

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

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 This chapter has been repealed and superseded by Chapter 90-A. The Commission has not, however, altered its by-law to reflect this change.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-

clares the need to stimulate a flow of private investment to satisfy the need for housing industrial expansion. It is the primary purpose of the Maine Industrial Building Authority to further industrial expansion in the state through the medium of insuring mortgage loans on new buildings. This section permeates the entire act and must be kept in mind when construing any other section of the Act.

In reviewing Section 5, Chapter 38B, "Definitions," you will note the distinction between new buildings, industrial project and cost of project. The definition of "industrial project" clearly presupposes new construction, which is buttressed by the definition of "cost of project." An "industrial project" is defined as "any building or other real estate improvement and, if a part thereof, the land upon which they *may be located*, and all real properties deemed necessary to their use by any industry. . ." (Emphasis supplied) The use of the words "may be located" indicates a future act rather than an accomplished fact.

An "industrial project" may include several buildings, some of which are old and others which are new. The term "new building" is self-explanatory.

Subsections V-A and VII, Section 6, again support the contention that the Authority deals with only new buildings.

Arguendo, Section 9-A provides that the issuance of a contract of insurance is conclusive evidence of the eligibility of the mortgage for insurance, but this section contemplates the action of the Authority to have been taken with statutory authority.

The dicta in *Martin v. Maine Savings Bank, et al*, 153 Me. 259, 272, recognizes the construction of new buildings.

It is my opinion that the Maine Industrial Building Authority must insure mortgage payments on new industrial buildings with an industrial project and is without authority to insure the mortgage payments on old buildings.

GEORGE A. WATHEN
Assistant Attorney General

May 3, 1960

Dr. Francis H. Sleeper, Superintendent
Augusta State Hospital
Augusta, Maine

Re: Persons suffering from opiates — disposition

Dear Dr. Sleeper:

I have your request for an opinion regarding the disposition of persons suffering from opiates and whether or not they can be accepted by the state hospital for the mentally ill.

Section 167, Chapter 25, provides that a person alleged to be suffering from the effects of the use of opiates, drugs or narcotics may be committed to the care of any hospital or qualified physician, and further provides that the person may be restrained for a period of not more than 90 days. Section 168 provides that such restraint must be by voluntary agree-