

# MAINE STATE LEGISLATURE


The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

# STATE OF MAINE

Inter-Departmental Memorandum Date November 28, 1983

To James E. Tierney, Attorney General Dept. Attorney General  
From Rufus E. Brown, Deputy  Dept. Attorney General  
Subject Membership of Baxter State Park Authority

---

---

This memorandum responds to your request of November 1, 1983, that I comment on the proposal of the Performance Audit Committee that Ken Stratton, Director of the Bureau of Forestry, be replaced by Dick Anderson, Commissioner of the Department of Conservation, on the Baxter State Park Authority. My conclusion is that such a proposal, if implemented, would seriously contradict the Trust purposes for Baxter State Park as expressed by Governor Baxter.

As you know, the Baxter State Park Trust consists of a series of gifts transferred to the State of Maine as trustee between 1931 and 1962 by deeds of trust submitted to various Legislatures for acceptance by Private and Special Acts. Fitzgerald v. Baxter State Park Authority, 385 A.2d 189, 191-92 (Me. 1978). These trust instruments, by their terms, do not refer to the Baxter State Park Authority. The Authority was created in 1939 to act as trustee for the State of Maine for purposes of Baxter's Trust. P.L. 1939, ch. 6. This Act, which Baxter "undoubtedly had a major role" in planning and introducing to the Legislature, J. W. Hakola, Legacy of a Lifetime, at 139, specified that the membership of the Authority should consist of the Attorney General, the Commissioner of Inland Fisheries & Game, and the State Forest Commissioner. Of course, that membership has remained consistent to the present date. 12 M.R.S.A. § 901.

Although, as just noted, the trust instruments themselves do not refer to the Authority, in 1955 Governor Baxter executed a formal instrument interpreting his Trust and in that year the Legislature evidenced its concurrence by enacting the interpretative declaration into law. P. & S. L. 1955, ch. 2 (the 1955 Interpretation Act). See Fitzgerald, supra, 385 A.2d at 198. The 1955 Interpretation Act specifically refers to the Baxter State Park Authority as the entity to exercise control over the Park and further refers specifically to the Departments of Forestry and Fish and Game. In addition, several of Governor Baxter's formal communications refer to both the Authority and some of its specific members. See e.g., January 11, 1955 letter to Governor Muskie, which makes reference to the 1955 Interpretation Act:

In consultation with our Forest and Game officials and with the Attorney General's Department it seems desirable to provide for an understanding as to what is required under the Trust Deeds.

Also see Governor Baxter's March 17, 1955 letter to Governor Muskie, commenting on the creation of the SMFA in which Governor Baxter

said that "It long has been my purpose to create in our forests a large area wherein the State may practice the most modern methods of forest control, reforestation and production under the management of our able Forest Commissioner Mr. Nutting and his associates." (emphasis added) One of the most emphatic letters on the subject of the membership of the Authority was written by Governor Baxter on February 16, 1967 to the Park Authority in reference to a proposal to enlarge the Authority to include State Representatives from Millinocket and Greenville. Governor Baxter strongly opposed this change in the membership, writing:

The present Commission of three members has worked without salary and has taken extra good care of the Park. Only those who seek to gain some advantage, which I do not understand, are behind this movement.

After my donating in excess of 200,000 acres of land and money in the amount of more than one and one-half million dollars, it would seem that my wishes in this matter should be recognized. There is no need for a change because the present system is working satisfactorily and carrying out my plans. I regard this bill as a personal attack against what I have done in creating Baxter State Park.

The members of the present commission are familiar with the Park and I want them to carry on without any change being made. As a matter of fact, we have no finer public officials than these three men. They are conscientious and there is no such thing as politics in their work.

I do not go into details because this proposal lacks any merit and would bring into the Park system elements which would ruin harmony. I hope the time does not come when the wishes of one who has created the most unique park in the country, would be disregarded.

The citizens of our State, if this matter were placed before them, would not think of making any changes. Such an action would break the Trust which I established and I should be humiliated if I were ever called upon to go before a Legislative Committee to try to stop passage of this proposed bill.

This letter was read to the State Government Committee by Austin Wilkins, and the proposal was defeated following opposition by several present and former members of the Authority.

