances within its scope. Further, its effect is to prohibit enactment of legislation, as an emergency measure, where that legislation authorizes the rental of State property for 40 years. Therefore, it appears to be squarely within the coverage of the constitutional provision prohibiting enactment by emergency legislation.

I hope this information is helpful.

Sincerely,


JOSEPH E. BRENNAN
Attorney General

JEB:mfe

cc: Honorable John L. Martin
Honorable Joseph Sewall