STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1965 - 1966

Such school regions are to be equated to the educational needs and scope of the programs to be offered. In short, the Board should not approve every application that may be submitted, because it looks promising. The first question the Board must ask is: Does it fit into our state-wide plan for technical and vocational schools, including those operated by the Board?

JOHN W. BENOIT
Assistant Attorney General

July 13, 1966
Maine Industrial Building Authority

Roderic C. O'Connor, Manager

Reference is made to your memo and letter of June 17, 1966 in which you ask two questions.

QUESTION NO. 1:

May the Authority insure payments for a loan solely made for personal property, i.e., machinery and equipment?

ANSWER NO. 1:

Yes.

REASON:

The amendments which were enacted by the 102nd Legislature in its special session changed the statutes to conform to changes made in the Constitution. Basically, the changes were made to authorize the Industrial Building Authority to insure first mortgages on machinery and equipment as well as on real estate.

The signifi ant amendments were to 10 M.R.S.A. § 703 and § 803 by P.L. 1965, Chapter 471.

An analysis of these amendments reveal the following conclusions: In § 803 it is provided that the authority is authorized to "insure mortgage payments required by a first mortgage on any industrial project."

§ 703 subsection 3 defines an industrial project in part as:

> "Any building or other real estate improvement and, if a part thereof, the land upon which they may be located, and all real properties *and machinery and equipment deemed necessary*" etc. (Underlined words added by P.L. 1965, Chapter 471.)

Hence the legislature has now authorized the Authority to insure first mortgage payments on machinery and equipment.

Also note amendment to § 703, subsection 6, wherein a mortgage is defined as a "mortgage on an industrial project and . . . means such classes of first liens . . . given to secure advances on or the unpaid purchase price of, real estate *or personal property*. . ." (Underlined words added by P.L. 1965, Chapter 471.)

Also note § 803, subsection 2, as amended by P.L. 1965, Chapter 471, wherein it provides that a mortgage to be eligible for insurance must involve a limited principal obligation "not to exceed 90% of the cost of the project related to real estate and 75%

of the cost of the project related to machinery and equipment."

When considered as a whole, the intent of the legislature as expressed by its enactments gives the Industrial Building Authority the right to insure first mortgages of machinery and equipment.

QUESTION NO. 2:

May a savings bank originate a loan for which the payments are insured by Maine Industrial Building Authority, made wholly or in part for machinery and equipment?

ANSWER NO. 2:

We respectfully decline to answer this question. It is not a matter which is of concern to the Maine Industrial Building Authority. This is a question which should be more properly addressed to the Bank Commissioner.

GEORGE C. WEST
Deputy Attorney General

July 15, 1966
Secretary of State

Linwood Ross, Deputy

You have requested my opinion on the legality of the withdrawal by a nominee for State Representative who was nominated at the June 20th primary election. Your question is based on the fact that Section 446 of the election laws requires any candidate to file with his primary petitions a consent that he will accept the nomination, that he will not withdraw, and that he will qualify for the office if elected. The consent form which is printed on our primary nomination petitions reads as follows:

> "I consent to the herein proposed nomination, agree to accept if nominated at the primary election; not to withdraw; and, if elected at the general election, to qualify as such officer."

This consent form must be signed by any candidate in a primary.

The question you present appears to be one of novel impression in this State. It has never been considered by our Court. As a matter of fact, there are very few cases on the point in the United States. Over the years there have been questions posed to this Office by reason of vacancies occurring by withdrawals. However, these have usually been inquiries by the Governor's Office with relation to the method of filling such vacancies. The question of whether the withdrawal of a candidate is permissible has never been raised and thus there are no prior decisions of this Office on the point.

My research has disclosed only three cases prohibiting the withdrawal of a nominee in a primary election. These cases all originate in the State of Nevada which requires a similar filing of a consent statement, however, under oath. There are, however, other provisions of our law bearing on the question which in my opinion make the Nevada cases inapplicable.

American Jurisprudence states the general rule to be as follows:

> "As a general rule and *in the absence of a statutory provision to the contrary,* the fact that a nominee has filed his declaration of candidacy for public office and executed a statutory affidavit that if nominated he would accept such nomination