

MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT

OF THE

ATTORNEY GENERAL



for the calendar years

1941--1942

The only answer I can make to the War Department, it seems to me, is that under the provisions of the Public Laws of 1931, Chapter 213, and the Public Laws of 1941, Chapter 173, the City of Presque Isle has full authority to acquire these lands, but there is no statutory authority for a conveyance of the lands. I hoped that you would be able to give me something that would assist me in arriving at a different conclusion, but your letter of March 9th, (with which, by the way, I absolutely agree) doesn't help any. It seems to me that you will have to have an act of the legislature in order to have authority to execute this deed, and the sands of the present legislature are rapidly running out. Whether or not unanimous consent could be obtained today for this authority I do not know. I would think that there would be no reason why the legislature should not consent to the introduction of a bill for this purpose, but it might not.

Because the same problem applies to the Town of Houlton, I am sending a copy of this letter to Bob Williams, whose name appears on a similar deed and to whom I wrote on March 3rd, but from whom I have as yet received no reply.

Sincerely yours,

FRANK I. COWAN
Attorney General

March 17, 1943

To:

David H. Stevens, Chairman Emergency Municipal Finance Board

From:

Frank I. Cowan, Attorney General

Attorney General

I have your memo of March 15 in which you ask the following question: "If a town being administered by the Board of Emergency Municipal Finance has failed to accumulate funds for debt retirement equal to the amount of taxes collected on assessments previous to the Board taking over the affairs of the city, is that town eligible for emergency aid?"

At the conference this morning at which Mr. William Hayes, State Auditor, Mr. Page, the Commissioner of Health and Welfare, Mr. Mossman, the Commissioner of Finance, you and I were present, I stated that the question probably would need to be reframed somewhat to express the idea which was worked out in our discussion. I gave also my opinion, which I now affirm, that the provisions of P. L. 1933, Chapter 284, appearing on page 43 of the P. & S. Laws of 1935, reading as follows: "All the provisions of this act shall be liberally construed so as to carry out these intentions. All powers and duties necessary to carry out the purposes herein set forth are hereby conferred on the board," must be given weight in considering the effect of Chapter 256, P. L. 1939. Moreover, said Chapter 256

shows the result of additional thought that had been given to the matter of rehabilitation of insolvent municipalities, and shows that the experience of the five years since the passage of the original Act had shown the desirability of a legislatively enacted procedural formula. It also shows that the legislature saw the apparent necessity of collaboration between the Board of Emergency Municipal Finance and the Welfare Department of the State.

Chapter 256 set up the following procedure:

1. An examination of the question of the inability of a municipality to provide necessary relief for its unemployables by the Commissioner of Health and Welfare and the State Auditor, and a decision arrived at by those two persons.
2. If the Commissioner of Health and Welfare and the State Auditor determine that the municipality is "unable", then a taking over of the management of its affairs by the Board of Emergency Municipal Finance.
3. The use of State money by the Department of Health and Welfare to furnish aid and relief to unemployables located in such municipalities.

As stated by Assistant Attorney General Folsom in his opinion of July 10, 1941, "Expense incurred by the city or town for pauper relief is a current expense and . . . expenses of that nature have priority for payment over existing indebtedness of the city or town involved."

The language of this opinion rendered by Mr. Folsom was very carefully worked out. This department was desirous of using language that would not tend to handicap the Welfare Department and/or the Emergency Municipal Finance Board in what we had decided was to some extent their joint problem of rehabilitating the municipality. We considered carefully whether or not welfare funds could properly be advanced where the indirect result of the advance would be that the municipality could accumulate funds with which to pay off its back debts. We started off with the axiom that hungry people must be fed from whatever funds are available. We advanced from that point to the opinion that the source of those funds is immaterial, because feeding the hungry is always an emergency problem. Therefore the hungry can be fed either from funds that have been received from any source or certainly from funds received from the Welfare Department.

We then considered whether or not the payment of the legal obligations of an insolvent municipality is a matter of primary importance, and it seemed to us that it is such. It is not, however, itself an emergency matter like the feeding of the hungry; but if the municipality is to be reinstated as a self-supporting, operating unit of State government, its financial stability and integrity must be restored. We therefore concluded that the restoration of this financial integrity should, as far as possible, be carried on at the same time that the unemployables are being cared for, to the end that the com-

munity might as soon as possible become self-supporting and take care of its own unemployable load. Any other procedure, it seemed to us, would result in the State taking on permanently the burden of supporting those unemployables, and that certainly was not the purpose of the legislature in the passage of the Emergency Municipal Finance Act. Certainly, also, from our point of view, the passage of the Act of 1939, above cited, was to make it possible for the Welfare Department with its very broad powers to come in and assist the Board in its problem of rehabilitation.

Following the line of reasoning set forth above, as well as additional reasons which I gave you at the conference this forenoon, it is my opinion that a town can be eligible for emergency aid, even though some of the revenues from taxation are being accumulated for the purpose of compromising the debts of the town and getting it into a position where it can carry on its own financial affairs.

The question has been raised as to whether or not the State Auditor and the Commissioner of Health and Welfare, acting purely and solely in the semi-judicial function conferred upon them by Chapter 256 of the Laws of 1939 need to continually study the question of "inability". It seems to me that the legislature has never laid upon these two officials such an intolerable burden. Having exercised their function of determining "inability", they have done all that is necessary at that particular time. The Board of Emergency Municipal Finance then takes over, and the Commissioner of Health and Welfare, acting in his capacity as Commissioner, in a purely administrative function, can advance emergency funds. The Commissioner, in his said capacity, has the duty of watching the distribution of such funds and determining to what extent he shall advance such funds, and when he shall discontinue such advance. Under the law as it is today, the Commissioner of Health and Welfare and the State Auditor will have no difficulty in keeping mutually posted on the amounts necessary to be advanced and whether or not the necessity still exists because the State Auditor is still a member of the Emergency Municipal Finance Board. Eventually, of course, the State Auditor, acting in his capacity as such, and performing an administrative function, checks the amounts that may have been paid out by the Welfare Department and performs his other necessary functions as State Auditor.

I have answered your question at considerable length and detail while the matter is still fresh in my mind, because it is my understanding that a procedural plan is to be worked out immediately.

If I have overlooked anything in this opinion, or if there is any statement herein contained that is not clear, I wish you would call that fact to my attention immediately so that I can give you an additional statement or a clarifying one.

FRANK I. COWAN
Attorney General