STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

February 12, 1960

To: Rod O'Connor, Manager of Maine Industrial Building Authority

Re: Proposed Change in the Lease Agreement

As I understand the problem, it has been requested that Article IV C of the lease agreement be omitted or an insertion placed therein that would allow the lessee to use an industrial project for *any* purpose the tenant desires although the purpose at present is for the manufacture of shoes.

The issue raised is whether the Maine Industrial Building Authority has authority to insure mortgage loans on a project that was originally eligible for mortgage insurance, but subsequently is used for a purpose not included in the definition of an industrial project.

If Article IV C were omitted and the Authority found that the building was used as an industrial project as defined by Section 5, subsection III, Chapter 38-B, there is authority under Section 9, Chapter 38-B, to insure the mortgage loan. However, if the project were subsequently used for a purpose outside the scope of an industrial project, I am of the opinion that the MIBA is without authority to continue insuring the mortgage loan.

The MIBA operates on a grant of powers from the Legislature and has only those powers expressly granted. Section 2, Chapter 38-B, sets forth the purpose of the Act, which is to further *industrial* expansion. Section 9, Chapter 38-B, grants the MIBA authority to insure mortgage payments on the first mortgage of any *industrial project* which is defined by Section 5, subsection III, as buildings and real estate improvement used for the "manufacturing, processing or assembling of raw materials or manufactured products".

Sections 7 and 9 of Chapter 38-B authorize the MIBA to lease or rent the project and to allow the local development corporation to lease or rent the project for temporary use other than specified in Section 5, subsection III. The underlying purpose in each instance is to safeguard the mortgage insurance fund.

In reviewing the MIBA forms, I find that the Authority makes the factual finding that the project qualifies as an industrial project. Form #10, the mortgage insurance agreement, reiterates this finding.

For the above reasons, I feel that the project must be and remain in use as an industrial project while insured by the MIBA to conform with the letter and spirit of the law. I see no objection to insertion of the language that the tenant may use the project for manufacturing, processing, and assembling of raw materials or manufactured products in Article IV C of the lease.

In respect to the provision that the tenant be allowed to sublease the project without requiring any approval, I am not in accord. My reason is solely that an undesirable tenant may come to an area in this manner. Your present mode is to work closely with the community where the project is located to determine their wishes for an industrial project and the type of manufacturing carried on therein.

May I point out that the reason for requiring rental insurance was based on the following:

§ 10, Ch. 122, Revised Statutes of 1954, provides in part:

". . . No agreement contained in a lease of any building, buildings or part of a building or in any written instrument shall be valid and binding upon the lessee, his legal representatives or assigns to pay the rental stipulated in said lease or agreement during a period when the building, buildings or part of a building described therein shall have been destroyed or damaged by fire or other unavoidable casualty so that the same shall be rendered unfit for use and habitation."

The local development corporation must pay the lender on the mortgage whether the building is fit for occupancy or not. Since the local development corporation presumably has no funds except those received from the lease rental payments on the project, the provision for lease rental insurance was to protect them and prevent a default. It was felt at the time that use and occupancy insurance would inure to the benefit of the tenant and not to the local development corporation. It would be well to check the policy to determine if adequate protection is provided.

GEORGE A. WATHEN
Assistant Attorney General

February 23, 1960

To: Roland H. Cobb, Commissioner of Inland Fisheries & Game

Re: Shooting Muskrats at Brownfield Game Management Area

I have your request for an opinion regarding the trapping and shooting of muskrats in the Brownfield Game Management area.

Section 17, Chapter 37, provides that the Commissioner is authorized to regulate hunting, fishing, and trapping on game management areas. The second paragraph provides that the authority given to the Commissioner in the first paragraph of Section 17 "shall also apply to lakes, ponds, marshes and sections of streams lying within the boundaries of any such game management area."

Your memo states that all game management areas are open to hunting subject to applicable state and federal laws. Therefore, subject to said laws, hunting of muskrats is proper in this area. A regulation issued pursuant to the authority granted in the first paragraph of Section 37 would be proper in such an area. I believe that the Saco River is a "stream" within the meaning of the statute, since the word stream is the general name of any flowing body of water and includes rivers and brooks.

GEORGE A. WATHEN
Assistant Attorney General