

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

3 M.R.S.A. § 241 provides that a Commission of three members having terms of 4 years each shall be appointed by the Governor with the advice and consent of the Council.

Article VI, Section 5 of the Constitution reads:

“No Justice of the Supreme Judicial Court or any other court shall hold office under the United States or any other state, nor under this State, except as justice of the peace or as member of the Judicial Council.”

QUESTION:

May a Judge of Probate legally be a Commissioner on Uniform State Laws?

ANSWER:

No.

REASON:

The Commissioner on Uniform State Laws is an “office . . . under this State.” It does not come within the two exceptions, justice of the peace or Judicial Council. Hence, a judge of probate is not eligible for the office.

GEORGE C. WEST
Deputy Attorney General

May 9, 1968
Economic Development

James K. Keefe, Commissioner

Scope of the Maine Industrial Building Authority Act

SYLLABUS:

Under the State Constitution, Art. IX, § 14-A and 10 M.R.S.A. § 701-852 the Maine Industrial Building Authority may issue mortgage insurance on existing buildings and machinery in the State.

FACTS:

The Department of Economic Development has requested an opinion as to whether or not the Maine Industrial Building Authority may issue mortgage insurance on existing buildings and machinery in the State.

QUESTION:

Whether or not the Maine Industrial Building Authority may issue mortgage insurance on existing buildings and machinery in the State?

ANSWER:

Yes.

REASONS:

The basic authorization for the Maine Industrial Building Authority comes from the State Constitution, Art. IX, Sec. 14-A:

“For the purposes of fostering, encouraging and assisting the physical location, settlement and resettlement of industrial and manufacturing enterprises within the State, the Legislature by proper enactment may insure the payment of mortgage loans on the real estate and personal property within the State of such industrial and manufacturing enterprises not exceeding in the aggregate \$40,000,000 in amount at any one time and may also appropriate moneys and authorize the issuance of bonds on behalf of the State at such times and in such amounts as it may determine to make payments insured as aforesaid.”

The enabling legislation is 10 M.R.S.A. §701-852. Before 1965 10 M.R.S.A §702 read as follows:

“It is declared that there is a state-wide need for *new industrial buildings* to provide enlarged opportunities for gainful employment by the people of Maine and to thus insure the preservation and betterment of the economy of the State and its inhabitants. It is further declared that there is a need to stimulate a larger flow of private investment funds from banks, investment houses, insurance companies and other financial institutions including pension and retirement funds, to help satisfy the need for housing industrial expansion. The Maine Industrial Building Authority is created to encourage the making of mortgage loans for the purpose of furthering industrial expansion in the State.” (Emphasis supplied)

The legislature in 1965 amended §702 to read as follows:

“It is declared that there is a state-wide need to provide enlarged opportunities for gainful employment by the people of Maine and to thus insure the preservation and betterment of the economy of the State and its inhabitants. It is further declared that there is a need to stimulate a larger flow of private investment funds from banks, investment houses, insurance companies and other financial institutions including pension and retirement funds, to help finance industrial expansion. The Maine Industrial Building Authority is created to encourage the making of mortgage loans for the purpose of furthering industrial expansion in the State.”

The deletion of the words “for new industrial buildings” shows that the intent was to include existing industry in the overall scope of the Act.

That we are able to go beyond the Constitutional provisions to the enabling legislation in order to better define the purposes is clear from *Martin v. Maine Savings Bank*, 154 Me. 259, 147 A. 2d 131 (1958):

“The basic objective of §14-A and the Enabling Act is to foster, encourage, and assist the industrial expansion of the state through the use of the state’s credit to a limited extent in financing the cost of needed new industrial buildings for the use of the industrial and manufacturing enterprises (which we may for convenience call “industries”) mentioned in the Constitution. Only a bare outline of the purposes is found in §14-A. They are set forth in more detail in the Enabling Act.”

Turning to § 703 subsection 1, before 1965 it read as follows:

““Cost of project” shall mean the cost or fair market value of *construction*, lands, property rights, easement, franchises, financing charges, interest, engineering and legal services, plans, specifications, surveys, cost estimates, studies and other expenses as may be necessary or incident to the development, construction, financing and placing in operation of an industrial project.” (Emphasis supplied)

In 1965 it was amended as follows:

““Cost of project” shall mean the cost or fair market value of *real estate improvements*, lands, new machinery and equipment including installation thereof, used machinery and equipment, property rights, easement, franchises, financing charges, interest, engineering and legal services, plans, specifications, surveys, cost estimates, studies and other expenses as may be necessary or incident to the development, construction, financing and placing in operation of an industrial project.” (Emphasis supplied)

The words “real estate improvements” were substituted for “Construction” making § 703 consistent with § 702 by implying that new industry or new buildings are not requirements under the Act.

It is clear from a reading of these sections, and the 1965 amendments thereto, that the legislature envisioned refinancing of existing industry in the State as part of the overall scope of the Act.

Extensive changes in the Act were made by P. L. 1967 c. 525, none of which affect the reasoning or results in the preceding paragraphs.

WARREN E. WINSLOW, JR.
Assistant Attorney General

May 15, 1968
Education

Asa A. Gordon, Director, School Admin. Services

Compatibility of School Director’s Office and Selectman’s Office.

SYLLABUS:

Incompatibility of offices results when school administrative district director also holds office of selectman of member town.

FACTS:

Past opinions of the Office of the Attorney General have issued with conclusions that the Office of Selectman and the Office of School Committee member are incompatible. See opinions dated May 1, 15, 1936; April 18, 1942; and March 24, 1955.

A school administrative district director has inquired of the Department of Education whether he may hold the director’s position together with the position of selectman of one of the towns which is a member of the school administrative district.

QUESTION:

May a person who holds the position of school administrative district director also