

MAINE STATE LEGISLATURE

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August 15, 1956

To Sulo Tani, Director, Development of Industry
Re: Proposed Industrial Building Authority

We have your memo of August 8, 1956, in which you ask this office for an opinion on questions you propound relative to the establishment of an Industrial Building Authority. You state that the form of the Maine School Building Authority Act seems to be adaptable to your purposes and as a basis for your questions you set forth three assumptions, namely:

- "1. A State Industrial Building Authority is created with powers to acquire and develop industrial properties for lease, sale or rent to private concerns.
- "2. The Authority may contract to acquire and construct for a non-profit industrial development group, industrial properties, for lease, sale or rent by the local group.
- "3. The Authority has power to issue revenue bonds to carry out its functions."

You then ask the following questions:

1. "Can the State Legislature authorize the State Building Authority to issue revenue bonds and secure such bonds by a pledge of the faith and credit of the state?"
2. "Can the State Legislature authorize the State Building Authority to issue revenue bonds, contract with a municipality to acquire and construct industrial buildings in its behalf and authorize the municipality to pledge as security, for retirement of principal and interest of bonds, the 7 $\frac{1}{2}$ mill tax, which now reverts to the town?"
3. "If the Authority should acquire and construct industrial properties for a town, can the town include the rental or other charges for such buildings, as current operative expenses?"
4. "Should the local agency contracting with the Authority for the acquisition and construction of industrial property be a non-profit local development corporation, may the local government pledge its taxing or bonding powers toward security for payment of rental or other charges?"
5. "If the municipality contracts to lease industrial property from the State Authority, may it in turn legally lease such property to an individual or private concern?"

Constitutional provisions to be considered in answering your questions are as follows: Article IX, Section 14:

"The credit of the state shall not be directly or indirectly loaned in any case. The legislature shall not create any debt or debts, liability or liabilities, on behalf of the state, which shall singly, or in the aggregate, with previous debts and liabilities hereafter incurred at any one time, exceed two million dollars, except to suppress insurrection, to repel invasion, or for purposes of war; and excepting also that whenever two-thirds of both houses shall deem it necessary, by proper enactment ratified by a majority of the electors voting thereon at a general or special election, the legislature may authorize the issuance of bonds on behalf of the state at such times and in such amounts and for such purposes as approved by such action; but this shall not be construed to refer to any money that has been, or may be deposited with this state by the government of the United States, or to any fund which the state shall hold in trust for any Indian tribe. . ."

and Article IX, Section 15:

"No city or town shall hereafter create any debt or liability, which singly, or in the aggregate with previous debts or liabilities, shall exceed seven and one-half per cent of the last regular valuation of said city or town; provided, however, that the adoption of this article shall not be construed as applying to any fund received in trust by said city or town, nor to any loan for the purpose of renewing existing loans or for war, or to temporary loans to be paid out of money raised by taxation, during the year in which they are made."

Legal principles involved. A long-term rental or lease, title to the property eventually to vest in the State, is in effect a contract of purchase. Such a device would then be an obligation on the part of the State to pay the purchase price and would be a liability within the prohibition of the Constitution. Opinion of the Justices, 146 Me. 183. Similarly, construing the constitutional limitation imposed upon cities and towns, our Court held in Reynolds vs. City of Waterville, 92 Me. 292, that the limitation on indebtedness could not be evaded by making the purchase in the guise of a lease.

We must assume, as did the Court in the Opinion of the Justices, that the debt limit in both cases, \$2,000,000 as to the State, and the constitutional formula in Article IX, Section 15, as to the towns, would be exceeded if either the State or the town, respectively, becomes obligated to make payments under a pledge of any kind, and therefore the answer to the questions numbered 1, 2, 14 and 5, is, No.

In its present form we do not understand Question 3, but undoubtedly the answers to the other questions would suffice.

In thus answering your questions we have merely pointed out the constitutional limitations which would have to be considered in the even an Authority were to be created for purposes otherwise lawful but where the amount of funds in question is the only obstacle; and we would also take this opportunity to point out that courts generally have held that the expenditure of public funds for a private purpose violates the Constitution, and for this reason also the proposal which you make would require answers as already given.

In 1871, the State expressed the same interest that is felt today in the development and increase of manufacturing industries in the State, and the Justices of our Supreme Court were asked the following question:

"Has the Legislature authority under the Constitution to pass laws enabling towns by loans or bonds to assist individuals or corporations to establish or carry on manufacturing of various kinds within or without the limits of said towns?"

The Court was also asked if towns might "establish manufactories entirely on their own account, and run them by the ordinary town officers or otherwise?" The Court answered both these questions negatively, saying:

"The issuing of bonds or the raising of money by taxation for the purpose of assisting individual or corporate enterprise, whether in manufacturing within or without the town, is the simply fostering individual and private enterprise. It may be taking one's money without his consent, to be loaned to an individual whom its owner would not trust, for a time which might be inconvenient, for a purpose which he might deem injudicious, and at a rate of interest at which he would decline lending to any one. All security of private rights, all protection to property, is at an end when one's money may be taken to be given away or loaned without his permission and at the will of others. It is no answer that the loan may be repaid. It is the owner's money, and its protection is guaranteed to him by the constitution, subject only to the higher rights and needs of the State."

With respect to whether or not the State itself by legislative act can carry on a similar function, this has been answered negatively in Opinion of the Justices, 118 Me., pages 508 et seq.

James Glynn Frost
Deputy Attorney General

jgf/c