

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)

MICHAEL E. CARPENTER
ATTORNEY GENERAL



FEB 26 1990

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

DIRECTOR lll
CHIEF RANGER ✓
BUSINESS MANAGER _____
RESOURCE MANAGER ✓
NATURALIST _____
OTHER RETURN TO ROXIE

February 21, 1991

Rodney L. Scribner, CPA
State Auditor
Department of Audit
State House Station #66
Augusta, Maine 04333-0066

Dear Rod:

I am in receipt of your letter of January 29, 1991, regarding Baxter State Park's practice of utilizing contractors at Kidney Pond and Daicey Pond facilities. I agree with the conclusions of Paul Stern in his letter of December 6, 1990, as well as those of Leslie D. Bloom at the Bureau of Employee Relations in a letter dated December 4, 1990.

In your letter, you indicate that the Park "intends to expand its use of this type of contract." My staff has informed me that in conversations with Park Director Caverly, he indicated quite clearly that the Park does not intend to utilize contractors for services beyond that which presently exist. With respect to the use of contractors for the Daicey Pond and Kidney Pond facilities, clearly that is permitted under 12 M.R.S.A. § 904.

Section 904 states that agents and representatives of the Park shall be hired pursuant to the Civil Service Law. In no way does section 904 prevent the Park from utilizing contractors where appropriate. The Kidney Pond and Daicey Pond facilities are unique in the Park; contemplating the rental and upkeep of numerous cabins and diverse grounds. The Park utilizes contractors there because this allows the Park to hire someone who can perform the varied numerous tasks to run the facilities without constant supervision.

Historically, Kidney Pond's cabins have never been run by Park employees. Kidney Pond cabins were leased to a private party until relatively recently. As a result of a policy change, this facility came more directly under the purview of the Park, with the Park utilizing a contractor rather than a lessee. Contractors have been used at Daicey Pond camps for nearly 10 years. No employees were replaced or laid off as a result of Daicey Pond camps going to contractors. Moreover, everyone agrees that the contractors at Daicey Pond have done a magnificent job.

You asked for specific guidelines in other areas. Because the Baxter State Authority is unique within State government, it is probably not productive to generalize based upon situations which exist at the Park. Further, each situation encountered has to be looked at on a case-by-case basis. The analysis includes many factors. For example, the degree of employer control is vital to determining whether an employer-employee or independent contractor relationship exists. Clearly, because of the enormous leeway and relative lack of control, we do not believe that the contractors at Daicey Pond or Kidney Pond are employees, i.e., agents or representatives under § 904. If you have a particular case you wish to present to us for our guidance, we would be happy to assist you.

I hope that this letter has been helpful to you.

Sincerely,



MICHAEL E. CARPENTER
Attorney General

MEC/tt

cc: Irvin C. Caverly, Jr., Director
Baxter State Park



STATE OF MAINE
 DEPARTMENT OF AUDIT
 STATE HOUSE STATION 66
 AUGUSTA, MAINE 04333
 Area Code 207
 Tel. 289-2201

RECEIVED
 ATTORNEY GENERAL

RODNEY L. SCRIBNER, CPA
 STATE AUDITOR

JAN 30 1991

January 29, 1991

Mr. Michael Carpenter
 Department of the Attorney General
 State House Station 6
 Augusta, Maine 04333

FEB - 4 1990

Dear Mike:

Welcome you to your new role as Attorney General. My staff and I look forward to continuing the good working relationship that our departments have enjoyed over the years. I've enjoyed our personal acquaintanceship as well.

I'm sure that you have a number of important matters to address. However, I would appreciate your consideration of an employee/contractor issue at Baxter State Park (BSP). It is far reaching because other departments have similar situations and we feel important legal considerations are being overlooked.

Recently, my staff questioned BSP's practice of hiring contractors to run Daicey Pond cabins. Assistant Attorney General Paul Stern advised BSP that there was no violation of statute. This matter is still troubling to me and to my staff. We believe that Mr. Stern's response did not fully address the employee versus contractor issue.

We have two principal concerns. First, are these individuals agents or representatives of BSP? Second, should BSP withhold income tax from payments made to them?

In our discussion with BSP management, they stated that a major reason for treating the individuals as contractors was to limit BSP expenses for employee fringe benefits. We also noted that BSP does not withhold income taxes from the individuals. BSP intends to expand its use of this type of contract. It is therefore particularly important that they receive authoritative, accurate guidance in this matter.

For your consideration, we have highlighted what we believe to be relevant information in the accompanying attachments.

- Attachment 1 - Paul Stern Letter of December 6, 1990
- Attachment 2 - 5 MRSA \$7032
- Attachment 3 - 12 MRSA \$904
- Attachment 4 - IRS Circular E Employer's Tax Guide
- Attachment 5 - IRS Publication 937 Business Reporting
- Attachment 6 - BSP Standard Operating Procedures Manual
- Attachment 7 - Contract for Special Services

Mr. Michael Carpenter
Department of the Attorney General

Page 2

The individuals in question are dressed in official uniforms similar to those worn by BSP employees; are perceived as representatives of BSP; serve in a capacity similar to park rangers; work on BSP premises; and appear to meet IRS employee criteria. We believe that there should be no question that legally they are employees of BSP and the contract relationship is a matter of form and not substance.

If you do finally conclude that these individuals are not BSP agents or representatives, we would appreciate specific, written guidance explaining your conclusion. Such guidance would be very helpful to us as we encounter similar situations on other audits.

Best personal regards,



Rodney L. Scribner, CPA
State Auditor

RLS:lg
Attachments