# MAINE STATE LEGISLATURE

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## STATE OF MAINE

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## Inter-Departmental Memorandum Date September 15, 1967

To Edward C. Hinckley, Commissioner	Dept. Indian Affairs
From Phillip M. Kilmister, Assistant	Dept_Attorney General
Subject Maine Indian Housing Authority Law	

#### FACTS:

The Maine Indian Housing Authority Law as enacted in 1965 and amended in 1967 permits home construction programs to be developed on all three Indian Reservations through the establishment of reservation "housing authorities." The Maine Indian Housing Authority Law incorporates by reference, with one minor exception, the terms of the Maine Housing Authorities Act as set forth in 30 M.R.S.A. § 4551-4755. Efforts are being made toward appointment of members to the three reservation housing authorities. Once established, the authorities will then apply for federal financial assistance to aid in the development of housing within the reservations.

You have asked five questions in regard to the Maine Indian Housing Authority Law and Maine Housing Authorities Act and also an additional question relating to the uniting of state appropriations with any federal aid which might become available to said housing authorities.

### QUESTIONS:

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- Is the Maine Indian Housing Authority Law (P.L. 1965, c. 280, as amended by P. L. 1967, c. 252) valid?
- 2. Is the Maine Housing Authorities Act (R. S., T. 30, c. 239, subchapter II) valid?
- 3. Does each reservation Housing Authority, when properly formed as authorized by the Maine Indian Housing Authority Law, have the right to develop and operate water and sewage facilities?

- 4. Does each reservation Housing Authority, when properly formed as authorized by the Maine Indian Housing Authority Law, have the right to borrow money?
- 5. Does each reservation Housing Authority, when properly formed as authorized by the Maine Indian Housing Authority Law, have the right to pledge revenues?
- Is there a way, through existing legislative 6. authority or Orders by the Governor of the State and his Executive Council, that the funds requested by this Department as the state's share of the developmental costs of water and sewage facilities on the three Indian Reservations, now contained in the bond issue for Capital Improvements which will be submitted to a state-wide referendum, may be united with Federal funds which may become available to the three reservation Housing Authorities as the Federal share of the developmental costs of water and sewage facilities on the three Indian Reservations? If not, what sort of legislation would be required for this purpose?

#### ANSWERS:

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The answers to the above-quoted questions are set forth in the following opinion.

#### OPINION:

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Our analysis of the provisions of both the Maine Indian Housing Authority Law and the Maine Housing Authorities Act affords no basis to question the constitutionality or validity of either and we therefore answer questions one and two in the affirmative. Since the passage of the United States Housing Act of 1937 and the subsequent enactment in

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many states of slum clearance enabling acts, many decisions have been handed down by the courts of the various jurisdictions upholding the constitutionality of slum clearance and low cost housing legislation similar to the Maine and Indian Housing Authority Acts.

The Maine Indian Housing Authority Law, 22 M.R.S.A. § 4731-4739 as amended by P. L. 1967, c. 252 provides for the creation of public bodies corporate and politic in each of the Indian reservations, said bodies to be known as "Housing Authorities." With several minor exceptions, the creation and powers of Indian Housing Authorities are governed by the terms of the Maine Housing Authorities Act as set forth in 30 M.R.S.A. § 4551-4755.

22 M.R.S.A. § 4733 Creation of Indian Housing Authorities.

"In the Penobscot tribal reservation at Indian Island, Old Town, and in each reservation of the Passamaquoddy Tribe of Indians at Pleasant Point and Indian Township, there is created a public body corporate and politic to be known as the reservation 'Housing Authority.' Except as otherwise provided in this chapter or clearly indicated otherwise by the context, the Maine Housing Authorities Act shall apply to the housing authorities created by this section, hereinafter in this chapter referred to as 'authority' or 'authorities.'" (Emphasis supplied)

Reduced to simple terms, if a municipal housing authority may establish, maintain, and operate water systems or sewage treatment and disposal systems, then reservation housing authorities may do likewise.

30 M.R.S.A. § 4651 sets forth the powers and duties of municipal housing authorities and provides in subsection 2:

"Housing projects. Within its area of operation: To prepare, carry out, acquire, lease and operate housing projects and to provide for the construction, reconstruction, improvement, exten-

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sion, alteration or repair of any housing project or any part thereof."

