

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)

JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

December 11, 1986

Irvin C. Caverly, Jr., Director
Baxter State Park Authority
64 Balsam Drive
Millinocket, Maine 04462

Re: Donations to Baxter State Park

Dear Buzz:

I have been asked to provide advice regarding the legality of the Authority accepting grants, gifts or donations for Baxter State Park. Generally, the Trust instruments present no bar to such gifts, so long as the use thereof is limited by the terms of the Trust and the intent of Governor Baxter. Under the present statutory scheme, the Governor of the State may accept gifts or empower the Authority to accept gifts for the benefit of the Park.

The legality of the Authority accepting gifts for the benefit of the Park is governed by the provisions of 12 M.R.S.A. §§ 900, et seq., as well as the intent of Governor Baxter as expressed in the various Trust documents and, perhaps, extrinsic evidence. Pursuant to its statutory authority, the Park Authority has power to receive and expend monies only from the trust funds and the income derived from the Park. 12 M.R.S.A. § 901 (1981). In 1981, the Legislature amended the statutory provision dealing with acceptance of gifts by the Governor of the State. Prior to the amendment, the legislation provided as follows:

"The Governor is authorized to accept in the name of the State any and all gifts, bequests, grants or conveyances to the State of Maine." 2 M.R.S.A. § 5 (1979).

In 1981, the following language was added:

"No other state official or any member of any other branch of State Government may accept any gift, grant or conveyance to the State or to that branch of government . . . unless specifically authorized to do so by statute or by clear implication, or unless empowered to do so by the Governor."
P.L. 1981, c. 53 (emphasis added).

Thus, it is possible now for the Governor of the State to accept gifts expressly restricted to be used for Baxter Park, and to utilize such gifts as State appropriations for the Park. Governor Baxter did not appear to object to State appropriations. Indeed, at least in one instance, Governor Baxter encouraged State appropriations to pay for Park rangers (letter of September 27, 1962, from Baxter to Austin Wilkins).

In addition, and significantly, the Governor can generally empower the Authority to accept gifts.^{1/} Although one can argue that the applicable legislation does not empower the Governor or the Authority to expend or utilize such gifts, such power appears to be implied from the legislation so long as such expenditure is otherwise in conformance with the Authority's mission. "The grant of an express power carries with it the authority to exercise all other activities reasonably necessary to carry it into effect . . ." 3 Sands, Sutherland Statutory Construction [3d ed.], § 65.03. In this matter, the grant of express power to the Governor to accept gifts or authorize an agency to accept gifts also carries with it the implied power to utilize the gift as the donor desired or to empower the agency to do so, unless, of course, such utilization otherwise conflicts with law or the trust. There appears no conflict with any applicable statute nor, as discussed below, Governor Baxter's trust.

^{1/} Of course, a legislative amendment to 12 M.R.S.A. § 901, specifically empowering the Authority to accept and expend outside gifts would make it unnecessary for the Governor to be involved in this issue and would clarify the situation.

With regard to any trust restriction on acceptance of gifts, Governor Baxter's intention on this matter must be determined first by analyzing the language of the Trust documents. Mooney v. Northeast Bank & Trust Co., 377 A.2d 120 (Me. 1977); Fiduciary Trust Co. v. Brown, 152 Me. 360 (1957). Charitable trusts are favorites of the law, and the court construes the language thereof liberally to permit charitable intentions to shine through. Griqson v. Harding, 154 Me. 185 (1958); Bates v. Schillinger, 128 Me. 14 (1929). I have reviewed Governor Baxter's deeds of land to the State, and they are silent regarding gifts from third parties. The documents creating the Trust funds are also silent on this issue. These Trust instruments, therefore, neither prohibit nor authorize the use of funds from additional sources.

