

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

From a reading of this section it is clear that a small loan company has the legal authority to make loans exceeding a 12% annual rate. It is fair to assume that the existing loans of the small loan company in question exceed the 12% annual rate limitation placed on industrial banks. Notwithstanding that the notice is given to the borrowers of the small loan company and encouragement given to them to refinance the loans with the industrial bank, and even though those loans which are not refinanced are segregated and liquidated as rapidly as possible, the rate of interest received by the industrial banks on these segregated assets undoubtedly would exceed the 12% annual limitation established by c. 59, sec. 205, part 1 and would be manifestly in conflict with the power given to industrial banks.

When those assets which represent the existing small loans are sold to the industrial bank, said bank must immediately reduce interest charges so as not to receive interest payments that exceed the statutory limitation of 12% per annum.

It is also noted that c. 59, sec. 206-II states:

“No industrial bank shall:

.....

“II. Make any loans for a longer period than two years from the date thereof, except in the case of loans that are eligible for insurance under the National Housing Act and for the insurance of which under that Act, seasonable application is made pursuant to the provisions of Title I of the National Housing Act.

.....”

This is an additional limitation on the assets which may be purchased. This section is construed to mean that any existing small loan which has more than two years to run cannot be purchased by the industrial bank unless it meets the pertinent requirements of the National Housing Act.

JEROME S. MATUS

Assistant Attorney General

March 18, 1964

To: L. H. Stanley, Director, Civil Defense & Public Safety

Re: County Commissioners' Responsibility for Civil Defense and Public Safety in Unorganized Territories

Facts:

The Civil Defense Director for Oxford County has asked for a clarification of that portion of R. S. 1954, c. 12, sec. 9, as amended, which states “counties shall have concurrent responsibilities for civil defense and public safety in the unorganized territories within the respective counties.”

Question No. 1:

Do county commissioners have full responsibility for civil defense and public safety in unorganized territories pursuant to R. S. 1954, c. 12, sec. 9, as amended?

Answer No. 1:

Yes, but not exclusive and final responsibility.

Opinion No. 1:

The term "concurrent" in c. 12, sec. 9 refers to the responsibilities of the State of Maine and its political subdivision, a county, within whose borders lies an unorganized territory.

The term "concurrent" does not refer to responsibilities of a political subdivision other than a county.

"Unorganized towns have no officers such as selectmen or assessors who would be responsible for such organization and operation of civil defense programs. No doubt a properly organized county program would incorporate within its framework programs in relation to unorganized towns." *Attorney General's Opinion*, July 2, 1958.

The word "concurrent" in its literal or primary sense means running together or running with. *15 C. J. S. 805.*

Our Supreme Judicial Court has said:

"The word 'concurrent' does not mean exclusive and final."
Norris v. Moody, 120 Me. 151, 153 (1921).

Chapter 12, section 9, reads in part:

"Local organization for civil defense and public safety. — Each political subdivision of this State is authorized to establish and *shall establish* a local organization for civil defense and public safety in accordance with the State Civil defense and public safety plan and program. . . ." (Emphasis added).

The words "shall establish" in the above-quoted section is a command by the legislature. The political subdivision must organize a local organization in accord with the state civil defense and public safety plan and program.

The responsibility of the political subdivision, in this case a county, is complete. The responsibility runs with and is shared by the State. If the State should determine that changes should be made in the civil defense organization in unorganized territories functioning of its civil defenses and public safety plan and program, the county as a political subdivision must conform to such changes. The State's responsibility is concurrent with that of the county and the State's authority is final.

County Commissioners are the proper officials to exercise the concurrent responsibility of the county. They are the executive heads of the governing body of the political subdivision known as a county. R. S. 1954, c. 12, sec. 2, states in part:

"Policy and purpose. — The purpose of the provisions of this chapter is to create a state civil defense and public safety agency, and to authorize the creation of local organizations for civil defense and public safety in the political subdivisions of the State; to confer upon the Governor and upon *the executive heads of governing bodies of the political subdivisions* of the State the emergency powers provided herein; . . ." (Emphasis supplied).

The general rule as to authority of county commissioners is stated in *Watts Detective Agency Inc. v. Inhabitants of County of Sagadahoc*, 137 Me. 233 - 238 (1941).

"Except as otherwise provided by law, a board of county com-

missioners or county supervisors ordinarily exercises the corporate powers of the county. It is in an enlarged sense the representative and guardian of the county, having the management and control of its property and financial interests, and having original and exclusive jurisdiction *over all matters pertaining to county affairs.*" (Emphasis supplied).

Question No. 2:

Do the County Commissioners have authority to authorize the duly appointed County Civil Defense Director to go into unorganized territories, and have the County Civil Defense Director

- a. appoint Civil Defense Directors for unorganized territories within the county;
- b. recommend the appointment by the County Commissioner of Civil Defense Directors for unorganized territories within the county; and
- c. supervise the Civil Defense Directors for the unorganized territories within the county?

Answer No. 2:

- a. No.
- b. Yes.
- c. Yes.

Opinion No. 2:

The full responsibility for appointing a director of a local organization must lie in the executive officers of governing body of the political subdivision.

The pertinent portion of R. S., c. 12, sec. 9, is as follows:

"Each local organization for civil defense and public safety shall have a director *who shall be appointed by the executive officers or governing body of the political subdivision*; and who shall have direct responsibility for the organization for civil defense and public safety, *subject to the direction and control of such executive officer or governing body.*" (Emphasis supplied).

Since the county commissioners are the executive heads of the political subdivision, known as a county, these are the sole persons who shall appoint heads of local organizations. The appointing of a Civil Defense Director for an unorganized territory is not a ministerial act which can be delegated to the County Civil Defense Director.

While the full responsibility lies with the County Commissioners to make the appointment of a Civil Defense Director for an unorganized territory, the County Civil Defense Director if requested by the County Commissioner certainly has the duty to recommend the individual who in his opinion can best fill the position.

Since the County Civil Defense Director and a Civil Defense Director for an unorganized territory are local directors, they are equally subject to the direction and control of the County Commissioners. If the Commissioners believe that for the proper functioning of civil defense and public safety programs the County Civil Defense Director should supervise and train the Civil Defense Director for an unorganized territory, the County Commissioners have the authority to so direct to the extent which they feel is necessary.

JEROME S. MATUS

Assistant Attorney General