The term "Housing Project" is defined in section 4552, subsection 12 of Title 30 and is described in part in the following language:

"Project or housing project. 'Project' or 'housing project' shall mean any work or undertaking:

"A. To demolish, clear or remove buildings from any slum area; or

"B. To provide decent, safe and sanitary dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances streets, sewers, water service, utilities, parks, site preparation, landscaping, administrative, community health, recreational, welfare or other purposes: . . . " (Emphasis supplied)

To clothe municipal housing authorities with the power to provide that an adequate water supply, or sewage disposal, or any other essential service normally furnished by a public utility be made available to residents of "housing projects" is not synonymous with giving housing authorities themselves the power to establish and operate such service producing utilities.

30 M.R.S.A. § 1901 provides definitions which apply to the provisions of the Maine Housing Authorities Act.

30 M.R.S.A. § 1901 entitled "Definitions" provides in part as follows:

"The listed terms as used in chapters 201 to 213, 223, 235 and 239 (The Housing Authority Law) to 245 are defined as follows, unless a different meaning is plainly required by the context:

"Subsec. 15. Sewers. 'Sewers' means and includes mains, pipes and laterals for the reception of sewage and carrying such sewage to an outfall or some part of a sewage disposal system, including pumping stations."

Title 30 M.R.S.A. § 1901 subsections 13 and 14 define sewage disposal systems and sewer systems and define such systems as plants or facilities used for the collection, treatment and disposal of sewage.

There is a clear distinction between the terms "sewer" and "sewer system" and municipal housing authorities are authorized by statute only to construct or provide the former as part of a housing project.

Municipal housing authorities in establishing "housing projects" are authorized to provide "water service." The legislature has not stated that authorities may provide water systems however.

30 M.R.S.A.  $\S$  1901 subsection 18 defines water systems in the following language:

"Water system. 'Water system' means and includes all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water and any integral part thereof, including but not limited to water supply systems, water distribution systems, reservoirs, wells, intakes, mains, laterals, aguaducts, pumping stations, standpipes,

filtration plants, purification plants, hydrants, meters, valvés and all necessary appurtenances and eqipment and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the municipal officers for the operation thereof."

By authorizing municipal housing authorities to provide "water service" as part of a "housing project" we believe it is clear that the legislature intended that authorities might provide that the services of a "water system" be made available to the occupants of said projects, and not that housing authorities themselves may construct and operate a "water system" as part of a housing project.

The legislature has given no express authority for municipal housing authorities to construct or operate sewer systems or water systems. Furthermore, we do not believe that the construction and operation of sewer systems or water systems represents an implied power of housing authorities, essential for the accomplishment of their corporate objectives. The absence of language expressly authorizing Indian Housing Authorities to construct and operate sewer systems and water systems compels us to answer question numbered three in the negative.

We briefly answer questions numbered four and five in the affirmative. Since the Indian Housing Authority Law incorporates by reference the terms of the Maine Housing Authorities Act, with the exception of referendum requirements, we would simply point out that municipal housing authorities may borrow money and pledge revenues as set forth in 30 M.R.S.A. § 4701, 4702 and 4752. These same provisions are applicable to reservation housing authorities.

As of the date of this opinion, the people of the State of Maine have rejected in referendum a bond issue, part of the proceeds of which would have been expended for the construction of sewage systems and water systems on the Indian reservations. This fact does not render question numbered six entirely moot however since it is entirely possible that state funds may be appropriated in the future for the construction of said facilities on the reservations. We answer question six in the negative.

The expenditure of state funds for the construction of sewage and water service systems is completely independent of any funds which the reservation housing authorities may receive from federal agencies to carry out their objectives. Neither the Department of Indian Affairs nor the reservation housing authorities have express statutory authority to construct or operate water supply systems or sewer systems.

We recognize the fact that the expenditure of state funds for sewage and water systems on the reservations may be of great importance to reservation housing authorities however since the construction of such facilities would undoubtedly greatly aid the housing authorities in carrying out their objectives, to wit: the establishment of safe and sanitary living accommodations for people of low income.

Phillip M. Kilmister

Assistant Attorney General

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