MAINE STATE LEGISLATURE

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June 14, 1963

Honorable J. Hollis Wyman
Senate Chambers
State House
Augusta, Maine

Dear Senator Wyman:

    We are in receipt of your request for an opinion
as to whether county commissioners can be personally
liable for moneys borrowed by a county in anticipation
of tax revenues.

    We answer in the negative. It is a basic principle
of common law that persons in the category of municipal,
county, or state officials act only in their representative
capacity as an agent, and not individually. A county
is liable for the acts of its agents. Morse v. Montville,
115 Me. 458. See also: Stone v. Augusta, 46 Me. 139;
Donahue v. Richards, 38 Me. 392; Wilson v. Simmons,
89 Me. 242; Hovey v. Mayo, 43 Me. 322. The county is
liable for misfeasance or nonfeasance of its agents,
but would not be liable for malfeasance, which would
in effect amount to a criminal act. Such is not the
case here.

    The county is liable for the amount of the debt
owed. See the leading case of Blood v. Beal, 100 Me.
30 (1905). See also: Wakem v. Caribou National Bank,
137 Me. 127 (1940), where on p. 131 the court cited
with approval Athens National Bank v. Ridgebury Township,
303 Pa. 479, 154 A. 791, which stated:

        "The loans were none the less valid
        because the supervisors used the
        current revenue for other purposes
        than their repayment."

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      See also: <u>Moores v. Inhabitants of the Town of Springfield</u>, 144 Me. 54 (1949).

                       Respectfully submitted,

                       Wayne B. Hollingsworth
                       Assistant Attorney General

WBH/slf