

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

September 29, 1961

To: Earle R. Hayes, Executive Secretary, Maine State Retirement System

Re: Cancellation of Social Security Agreement with South Portland Housing Authority

Reference is made to your memo of September 18 to which you attached a copy of the letter from the Regional Representative, Bureau of Old-Age and Survivors Insurance.

The question seems to be whether or not a city may terminate a housing authority which has been active in that city.

The creation of a housing authority is set forth in Revised Statutes of 1954, Chapter 93, section 3, as follows:

“In each city and in each town there is created a public body corporate and politic to be known as the ‘Housing Authority’ of the city or town; provided, however, that such authority shall not transact any business or exercise its powers hereunder until or unless the governing body of the city or the annual meeting of the town, as the case may be, by proper resolution shall declare that there is need for an authority to function in such city or town;”

Section 4 of the same statute provides for the appointment of commissioners by the proper city or town officials. Apparently the City of South Portland at one time created a housing authority in accordance with section 3. Now the City of South Portland has decided it does not need an active housing authority and the City Council has passed an order attempting to terminate the housing authority in that city.

It is quite apparent that the legislature has created the housing authority and the city has only activated this authority. Chapter 93 does not provide for a method of terminating such an authority. Only the legislature can terminate a housing authority as it is the body which created it.

A city or town may suspend the active status of an authority by failure to have commissioners appointed on the completion of the term of office of current commissioners.

It would follow that the action of the City Council would simply suspend the operation of the authority but does not terminate it as a public body corporate and politic. Of course, it cannot function until it is revived and commissioners appointed, but this can be done at any time the City Council decides it is necessary.

GEORGE C. WEST

Deputy Attorney General

October 9, 1961

To: Warren G. Hill, Commissioner of Education

Re: School Construction Assistance under Chapter 41, Section 237-H

You have inquired whether or not a town which authorized school construction and sold a bond issue to finance the construction prior to August 28, 1957,

is eligible for the school construction aid under Revised Statutes, Chapter 41, Section 237-H.

Revised Statutes, Chapter 41, Section 237-H, provides in part as follows: “. . . Said apportionment (construction aid) shall apply similarly to payments made for capital outlay purposes on school construction, approved by the commissioner after August 28, 1957, in single municipality administrative units where the April 1st enrollment of resident and tuition pupils in grades 9 through 12 for that year is over 700 pupils. . .”

The approval of the commissioner indicated above is the approval contained in Revised Statutes, Chapter 41, Section 26, which provides,

“. . . all plans and specifications for any such proposed school building and plans for the reconstruction or remodeling of any school building, the expense for which shall exceed \$500, shall be submitted to and approved by the Commissioner and the Bureau of Health before the same shall be accepted by the superintending school committee. . . .”

The facts relevant as to whether or not the town qualifies for the construction aid are as follows: The town authorized a \$650,000 bond issue on May 27, 1957, and sold the bonds on August 1, 1957. The plans and specifications for the construction were submitted to the Department of Education for the Commissioner's final approval on or about April 10, 1958. On June 11, 1958, the contract for construction was executed. The plans were finally approved by the Commissioner of Education on May 26, 1959. No moneys were expended for construction nor was construction commenced until after August 28, 1957.

Although the plans and specifications for the construction were not approved until after construction was begun, in contravention to Chapter 41, Section 26, of the Revised Statutes, since no funds were expended and no construction was begun until after August 28, 1957, the town qualifies for the construction aid under Revised Statutes, Chapter 41, Section 237-H. The fact that the town voted the bond issue and the bonds were dated before August 28, 1957, are not the determining factors in the above situation but rather the expenditure of money, commencement of construction and final approval of the plans after August 28, 1957, are the determining factors.

RICHARD A. FOLEY

Assistant Attorney General

October 9, 1961

To: Steven D. Shaw, Administrative Assistant, Executive Department

Re: Associate Judge, Auburn Municipal Court

This will answer your verbal request for the basis of the judge of the Auburn Municipal Court appointing an associate judge of said court.

The charter of the Auburn Municipal Court was revised in 1915, Private and Special Laws, Chapter 194. Section 4 of the charter was amended by Private and Special laws of 1955, Chapter 124, section 2, and reads as follows:

“The recorder of said court shall be a citizen of said Auburn and a member of the bar of the county of Androscoggin, and shall be ap-