

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

MAINE STATE
LIBRARY

Houlton; that the corporation has been endowed with authority to act in a dual capacity, one as a public municipal corporation so far as the town of Houlton and its inhabitants are concerned, and the other as a private enterprise in furnishing electric current to a dozen other towns and their inhabitants, . . .”

Greaves v. Houlton Water Company, 140 Me. 158, 165

In its capacity as a sewerage company, the Houlton Water Company is, by the terms of the above decision, a municipal corporation. This is because the authority of the Houlton Water Company to maintain the municipal sewer system does not extend into other towns. This authority was originally vested in a private corporation known as the Houlton Sewerage Company, which company was later bought by the water company. The authority of the sewerage company was limited to the Town of Houlton and would appear never to have been extended. It was organized

“ . . . for the purpose of providing in the town and village of Houlton, a system of public sewers and drainage, for the comfort, convenience and health of the people of said Houlton. . .” Private & Special Laws of Maine, 1887, c. 145, § 1.

The following conclusions can be drawn:

1. The Houlton Water Company is a municipal corporation with respect to its activities carried on for the benefit of the inhabitants of Houlton.
2. The Houlton sewerage system exists solely for the benefit of the inhabitants of Houlton.
3. The Houlton Water Company is a municipal corporation with regard to its function as a sewerage company.
4. The Water Improvement Commission has the authority to grant funds to a municipal corporation to aid in an approved survey of the municipal sewerage system.

It is our opinion, therefore, that the Water Improvement Commission has the authority to grant funds to aid the Houlton Water Company in an approved survey of the sewer system serving the Town of Houlton.

THOMAS W. TAVENNER
Assistant Attorney General

April 20, 1960

To: R. W. MacDonald, Chief Engineer, Water Improvement Commission

Re: Greater Portland Regional Planning Commission

We have your recent request for an opinion as to whether the Water Improvement Commission can grant funds to the Greater Portland Regional Planning Commission for sewerage planning. This grant would be made under the terms of Section 7B, Chapter 79, Revised Statutes of 1954, as amended.

Under the terms of the above section 7B, the Commission is authorized to make payments to municipalities and quasi-municipal corporations for approved sewage surveys. The question involved here is whether or not

the Greater Portland Regional Planning Commission is a quasi-municipal corporation so as to be eligible for such a payment.

The first question involved here is, what is a municipal or quasi-municipal corporation? A quasi-municipal corporation has been defined to be “. . . a corporation created or authorized by the legislature which is merely a public agency endowed with such of the attributes of a municipality as may be necessary in the performance of its limited objective. In other words, a quasi-municipal corporation is a public agency created or authorized by the legislature to aid the state in, or to take charge of, some public or state work, other than community government, for the general welfare.”

I McQuillin, *Municipal Corporations* 467

This same general line of reasoning was followed in the case of *Augusta v. Water District*, 101 Me. 148. Here the term “quasi-municipal corporation” was defined to mean a body formed for the sole purpose of performing one or more municipal functions.

“A body politic and corporate, created for the sole purpose of performing one or more municipal functions, is a quasi-municipal corporation, and as we have said, in common interpretation, is deemed a municipal corporation.”

August v. Water District, 101 Me. 148, 151

It should also be noted that, according to the above decision, there is little, if any, difference between a municipal and a quasi-municipal corporation.

The next problem is the definition of the phrase “body politic and corporate”. A body corporate is an early legal term for a corporation. 1 *Bouvier's Law Dictionary* 374. A body politic also refers to a corporation. 1 *Bouvier's Law Dictionary* 374. A corporation is a body, “consisting of one or more natural persons, established by law, usually for some specific purpose, and continued by a succession of members.” 1 *Bouvier's Law Dictionary* 682.

It seems, then, that there are several requirements which must be met before an organization can qualify as a municipal or quasi-municipal corporation.

1. It must be a corporation.
2. It must be created solely to serve the public.
3. It must be an arm of the state in a given geographical territory.

Membership in the Greater Portland Regional Planning Commission is by representation. This is clearly stated in Article IV of the by-laws.

“Representation on the Commission shall be by Commissioners and Representatives.”

Commissioners and Representatives must be from the various towns of the greater Portland area. Thus the Commission is really an association of communities for a common purpose rather than an association of individuals. Municipal Corporations set up by the State Legislature are given charters, which charters constitute the legal basis of the corporation. The legal basis of the Greater Portland Regional Planning Commission is stated to be Chapter 42 of the Public Laws of 1955 (superseded by Chapter 90-A of the Revised Statutes of 1954). In the typical charter granted directly

to a municipal corporation by the Legislature there is a clause which, in specific terms, creates a corporation. Such a clause can be found in the charter of the Augusta Water Company.

“. . . (various named individuals) are hereby made a corporation by the name of the Augusta Water Company, . . .” Laws of 1870, Chapter 463 (Words in parentheses supplied.)

and again in the charter of the Brunswick School District:

“. . . the inhabitants and territory within the town of Brunswick are hereby created a body politic and corporate under the name of Brunswick School District. . .” Private and Special Laws of 1935, Chapter 70.

There is no statutory provision making the Planning Commission a corporation. Such a provision cannot be inferred into the enabling statute. *Sweeney v. Dahl*, 140 Me. 140. Because the state legislature has not seen fit to grant to the Greater Portland Regional Planning Commission the status of a corporation, we feel that the Commission cannot be considered a corporation for any purpose.

It is our opinion, therefore, that the Greater Portland Regional Planning Commission is not a corporation and that the Water Improvement Commission has no authority to grant funds to the Commission under Section 7B, Chapter 79, Revised Statutes of 1954, as amended.

It should also be noted that the Commission’s legal basis, as set forth in its by-laws, is Chapter 42 of the Public Laws of 1955. This chapter has been repealed and superseded by Chapter 90-A. The Commission has not, however, altered its by-law to reflect this change. This matter has been brought to the attention of Graham Phinney, Planning Director of the City of Portland, who has assured this office that the necessary change will be made at the next meeting of the Commission.

THOMAS W. TAVENNER
Assistant Attorney General

April 26, 1960

To: Roderic O’Connor, Manager of Maine Industrial Building Authority

Re: Industrial Buildings — Old

I have your request for an opinion regarding whether or not the Maine Industrial Building Authority has authority to insure mortgage payments on a building that has been constructed in the past and which a new industry wishes to use, repair or expand for its purposes.

I have reviewed the minutes of the meeting of December 16, 1958, at which time this problem was discussed by the Authority without arriving at any solution.

Section 14A, Article IX of the Constitution of Maine, is written with a broad scope in view limited to the proper enactment by the legislature; therefore, we need not look beyond the legislative act itself.

Section 2, Chapter 38B, sets forth the purposes of the Maine Industrial Building Authority Act. This section declares the need of new industrial buildings to preserve and better the economy of the state and further de-