

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
ATTORNEY GENERAL

for the calender years

1961 - 1962

January 19, 1961

To: Honorable Harvey R. Pease  
Clerk of the House  
State House  
Augusta, Maine

Dear Mr. Pease:

In answer to your oral question as to whether or not a person duly qualified as a representative to the Legislature may subscribe to his oath of office before a magistrate other than that set forth by the constitutional provision.

Article IX, Section 1, of the Constitution reads in part as follows:

"The oaths or affirmations shall be taken and subscribed by . . . the senators and representatives before the governor and council. . . ."

It is our understanding that the Governor will be absent from the State for a few days. Although there may be occasions which would necessitate the taking of oaths by such officers before a magistrate other than that specified above, this is not such an occasion. It is our understanding that the Governor and Council will be in session when the Legislature convenes on Tuesday next and at that time the oath may be administered.

The constitutional provision referred to is a directive and should be followed under the present circumstances.

Very truly yours,

FRANK E. HANCOCK

Attorney General

January 20, 1961

To: Honorable Ralph M. Lovell  
Senate Chamber  
State House  
Augusta, Maine

Dear Senator Lovell:

We have your request for an opinion on L.D. #102, entitled "An Act Authorizing Municipal Construction of Industrial Buildings."

The act adds a new section to Chapter 90-A, section 12, the section setting forth the purposes for which a municipality may raise and appropriate money, and reads as follows:

"Sec. 12-A. Industrial building construction. A municipality may issue notes or bonds for constructing buildings for industrial use, for lease or sale by the municipality, to any responsible industrial firm or corporation, for the manufacturing, processing or assembling of raw materials or manufactured products."

It is our opinion that L.D. #102 if enacted into law, would be unconstitutional.

The latest word of our court on such laws permitting towns to raise funds for private industrial purposes is seen in 152 Me. 440.

In 152 Me. the court considered an L.D. which proposed a law whereby the City of Bangor would be empowered —

“to acquire by purchase or lease or purchase and lease, or by the right of eminent domain, lots, sites, improvements and places within the City of Bangor to be used for industrial development.”

The court, following a long line of cases previously considered in this state, held that the L.D., if enacted, would not be constitutional.

The essence of the court's decision, seen at page 445, treating of both ordinary acquisition and acquisition by eminent domain, is as follows:

“We prefer to place our answer upon consideration of the basic purpose of the Act. This, we are compelled to find, is a private purpose and not a public purpose under our constitution. It follows that the city may neither raise money by taxation nor acquire property by eminent domain for such purpose. There is neither the “public use” of taxation, nor the “public use” of eminent domain. The likelihood that public funds expended in acquisition of property might be repaid in whole or in part, or even with a profit, in its disposal does not alter the situation in its constitutional aspects. The taxpayer in the operation of the plan would be, or might be, called upon to pay therefor; and thus the constitutional bar remains firm.”

For the above reasons we believe L.D. #102 would not be constitutional.

Very truly yours,

JAMES GLYNN FROST

Deputy Attorney General

To: Honorable Philip E. Dunn  
House of Representatives  
State House  
Augusta, Maine

January 30, 1961

Dear Mr. Dunn:

We have your request for an opinion regarding whether or not a town has the right to work its highway equipment on a private job for a fee.

It has been held by the Maine courts that a town, in the absence of a special charter, acts in a dual capacity — one governmental and one corporate or private, *Libby v. Portland*, 105 Me. 372.

In acting in its private capacity a town does not exceed its powers by making a contract to lease the town house for a period of six years when the town house is not wanted for town purposes, *Jones v. Sanford*, 66 Me. 585. Ordinary prudent management dictates that municipalities derive some income and the public some benefit from municipal property rather than permit it to lie idle when it is not needed, *Clapp v. Jaffrey*, 97 N. H. 456, 91 A. 2d 464.

It is my opinion, therefore, that when the town's highway equipment is not needed for construction or maintenance of the town roads, rather than have the equipment lie idle, it is within the discretion of the town officials to permit use of the equipment on a private job for a fee.

Very truly yours,

RICHARD A. FOLEY

Assistant Attorney General