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State of Maine
DEPARTMENT OF ATTORNEY GENERAL

M E M O R A N D U M

To: Crombie Garrett, Deputy Attorney General
From: Paul Stern, Assistant Attorney General
Date: May 29, 1992
Subject: Baxter Park



I have discussed the issue of the effect of Part KKK of the Budget Bill on Baxter Park funds with Jim Clair of the Office of Legislative Analysis. Clair has become involved because Jack Nicholas appears to be fishing about for an opinion contrary to that of this office. Clair indicated that he agreed that Part KKK did not apply to trust fund monies but asserted it did apply to a special dedicated account that consisted primarily of user fees and the sale of timber from Baxter State Park.

Following some legal research, I told Clair that Part KKK also does not apply to the special dedicated account. The reason I gave is the generally accepted proposition that the trust follows the trust property, and attaches to any products of that trust property. 90 CJS, Trusts § 437. In effect, all property belonging to the trust, however it may be changed or altered, and all the fruits of such property, continues to be subject to or affected by the trust. Bogert, Trust & Trustees [2nd ed. rev.], § 866. The monies in the special dedicated account all arise from or are products of Baxter State Park itself. As such, Governor Baxter's conditions on Park-land itself, i.e. to be used for recreational purposes only, apply to these products as well. Therefore, Part KKK cannot cause the transfer of portions of these funds over to the General Fund.

Upon explaining this to Clair, he seemed to agree. He indicated that Jack Nicholas would be calling you on Monday. I am providing this short memo to you in the hopes that it may be helpful in your discussions, or may form the basis of a memo from you to Nicholas to resolve these issues. If I can be of any further assistance, please call on me.

PS/lw