

MAINE STATE LEGISLATURE

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Inter-Departmental Memorandum Date May 25, 1978

To Doris Hayes, Deputy

Dept. Secretary of State

From Steven Wright, Ass't. Att. Gen.

Dept. Secretary of State

Subject Opinion Request re Bonney Woods Corporation's Filing Requirements

This responds to your opinion request of May 9, 1978. You have asked whether the Bonney Woods Corporation, incorporated by P & SL 1909, c. 108, is subject to any statutory requirements pertaining to the filing of annual or biennial reports. We answer that the Bonney Woods Corporation is subject to the biennial reporting requirements of 13-B MRSA § 1301.

The private and special law establishing the Bonney Woods Corporation did not expressly specify the corporation as a not-for-profit nonstock corporation. However, a review of Section 3 of P & SL, c. 108 shows that the sole purpose of the corporation is

(t)o own property, both real and personal within the limits of Franklin county to be used as and for a public park or parks and recreation grounds for the people of Franklin county, and for no other purposes whatever, and all property acquired by said corporation, either by gift, purchase, or otherwise, shall be used for said purposes forever and shall under no circumstances be sold, or rented for any purpose whatever for private use or hire,...and all property of said corporation held for free public use shall be exempt from state, county and town taxation.
(emphasis supplied)

Without denominating this corporation as "charitable" or "nonprofit", the legislative intention appears clear and unambiguous that it be so classified. There is no provision for the issuance of stock in the incorporating legislation.

The purpose of the corporation also seem to have brought it within the penumbra of 13 MRSA c. 81, which deals with nonprofit corporations without capital stock organized for fostering, encouraging and assisting recreational projects. Being classified as generally within the category of those corporations covered by 13 MRSA c. 81 excepted the corporation from having to file annual reports. See 13-A MRSA § 1301, sub-§ 6. Presently, however, the Bonney Woods Corporation and other similarly situated corporations are subject to Title 13-B, the "Maine Nonprofit Corporation Act." 13-B MRSA § 103, sub-§ 1 reads, in part:

1. Domestic corporations. The provisions of this Act relating to domestic corporations shall apply to:

* * *

- C. All nonstock corporations created by special Act of the Legislature for a purpose or purposes for which a corporation may be organized under this Act.

A review of 13-B MRSA § 201, "Purposes", shows that the purposes of the Bonney Woods Corporation are those for which a corporation could be organized under the Maine Nonprofit Corporations Act. See 13-B MRSA § 201, sub-§ 1. Additionally, 13-B MRSA § 103, sub-§ 3, provides, in part:

Subject to provisions of section 201, this Act... shall not apply to any corporation created by special Act of the Legislature, to the extent that this Act is inconsistent with such special Act.
(emphasis supplied)

The biennial reporting requirement of 13-B MRSA § 1301 is not inconsistent with the special Act establishing the Bonney Woods Corporation.


Also, 13 MRSA c. 81 was amended by the same legislation that enacted Title 13-B, the Maine Nonprofit Corporation Act, effectively eroding any claim to an exemption from reporting requirements previously based on the language of 13-A MRSA § 1301. While the Bonney Woods Corporation was formerly generally within the purview of 13-A MRSA c. 81, it is now governed by Title 13-B.

Our conclusion that the Maine Nonprofit Corporation Act applies to the Bonney Woods Corporation, and therefore, requires the corporation to file biennial reports, is reinforced by the comments included with the Nonprofit Corporation Act in its legislative document form. Under the Comment section of L.D. 1885, it provided:

Comment - Title 13-B, § 103

* * *

The status of corporation formed under the old acts is protected as well. These corporations will not have to reincorporate, but will have to observe the provisions of the new law in conducting activities subsequent to the passage of the new law. If the old corporations, for example, fail to file annual reports,¹ they may have their authority to carry on activities revoked by the Secretary of State.
(emphasis supplied)


Steven Wright,
Assistant Attorney General

¹It should be noted that the Maine Nonprofit Corporation Act existed in two legislative document forms, L.D. 626 and L.D. 1885, the latter form changing § 1301 of Title 13-B so that it required biennial, rather than annual, reports. This accounts for the erroneous use of terminology in the Comment referring to "annual reports". Also, corrective legislation should be introduced at the next session to remove the annual report terminology in 13-B MRSA § 201.