

MAINE STATE LEGISLATURE

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September 25, 1964

Mr. David H. Clark
State Credit Research Committee
University of Maine
Orono, Maine 04473

Dear Mr. Clark:

Re: Issuance of Revenue Bonds for Financing Industry

FACTS:

The State Credit Research Committee was created by the Governor. The Committee has been asked by the Governor to study the possibility of expanding state-backed credit (such as the Maine Industrial Building Authority) to include a wider range of business enterprises and uses. Part of the work is concerned with examining existing sources of credit such as municipal bonds.

To this end you have asked four questions. The first two consist of substantially the same tenor except they cover two phases of industrial expansion. Both questions contain within themselves a separate question. That question relates to federal income tax exemption.

This office is not equipped to give official opinions relative to federal income tax matters. Such opinions should be sought from the Internal Revenue Service.

For the reasons stated in the two foregoing paragraphs we are rephrasing the first two questions as one.

QUESTIONS NO. 1 and 2:

Can municipalities in Maine at present authorize local development corporations to issue revenue bonds in the name of the municipality (a) to finance any industrial purpose or (b) for the purpose of constructing a building for industrial use?

ANSWER:

No.

OPINION:

In order to answer this question it is necessary to understand the relationship between the state, municipalities and local development corporation. All municipalities exist by virtue of authorization granted by the legislature.

"It must be kept firmly in mind that a city is the creation of and subject to the control of the Legislature. The powers of a city are derived from two sources; first, from the charter and special legislation directed to the particular city; and second, from the Constitution of the State and statutes of general application."
Farris, Atty. Gen'l. v. Colley, 145 Me. 95 @ 97.

We are concerned here with grants of power or authority by the Constitution and by statutes of general application. The Constitution of the State, Article IX, section 15, provides a limit upon any debt or liability which a city or town may create.

Article IX, section 8-A, authorizes a municipality, by majority vote, to issue notes or bonds in the name of the municipality for the purpose of constructing buildings for industrial use, to be leased or sold by the municipality to any responsible industrial firm or corporation.

The Constitution is always strictly construed by the court. It tries to give practical effect to the language used but with a literal interpretation.

These are the only two provisions of the Constitution granting the power to issue notes or bonds to municipalities. Next we look to legislative acts.

Chapter 90-A, section 14, provides for a municipality to issue general obligation securities for funding or refunding its debt and for any purpose for which it may raise money. Subsection VIII thereof states:

"Securities issued by a municipality and coupons, if any, attached thereto shall be executed in the name of the municipality by the manual or facsimile signatures

of such official or officials as may be authorized to execute such securities "

Section 15 of the same chapter authorizes municipalities with 2500 or more population to issue revenue bonds for acquiring, improving, extending or repairing a revenue-producing municipal facility or funding or refunding outstanding revenue bonds.

Section 1, XI, of the same chapter defines a "revenue-producing municipal facility" as any "water supply or distribution system, any sewage disposal or sewerage system, and any automobile parking facility " So that revenue bonds may be issued by a municipality for those purposes and no other.

We have reviewed the statutes relating to the issuance of municipal bonds. These statutes are based upon the authority given in the Constitution and previously cited.

Next we must look at "local development corporations." They are authorized by chapter 54. Their authority is contained in that chapter. In addition to the usual powers of succession, having a seal, adopting by-laws, suing or being sued and enjoying the rights, privileges and immunities of a legal corporation they have "the power to use, sell, convey, mortgage, lease or rent real or personal property and to do any and all things necessary to carry out the purposes of such corporation."

They, like municipalities, are creatures of the legislature. They do have certain powers not listed in detail in the statutes. They have no relationship to the municipality and the municipality has no authority over the corporation. A municipality may not grant powers to a non-profit corporation contrary to the statutes. Municipal ordinance authority is set forth in chapter 90-A, sections 3 and 4.

There are two types of ordinances permitted. One is called police power ordinances, which include matters pertaining to general welfare; preventing disease and promoting health and providing for public safety. Also, the providing of protection and maintenance of public ways and property; regulation of the operation of vehicles and construction and remodeling of buildings. Also, regulation of purchase and sale of second-hand articles, junk, and the business of peddling, dance halls and mechanical rides.

The second type of ordinances are called Administrative. They encompass personnel, pensions, training services for personnel and allied administrative functions of a municipality.

In no place in the statutes are municipalities authorized to grant powers and authority to any local development corporations.

It should also be noted that local development corporations organized under chapter 54 are private non-profit corporations. They are not quasi-municipal corporations. Only the legislature can create quasi-municipal corporations, school districts, water districts, sewer districts, and the like.

We are forced to the conclusion that municipalities may not authorize local development corporations to issue revenue bonds in the name of the municipality.

QUESTION NO. 3:

If it is possible for revenue bonds for industrial purposes to be issued in the name of the municipality, are these bonds exempt from the constitutional debt limitation of the state?

ANSWER:

No.

OPINION:

In the answer to your previous question we stated that a municipality can issue revenue bonds only for limited purposes. None of them being for "industrial purposes" as you mean the phrase. However, we will answer the question as if the qualifying word "revenue" was not used.

It is our belief that bonds authorized by Article IX, section 8-A, are subject to the general limitation of municipal debt set forth in Article IX, section 15. All articles and sections of the Constitution must be construed as a whole document so that all parts harmonize with each other. Section 8-A is a late amendment. There is nothing in the language to indicate an intent to except its provisions from the limitation of section 15. Bonds issued under section 8-A would be debts or liabilities and hence come within the scope of section 15.

QUESTION NO. 4:

Are firms who lease buildings financed by revenue bonds of a municipality exempt from property taxes unless payments in lieu of taxes are specifically included in the lease between the firm and the municipality or local development corporation?

ANSWER:

No.

OPINION:

Again we will answer this question as though the word "revenue" does not appear as qualifying the kind of bonds. Chapter 91-A, section 6, states:

"All real estate shall be taxed in the place where it is, to the owner or person in possession, whether resident or non-resident."

Section 10 sets forth the exemptions. Subsection I, E, provides:

"The property of any public municipal corporation of this state appropriated to public uses, if located within the corporate limits and confines of such public municipal corporation."

A building leased to a private corporation cannot be said to be "appropriated to public uses." An industrial project is not a public use.

As was very clearly stated in Owls Head v. Dodge, 151 Me. 473 @ 480:

"The property of a municipality not devoted to public use is not exempt from taxation . . . ;
Inhs. of Boothbay v. Inhs. of Boothbay Harbor, 148 Me. 31. See also Greaves v. Houlton Water Co., 143 Me. 207, and McDonald v. Stubbs, 142 Me. 235."

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At page 481 (Owls Head v. Dodge):

"A leasehold is an interest in land for the purpose of taxation."

Hence, lessees of municipal property used for private purposes are not exempt from taxation on the property.

Very truly yours,

George C. West
Deputy Attorney General

GCW:H