

Joseph E. Brennan attorney general



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STATE OF MAINE Department of the Attorney General AUGUSTA, MAINE 04333

March 16, 1978

A. Lee Tibbs, Director Baxter State Park Millinocket, Maine

Re: Park's liability for Visitor Activities

Dear Lee:

This is in response to your request dated February 15, 1978, for an opinion as to the liabilities of the Baxter State Park Authority (hereinafter "the Authority") for accidents which may occur in the climbing of Mount Katahdin under adverse weather conditions. You have indicated in your memo that it is the current policy of the Authority to close certain areas of Mount Katahdin under adverse weather conditions for reasons of safety. You have also indicated that it is the current policy to close all trails for certain periods of the year because of the unpredictable nature of the storm activity, to close trails during the winter only to those who do not satisfy the winter climbing requirements, and to close certain trails during the summer in periods of bad weather conditions and at times which will involve climbing after dark.

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For a previous discussion of the Park's liability for certain activities, please refer to my opinion to you dated August 2, 1977, concerning Horse Mountain Lookout Tower.

As a general matter, the liability of the State is now governed by the Maine Tort Claims Act, Title 14 M.R.S.A. § 8101, et seq. The Maine Tort Claims Act provides for immunity from suit for governmental entities as defined by Title 14 M.R.S.A. § 8102.2 and § 8102.4. Title 14 M.R.S.A. § 8103 provides that

"Except as otherwise expressly provided by statute, all governmental entities shall be immune from suit on any and all tort claims seeking recovery of damages. * * * Notwithstanding § 8104, a governmental entity shall not be liable for any claim which results from: "F. The construction, ownership, maintenance or use of: (1) Unimproved land; . . [and] (3) land, buildings, structures, facilities, or equipment designed for use primarily by the public in connection with public outdoor recreation; * * *"

That is, pursuant to State statute, the Authority as an agency of the State is immune from liability for claims which result from the climbing of Mount Katahdin, an area of unimproved land.

You have also asked whether the Authority would be able to adopt an advisory warning policy whereby the Authority would warn prospective visitors to the Park of adverse weather conditions and then require that such persons reimburse the Authority for any necessary rescue costs which are incurred after such a warning. This is primarily a policy decision for the Authority. If the Authority is interested in pursuing this matter, it appears to _ me that it would be necessary for some sort of written agreement to be signed whereby a person still wishing to climb Katahdin after an adverse warning would indicate his/her agreement to hold the State harmless and to reimburse the State for expenses for rescue.

If I can be of further assistance, please let me know.

Sincerely yours,

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SARAH REDFIELD Assistant Attorney General

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