STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

2. If so, do the statutes of the State of Maine contain any prohibition precluding the Commission from complying with the Order of the House of Representatives?

ANSWERS:

1. Yes.
2. No.

REASON:

First, it is noted that the House Order requests "findings" from the Commission; and that Section 141 of Title 35 uses the word "order" in establishing a particular bar relative to the use of the Commission's order.

In the event that an order contains findings, the Commission's issuance of its findings to the House relative to the legislative mandate constitutes compliance with that mandate. We do not interpret the above-quoted bar as precluding the Commission from complying with the House Order.

Our examination of the plural provisions of the Maine Statutes fails to reveal the existence of language prohibiting the Commission from complying with the House Order.

JOHN W. BENOIT
Assistant Attorney General

January 25, 1968
Maine Recreation Authority

Lloyd K. Allen, Manager

Insurability of Recreational Project Loans Contracted for Prior to Effective Date of Me. Rev. Stat. Ann., Tit. 10, § 6003 (2) (Supp. 1967).

FACTS:

Me. Public Laws 1965, ch. 495, created the Maine Recreation Authority. One of the principal purposes of the Authority is to pledge the full faith and credit of the state to insure payments made by local recreational development corporations on their mortgages to lenders. One of the criteria for eligibility of a recreational project loan for Authority insurance under the creating act was that the principal obligation, including initial service charges and appraisals, inspection and other fees approved by the Authority, had to be at least $50,000 and not exceed 90% of the project cost.

On May 11, 1967 the Authority, pursuant to vote duly taken at its meeting held that day, executed a conditional insurance agreement. Such conditional agreements are the first step toward insurance, by the Authority, of recreational project loans. They contain a formal recital that the project is eligible for insurance and that the lender is responsible, and also bind the Authority to insure the loan payments once the project is completed to the satisfaction of the local development corporation and leased to a tenant. The principal amount of the note pursuant to whose terms payments, to be insured by the Authority, were to be made, was recited as $67,000 and such sum was further recited as less than 90% of the project costs as determined by the Authority.

Thus, under the law existing at the date of execution of the conditional agreement, the principal obligation of the subject recreational project loan met the statutory criteria, relative to amount and percentage of project cost, for Authority insurability.

Me. Public Laws 1967, ch. 481, § 4, however, changed these statutory criteria. Such section (now codified as Me. Rev. Stat. Ann., Tit. 10, § 6003 (2) (Supp. 1967)) now requires the principal obligation of recreational project loans to be at least $100,000; not to exceed 20% of the amount set forth in Me. Const., Art. IX, § 14-B; and not to exceed 75% of the project cost at the time the mortgage is executed. This amending section became law on January 1, 1968.

The conditions prerequisite to issuance of the Authority's insurance contract to cover the loan on the subject recreational project were fulfilled after January 1, 1968. Counsel for the proposed mortgagee bank has questioned whether the Authority can now issue its contract on such project since the project's principal obligation does not meet the criteria, relative to amount and percentage of project cost, established by the amending section referred to above. In view of counsel's doubts, you ask the following question:

QUESTION:

May the Maine Recreation Authority legally issue, subsequent to January 1, 1968, a contract of insurance covering a first mortgage on a recreational project where: (1) said mortgage involves a principal obligation, including initial service charges and appraisals, inspections and other fees approved by the Authority, in an amount of less than $100,000 but not less than $50,000 and in an amount in excess of 75% but not in excess of 90% of the cost of the project; and (2) the Authority issued prior to January 1, 1968 a conditional insurance agreement, otherwise in accordance with law, covering said mortgage on said recreational project, provided: (a) that said mortgage is otherwise eligible for Authority insurance under Me. Rev. Stat. Ann., Tit. 10, § 6003 (Supp. 1967); (b) that the parties to the conditional insurance agreement have complied with the terms thereof; and (c) that the aggregate amount of the principal obligations of all outstanding mortgages so insured does not exceed the amount set forth in Me. Const., Art. IX, § 14-B?

ANSWER:

Yes.

OPINION:

The first step, in reaching the conclusion that the Authority has power to insure the loan, is to recognize that the Conditional Mortgage Insurance Agreement executed by the Authority on May 11, 1967 is a classic unilateral contract. The Authority has, under the agreement, obligated itself to issue the mortgage insurance agreement upon the occurrence of certain conditions specified in the conditional agreement – "completion of the project, acceptance thereof by the landlord, and the putting into effect of the agreed upon long term lease of said project. . . ."

Once the nature of the conditional agreement becomes apparent, it follows that to reach any other conclusion would fly in the face of Me. Const., Art. I, § 11, and U. S. Const., Art. I, § 10 (the so-called "contract clauses"). The doctrine that the law in force when a contract is made enters into and comprises a part of the contract itself is so well settled as to require no further exposition in this opinion. *See, e. g.,* Wood v. Lovett, 313

U. S. 362, 370 (1941). It was likewise early settled that the protection of the contract clause extends to contracts in which the State is a party as well as to contracts between private individuals. *See* Fletcher v. Peck, 6 Cr. 87 (1810).

Accordingly, it is our opinion that the provisions of Me. Public Laws 1967, ch. 481, § 4, which modified existing law so as to increase the principal obligation of recreational project loans and decrease the percentage of net project costs which such loans may comprise, cannot operate to invalidate a conditional mortgage insurance agreement executed by the Maine Recreation Authority in compliance with the law existing at the date of execution.

ROBERT G. FULLER, JR.
Assistant Attorney General

February 15, 1968
Executive

Honorable Kenneth M. Curtis, Governor

Appointment of Employee of State College to the State Board of Education.

FACTS:

The Maine Revised Statutes relating to Education provide, inter alia, that the State Colleges specified in 20 M.R.S.A. § 2301 are under the direction of the State Board of Education; and that the Board has charge of the general interests of those State Colleges, including the employment of teachers and lecturers for the State Colleges.

> "The state colleges shall be under the direction of the state board. Said board shall have charge of the general interests of said colleges; shall see that the affairs thereof are conducted as required by law and by such by-laws as the board adopts; employ teachers and lecturers for the same; and shall have authority, by and with the consent of the Governor and Council, to dispose of and acquire property for the improvement of the plants and grounds; and biennially render to the Governor and Council an accurate account of the receipts and expenditures for the biennium preceding, including same as a part of the commissioner's report. The clerical and staff services for this board shall be performed by the employees of the department under the direction of the commissioner. The head of a state college shall be designated as a president." *20 M.R.S.A. § 2305.*

QUESTION:

Does the law prohibit the Governor from appointing an employee of a State College to the State Board of Education?

ANSWER:

Yes.

REASON:

The provisions of 20 M.R.S.A. § 2305 specify that the State Colleges (designated in