

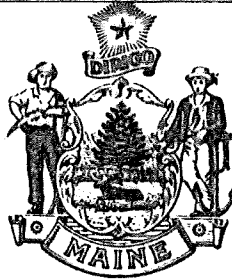
MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

August 21, 1979

Captain Robert Flenner
Administrative Officer
Maine Maritime Academy
Castine, Maine 04421

Re: Yacht Onalay.

Dear Captain Flenner:

I apologize for my delay in getting back to you with regard to the status of the yacht Onalay.

My ultimate conclusion on this problem is that the Maine Maritime Academy, as such, does not own the yacht Onalay at this time. The title to this yacht is in the State of Maine, and the Onalay was transferred to Maine Maritime Academy merely for custody and control. Hence, the only agency which has the power to sell this yacht at present is the Department of Finance and Administration, through the Bureau of Purchases, 5 M.R.S.A. § 1811.

For your information, title in the State of Maine is good, pursuant to the forfeiture statute, 22 M.R.S.A. § 2387. In the proceeding for forfeiture, proper notice was given and hence the State took title free of any interests which might now be asserted. See Parker and Parker v. W. E. Soule Company, 123 Me. 524 (1924).

The problem as I see it with the sale by the Maine Maritime Academy of the yacht Onalay is that the transfer from the Department of Public Safety to the Maine Maritime Academy was effected through the Bureau of Purchases, Surplus Property Division, and the Maine Maritime Academy took as a State agency. As you are well aware, pursuant to P. & S.L. 1947, c. 24, the Maine Maritime Academy is a State agency "for the purposes for which it was established under the provisions of this chapter." While I am not satisfied that, for each and every purpose, the Maine Maritime

Academy is a State agency, I believe that for purposes of transfer and holding of property, it is. The legislative history of transfer of property from the State to the Maine Maritime Academy, e.g., transfer of Eastern State Normal School land to Maine Maritime Academy pursuant to P. & S.L. 1961, c. 71, indicates that property transferred by other State agencies to the Academy has been transferred only to the "custody and control" of the Academy and not with a full ownership interest.

It seems that this conclusion does, however, solve, or at least transfer, another problem raised with regard to the Onalay. If title and ownership is in the State, then it must be the State which is responsible for any customs duty on the Onalay.

I am further satisfied that, as a State agency, unless the Academy has a specific legislative authorization to sell the Onalay, it cannot do so. See generally, 72 Am. Jur.2d States, § 66, et seq.; see also Louisiana Association for Mental Health v. Edwards, 322 So.2d 761 (La. 1975). There is considerable law dealing with the authority of the State to authorize agencies to sell State property, the thrust of which is that it is in fact State property and must be conveyed subject to the procedures (and restrictions) enacted by the Legislature.

This brings us to the question of alternatives open to the Academy in terms of dealing with the Onalay. First of all, you may keep it. In light of your indications that it is not that useful to the Academy, however, I would suspect that you would not wish to do this. Next, you can attempt to get special legislative action to grant it to the Maine Maritime Academy as its sole owner or to authorize the Academy to sell it and to retain the funds received from selling it. There appears to be some authority for this and there is a recent case which recognizes that the Legislature has power, through resolve, to grant title to State property to other parties. Boothbay Harbor Condominiums, Inc. v. Department of Transportation, 382 A.2d 848 (Me. 1978) (although this case involves a private party and not another State agency). While I would be happy to help draft any documents involved, it would be up to the Academy to initiate and follow up such legislation.

Finally, a theoretical, but somewhat unfeasible, alternative would seem to be to have the State sell the Onalay and to attempt to negotiate for a share to go to the Academy. This would also require legislative approval, however. It appears to me that the legislative alternatives, either having the Onalay granted to the Academy as a body corporate by legislative resolve or having the right to sell granted to the Academy, are presently the most practical.

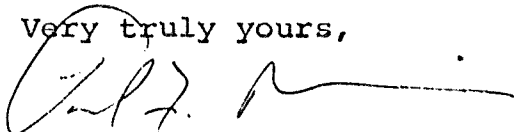
I have also briefly looked into the problem of the access to the Maine Municipal Bond Bank (30 M.R.S.A. § 51, et seq.) for the Maine Maritime Academy. My review of the statute creating the Maine Municipal Bond Bank supports your conclusion that the Academy does not now have access to it, as it is not within the definition of "governmental units" to whom loans can be made. Hence, legislative action would be required to add the Maine Maritime Academy to the definition of "governmental units" included within the scope of the lending power of the Maine Municipal Bond Bank. I find nothing in the statutory language or in its underlying purpose which would prevent the Legislature as a matter of policy from including the Academy as a "governmental unit" which is to have access to the Maine Municipal Bond Bank. The one problem the Legislature may foresee is the possibility of other quasi-governmental entities seeking also to be included within the scope of that statute.

It is my understanding, although I am not entirely sure, that proposed legislation for the January session has to be submitted by November of 1979. Again, as with the problem with the Onalay, I would be happy to assist the Academy in drafting any legislation which it might wish to introduce.

I hope that the informatio- contained in this letter is useful and that it comes in time for you to present it to the meeting of the Trustees. I have, of course, several other projects on your behalf which I will get to in the near future.

Thank you for your kind patience and cooperation in this matter. I am

Very truly yours,



PAUL F. MACRI
Assistant Attorney General

PFM/ec