Since the Trust documents are silent on the issue and charitable trusts are liberally construed to achieve the intentions of the settlor, it can be said that acceptance of gifts to achieve the purposes of the settlor not only fails to conflict with the Trust but, moreover, is in furtherance and conformity therewith. The Trustees have such powers as are expressly or impliedly given them by the settlor or are vested in them by statute. Bogert, Trustee & Trustees [2d ed. rev.], § 391. Although Trustees might not be authorized to accept any and all gifts from third parties to the Trust, it has been held that "a gift which does not change the nature of the trust, unreasonably enlarge its scope, or thwart or defeat its essential purpose, and which in amount is in reasonable proportion to the requirements of the Trust, is within the authority of the trustees" to hold and use in accordance with the trust instrument. Danaldson v. Borough of Madison, 213 A.2d 33, 46 (N.J. Sup. Ct. 1965). In Danaldson, the New Jersey court approved a bequest from the husband of the settlor to cover increased costs in maintenance of a building which was the object of the trust. With respect to the Park, so long as a gift does not attempt to change the nature or purpose of the Trust, it would appear a gift could be received because of the size of the Park and magnitude of the Authority's mission.

Governor Baxter's actions and statements regarding gifts from third parties do not appear to evince a prohibition on such. Where the Trust contains no express provision, it can be argued that reference may be made to extrinsic evidence to determine the intent of the settlor, see generally II Scott on Trusts, § 164.1. Records do indicate that during his lifetime, Baxter himself paid directly for many aspects of the Park's operations. See, e.g., letters from Baxter dated May 30, 1960 offering to pay for part of a Park road; dated February 28,

1961 offering funds in addition to State appropriation; dated September 22, 1965 authorizing expenses for gate house. The state of Maine itself also appropriated funds for the operation of the Park. See, e.g., Resolves 1953, c. 102, Resolves 1963, c. 70. See also letters from Baxter dated September 27, 1962 asking that money for the rangers come from State appropriations and not his special trust fund.

The correspondence and actions of Governor Baxter indicate he was deeply concerned that no one be allowed to use the Park as a memorial and that he be involved in major park decisions during his lifetime. (Letters of August 27, 1965 from Baxter to Austin Wilkins, and of August 30, 1965 from Baxter to Richard J. Dubord.) As you may recall, Governor Baxter strongly objected to the acceptance of funds from the Appalachian Mountain Club for the erection of bunkhouses and purchase of rescue equipment. The concern raised by Governor Baxter with respect to the Appalachian Mountain Club bunkhouse matter appears to be twofold: that Governor Baxter be involved, during his lifetime, with any major decisions, and that the Park not be used as a memorial to anyone who wanted to provide money for such.

With Governor Baxter's death, the administration of the Park is in the hands of the Authority whose broad powers and discretion are limited by the terms of the Trust and intent of Governor Baxter. Normand v. Baxter State Park Authority, 509 Me. 640 (1986); State v. Fin & Feather Club, 316 A.2d 351, 355 (Me. 1974). Obviously, no gift should be accepted if it is conditioned on being used as a memorial or for a memorial structure. Further, as discussed above and to avoid entanglement and conflict between the conditions of Baxter's Trust and any conditions attached to outside gifts, the Authority should accept gifts and donations only if such are irrevocable and, at most, conditioned on conformance with the Trust and intent of Governor Baxter, with no additional restrictions. In this way, there will be no question that the Authority's actions regarding the use of the gift is dictated solely by the Trust, the donors will not become involved in the management of the Park, there will be no memorials in the Park, and the Authority would not have to address conflicts each time a gift is presented to it for acceptance. Simply put, if someone wishes to make a gift, grant or donation to the Park, it should be an irrevocable gift to the Authority to use in conformance with the Trust and intent of Governor Baxter.

Finally, if such gifts are accepted, it appears that they should not be comingled with Governor Baxter's trust funds. The trustee for a charity owes a duty to keep his trust funds separate. Bogert, supra at § 396.

If I can be of any further assistance, please do not hesitate to call on me.

Sincerely,

PAUL STERN
Assistant Attorney General

PS:msg

cc: Baxter State Park Authority Members