

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

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Such members exercise a share of the powers of civil government and obtain their authority directly from the State. The emoluments of the office are not a necessary element in determining its character. For this reason it is my opinion that you would have to resign as a member of the Bridge Authority before being elected to the Council since the Constitution reads:

“Section 4. No member of Congress, or of the legislature of this state, nor any person holding any office under the United States, (post officers excepted) *nor any civil officers under this state . . . shall be counsellors. . . .*”

The answer to your question, therefore, must be no.

Very truly yours,

FRANK E. HANCOCK
Attorney General

December 27, 1960

To: Carleton L. Bradbury, Commissioner of Banks and Banking

Re: Servicing Agreement for Mortgages on Property in North Carolina

With respect to the legality of the Maine State Retirement System's purchase of mortgages on property in North Carolina, we offer the following:

Intangible Property Tax and Income Tax in
North Carolina

With respect to the intangible property tax levied in the State of North Carolina, section 105-212 of the General Statutes of North Carolina set forth the institutions exempted from such tax.

“105-212. Institutions exempted; conditional and other exemptions.—None of the taxes levied in this article or schedule shall apply to religious, educational, charitable or benevolent organizations not conducted for profit, nor to trusts established for religious, educational, charitable or benevolent purposes where none of the property or the income from the property owned by such trust may inure to the benefit of any individual or any organization conducted for profit, nor to any funds held irrevocably in trust exclusively for the maintenance and care of places of burial; nor, on or after January first, one thousand nine hundred and forty-two, to any funds, evidences of debt, or securities held irrevocably in pension, profit sharing, stock bonus, or annuity trusts, or combinations thereof, established by employers for the purpose of distributing both the principal and income thereof exclusively to eligible employees, or the beneficiaries of such employees, if such trusts qualify for exemption from income tax under the provisions of section 105-138, subdivision (10); . . .”

Referring to section 105-138 subdivision (10) we find therein those organizations which shall be exempt from income tax.

“(10) Pension, profit sharing, stock bonus and annuity trusts, or combinations thereof, established by employers for the purpose of distributing both the principal and income thereof exclusively to eligible employees, or the beneficiaries of such employees, and so constituted that no part of the corpus or income may be used for, or diverted to, any purpose other than for the exclusive benefit of the employees or their beneficiaries; provided, there is no discrimination, as to eligibility requirements, contributions or benefits, in favor of officers, shareholders, supervisors, or highly paid employees; provided further, that the interest of individual employees participating therein shall be irrevocable and nonforfeitable to the extent of any contributions made thereto by such employees; and provided further, the Commissioner of Revenue shall be empowered to promulgate rules and regulations regarding the qualification of such trusts for exemption under this subdivision. The exemption of any trust under the provisions of the federal income tax law shall be a prima facie basis for exemption of said trust under this paragraph. This subdivision shall be effective from and after January first, one thousand nine hundred and forty-four.”

Insofar as the Maine State Retirement System is a state agency administering its funds for pension purposes exclusively for the benefit of eligible employees and employees of participating districts; and insofar as it is exempt from federal income tax, it would be, in our opinion, exempt from North Carolina income taxes and as a result also exempt from the North Carolina Intangible Property Tax.

North Carolina Usury Law

While there appears that there is a usury law in the State of North Carolina, it also appears that laws of that state limiting the rates or time of payment of interest on certain obligations do not apply to the purchase of mortgages guaranteed by FHA.

The first paragraph of Section 53-45 General Statutes of North Carolina appear to spell out the conditions under which it would be legal to purchase such mortgages and not be subject to the usury law.

“(1) Insured Mortgages and Obligations of National Mortgage Associations. — It shall be lawful for all commercial and industrial banks, trust companies, building and loan associations, insurance companies, and other financial institutions engaged in business in this State, and for guardians, executors, administrators, trustees or others acting in a fiduciary capacity in this State to invest, to the same extent that such funds may be invested in interest-bearing obligations of the United States, their funds or the moneys in their custody or possession which are eligible for investment, in bonds or notes secured by a mortgage or deed of trust insured by the Federal Housing Administrator, in mortgages on real estate which have been accepted for insurance by the Federal Housing Administrator, and in obligations of national mortgage associations.”

Under the provisions of the above-quoted section it is our opinion that it would be proper for the Retirement System to purchase FHA guaranteed

mortgages in the State of North Carolina and that the usury laws of that State would not apply to the transaction.

We note that under Title 24, Part 221.1 Code of Federal Regulations, the Maine State Retirement System, as a governmental agency, is approved as a mortgagee under section 203 of the National Housing Act insofar as it is empowered to hold mortgages insured under Title II of the National Housing Act as security or as collateral.

JAMES GLYNN FROST
Deputy Attorney General

December 28, 1960

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Thornton Academy

I have your request for an opinion of December 16, 1960, in which you ask the following questions:

"1. Is there any way a contract academy could utilize the Maine School Building Authority?"

Answer:

Subsection V, Section 248, of Chapter 41, R. S. 1954, states that the Maine School Building Authority may build and repair school projects when the superintending school committee of any town or the community school committee of a community school district or the school directors of any School Administrative District has certified the need therefor to the municipal officers of the town for the procurement or addition of school buildings.

Under the present set up the Maine School Building Authority may deal with any administrative unit. The term "administrative" as defined in Section 236 of Chapter 41 includes municipal and quasi-municipal corporations responsible for operating public schools.

Under the provisions of the Maine School Building Authority law and the procedures which have been set up to effectuate the purposes, there is no machinery or authority for dealing with a privately owned academy.

"2. Could a joint effort with the City of Saco for a gymnasium or recreation center be eligible?"

Answer:

This question appears to be an attempt to avoid the inability for the academy to deal directly with the Authority by bringing in a city which, of course, could deal with the Authority in building school buildings. In my opinion a recreation center would not be eligible but a gymnasium, if a part of the school program, might be eligible. The property would necessarily become the property of the City of Saco under the terms of the lease agreement.