Further evidence of Governor Baxter's intent with regard to membership of the Authority is found in a letter of Albert D. Nutting, former Commissioner of the Forestry Department and later head of the School of Forestry at the University of Maine, a man who was particularly close to Governor Baxter. Mr. Nutting drafted a proposal for a multiple use state forest and for the continuance of the Baxter Park Authority, such proposals being transmitted to Governor Baxter in a letter dated December 11, 1967. In the proposal concerning the Park Authority, Nutting wrote:

The present administrative organization of the Park is a separate unit of State government. I believe strongly that the Baxter Park Authority is the best administrative body to assure that my desires for a wilderness park will be continued. As a citizen of Maine, I greatly appreciate the accomplishments of the State Park and Recreation Commission in providing areas and facilities for out-of-door recreation for Maine people and their visitors. However, they are subject to political pressures to provide a different kind of recreation than I have long worked for in Baxter Park. My 50 years/effort to provide a wilderness park has been to establish an area where nature can take its course with a minimum of disturbance from man. I want everyone who appreciates such an area to have a chance to visit Baxter Park, but I don't want it ruined by the masses of people who go to areas just to see something new to them. State and national parks are filled with such problems. Mass recreation areas have their values, but aren't what I want. There are local people surrounding Baxter Park who would like to exploit it for their own benefits. They have often tried to do this. I want them to have fair treatment, but no special privileges.

The present Baxter Park Authority provides the kind of governing body I believe the best fitted to continue Baxter Park as I want it to be. The three men who comprise the Authority are State employees. I don't believe their

services on the Authority have, or will have, any effect on their salary costs to the State. The Forest Commissioner provides the Authority with a person informed in forestland management, the Inland Fisheries and Game Commissioner with an interest and informed person in the management of fish and game in forested areas, and the Attorney General with the person interested and knowledgeable in the law and all are interested in people. They have successfully administered Baxter Park in conformity with my ideas for many years. I want to see their type of administration continued long after I passed from the scene.

On December 28, 1967 Governor Baxter wrote to Mr. Nutting referring to his letter and commenting that "You outlined what I have in mind and I appreciate the thought and time you have put in to get these ideas together."

All of this background lends strong support for the conclusion of our own Law Court in Fitzgerald, supra, 385 A.2d at 202-203:

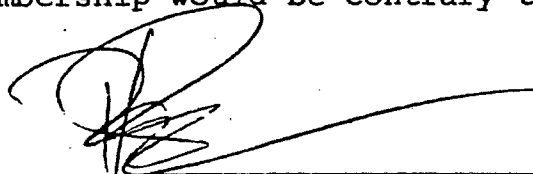
The membership in the Authority, obviously selected by Governor Baxter himself and ratified by him by his subsequent gifts, consists of the State's principal officers in the professions of the law, forestry, and fish and wildlife management. Both Governor Baxter and the legislature placed their confidence in the judgment and integrity of those high State officials.

With this background, it appears clear that the present membership of the Authority was that intended by Governor Baxter and by such membership Governor Baxter intended to draw upon the expertise and the judgment of particular State officials. The position of the Director of the Bureau of Forestry was particularly important, in view of the need for expertise in forest management and also in light of the history of Governor Baxter's reliance upon former Commissioners of the Department of Forestry, Albert Nutting and Austin Wilkins. The Department of Conservation has a much larger constituency than the Bureau of Forestry and the interest of forestry, including the Land Use Regulation Commission, the Bureau of Public Lands, Geology and the Parks and Recreation Commission. Indeed, there is reason to believe that Governor

Baxter would be particularly concerned about the substitution of the Commissioner of Conservation for the Director of the Bureau of Forestry on the Park Authority because such a Commissioner not only lacks focus and expertise in forestry, but his constituency includes the State park system, which Governor Baxter was careful to distinguish from the Baxter State Park. See 12 M.R.S.A. § 900:

While this area bears the name park, it is not to be confused with the existing state park system and is to "be separately administered free from any connection with the larger State Park Commission" (Bureau of Parks and Recreation). That system, purchased with the funds of the people, must change from time to time to accommodate changing circumstances and the varying desires of its proprietors; not so, Baxter State Park, purchased by the generosity of one man, richly endowed, and presented to the people with specific stipulations.

Given Governor Baxter's strong views about the membership of the Park Authority, as expressed in various documents and recognized by our own Law Court, it is my conclusion that the proposal of the Performance Audit Committee in regard to a change in the Authority's membership would be contrary to the Baxter Trust.



---

RUFUS E. BROWN  
Deputy Attorney General

REB:mfe