

MAINE STATE LEGISLATURE

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July 31, 1947

To Fred M. Berry, State Auditor
Re: Squirrel Island Village Corporation Audit

I have your memos of July 2nd, 3rd, 21st and 25th, asking four legal questions relating to the Squirrel Island Village Corporation whose books are now under audit by your department at the request of some of the voters of the Village Corporation.

Under date of July 2nd you ask whether the 5% debt limit for municipalities, as prescribed by Article XXXIV of the Constitution of the State of Maine would apply to the Squirrel Island Village Corporation.

In my opinion village corporations are not subject to the constitutional debt limit. In the case of Hamilton vs. Portland Pier District, 120 Maine at page 21, the Court said: "Where two or more municipal corporations or political bodies are wholly or partly coincident in territory, they are nevertheless regarded as separate bodies for the purposes of constitutional debt limitation, unless the contrary is expressed in the constitution." There is no debt limitation in the charter of the Squirrel Island Village Corporation. The debt limit would apply to the town of Southport and would not apply to the village corporation chartered by the legislature.

The charter of the Squirrel Island Village Corporation provides that the assessors of the town of Southport shall assess a tax to the village corporation upon polls and estates of persons residing within the limits of the corporation and upon the estates of non-resident proprietors and to certify a list of the assessments to the collector of the town of Southport, whose duty it shall be to collect the same in like manner as county and town taxes are collected and pay same over to the treasurer of the corporation whenever the overseers shall so direct. The charter provided that the town of Southport should annually pay over to the treasurer of the corporation from the taxes collected from the inhabitants of the Squirrel Island Village Corporation a sum equal to 60% of all the town taxes collected exclusive of the State and county tax.

The charter was amended in 1909 by Chapter 12 of the Private and Special Laws, by raising the percentage from 60 to 75.

In 1921 the charter was amended by Chapter 10, P&SL, enlarging the purposes of the village corporation, but I find nothing in the amendments or in the original charter which fixes the debt limit of the village corporation.

In your memo of July 3rd you state that the audit of the Squirrel Island Village Corporation reveals several thousand dollars' worth of 4% bonds outstanding and payable to Stanley R. Miller, Trustee. You state that Mr. Miller, as you understand it, is trustee

of several estates in the State of Massachusetts. He is also chairman of the Board of Overseers of the Squirrel Island Village Corporation, and in this capacity must approve loans which are made to the corporation. You further state in your memo of July 3rd that there appears to be a question whether or not this is in violation of Chapter 122, Section 17, R. S. 1944, which relates to public officials' being forbidden to have a pecuniary interest in public contracts.

In reply to this memo I will say that I am not in a position to rule upon this question as your question does not present enough facts for me to say whether this loan would be a violation of Section 17 of Chapter 122, R.S. You say that the obligations are payable to Stanley R. Miller, Trustee. I feel that if the corporation thinks any loan is illegal, it should raise the question and let the court decide. Furthermore, I do not know what the word "Trustee" after the name of Stanley R. Miller in your memo indicates. You state that he is trustee of several estates in the State of Massachusetts. It may be that he is not pecuniarily interested in those estates, if all the facts were known; therefore I hesitate to make any ruling on this point.

Now referring to your memo of July 21st, relating to the audit of the accounts of the Squirrel Island Village Corporation, you solicit my opinion on the following:

"One of the bylaws of the Squirrel Island Village Corporation empowers the Board of Overseers to authorize the Superintendent of the Village Corporation to draw checks in payment of supplies which he may purchase for the operation of the fiscal affairs of the Island. Periodically, the Superintendent renders a bill to the Corporation treasurer for the amounts of money which he has expended, and is reimbursed for these expenditures by the Treasurer upon an authorized warrant signed by the Board of Overseers.

"Chapter 80, Section 31, Revised Statutes of 1944, provides,

'The treasurer of a city or town shall disburse money only on the authority of warrants drawn therefor by the municipal officers. Provided, however, that when a special act of the legislature provides a different method of authorizing expenditures in any city or town, the treasurer of such city or town shall disburse money in accordance with the provisions of such special act.'

"In the same chapter, Section 83 relates to the bylaws of towns, cities and villages, and states,

'Towns, cities and village corporations may make bylaws or ordinances, not inconsistent with the law.'

You add that nothing appears in this section that authorizes a village corporation to delegate any other except the treasurer to pay bills for the corporation.

You then ask: "Has the Superintendent of the Village Corporation, who is charged with certain duties, the right to issue checks in behalf of that Corporation?"

In my opinion, if the bylaws of the corporation empower the Board to authorize the superintendent to draw checks in payment of supplies in the operation of the fiscal affairs of the island, the checks signed by said superintendent would be legal, and of course they have been accepted and he has a right to issue said checks under the authority of the board. The question of whether or not this bylaw is inconsistent with law is one for the courts to pass upon when the legal question is raised by a refusal to accept said checks signed by the superintendent.

Referring to your memo of July 25th, in which you state that in your audit of the Squirrel Island Village Corporation considerable reference must be made to the general statutes as they relate to the financial activities of cities and towns, for example, Chapter 80, Section 96, relating to cities and towns issuing temporary loans, and you wish to know whether or not a village corporation can be classified as a municipality, thereby being covered by these general statutes:-

A village corporation is a quasi-municipal corporation and not a municipality within the meaning of Section 21, Subsections XIX and XX, Chapter 9, R. S. 1944.

The financial activities of a village corporation are regulated by its charter and bylaws. The Squirrel Island Village Corporation by Section 2 of Chapter 10, P&SL 1921, is authorized and empowered, at any legal meeting called for the purpose, to raise money for many purposes; and inasmuch as the corporation has no taxation powers - that power has been given by the legislature to the town of Southport - it impliedly has power to borrow money for its purposes by issuing notes and bonds in anticipation of its percentage of the tax money from the tax collector of Southport.

Ralph W. Farris
Attorney General

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