

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

issued shall surrender the same on demand of the Secretary of State whenever his registration certificate is suspended or revoked or has expired without renewal. Whoever steals, takes or carries away any registration number plate from any person entitled to its possession shall be punished by a fine of not more than \$100 or by imprisonment for not more than 90 days, or by both.”

Since the plates are the property of the State, its agents may remove them even in the absence of the owners of the vehicles in question. The second sentence of § 113 quoted above is not applicable to these agents since the State owns these plates.

There should never be any physical force exerted on any individual to effect this removal. However, whatever force that is reasonable under the circumstances can be used to physically remove the plates from the vehicle.

The fact that one of the co-owners has failed to comply with 29 M.R.S.A. § 781 et seq. does not change these results. When a person co-registers a vehicle with another, he must abide by the laws as they pertain to the other co-registrants.

WARREN E. WINSLOW, JR.
Assistant Attorney General

June 24, 1968
Executive

Herbert S. Sperry, Director, OEO

Maine Housing Authorities Act

SYLLABUS:

Though, under some circumstances, Maine municipalities may act as Lessor or Lessee of real property, in general neither counties nor municipalities in this State possess the broad range of powers conferred upon local housing authorities by 30 M.R.S.A. §§ 4551-4755 (1964).

FACTS:

The Legal Department of the Regional Office of the Department of Housing and Urban Development has presented through your office the following questions for answer:

QUESTION NO. 1:

Do Maine municipalities and/or counties have the power to lease housing units from a private corporation and then sublet such housing units to low-income families resident within the governmental unit?

QUESTION NO. 2:

Do Maine municipalities and/or counties possess powers equivalent to those granted local housing authorities under and by virtue of the following statutes: 30 M.R.S.A. § 4651(1) (1964); 30 M.R.S.A. § 4651(3) (1964); 30 M.R.S.A. § 4651(4) (1964) and 30 M.R.S.A. § 4701 (1964)?

QUESTION NO. 3:

If the answers to Questions No. 1 and No. 2 are in the affirmative, may a municipality and/or county enter into financial assistance contracts with the Federal Government without the necessity of town meeting or voter referendum approval?

ANSWER NO. 1:

I. Municipalities.

All capacities, powers and duties of Maine municipalities are derived from legislative enactments. *Opinion of the Justices*, 161 Me. 182, 210 A.2d 683 (1965). There is no state statute which purports to empower Maine municipalities to lease housing units from private corporations and then sublet such housing units to low-income families resident within the municipality. It may be that by virtue of a provision in its charter, a municipality has such power, and reference should be had to the records of particular municipalities for further determination.

We also point out the existence of the Maine Housing Authorities Act, 30 M.R.S.A. §§ 4551-4755 (1964), and note that the existence of this Act may constitute a legislative pre-emption of municipal powers with respect to housing and a delegation of the entire housing problem to local housing authorities for solution. See the language in 30 M.R.S.A. § 4553 (1964): "It is declared . . . that these (blighted) areas in the State cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved through the operation of private enterprise . . .". *Cf. Drake v. City of Los Angeles*, 38 Cal. 2d 872, 243 P.2d 525 (1952), where the court stated: "The local law governing the acts and authority of the city council as to slum-clearance and low-rent housing projects has been superseded by the (California Housing Authorities Law)." 38 Cal. 2d 872, 874, 243 P.2d 525, 526.

II. Counties.

With respect to counties of a sister state which were organized in fashion similar to Maine, it has been held that such counties have no powers not conferred by the state legislature. *Opinion of the Justices*, 99 N.H. 540, 114 A.2d 879 (1955). Maine counties are mere political subdivisions of the state. *Cf.* 1 M.R.S.A. § 7 (1964). Therefore, absent a grant of legislative power to act in manner contemplated by the question posed, a Maine county is devoid of authority to so act. We find no such legislative grant.

ANSWER NO. 2:

30 M.R.S.A. § 4651(1) (1964) empowers housing authorities:

"To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this subchapter, to carry into effect the powers and purposes of the authority."

With the above provision, compare 30 M.R.S.A. § 1902 (1964):

"The residents of a municipality are a body corporate which may sue and be sued, appoint attorneys and adopt a seal."

Municipalities have the power, through duly authorized agents, to enter into contracts which relate to the lawful exercise of their corporate powers as defined in their charters. *Cf. School Administrative Dist. No. 3 v. Me. School Dist. Comm'n.*, 158 Me.

420, 185 A.2d 744 (1962). The making of bylaws by an authority is analogous to the adoption of municipal ordinances. The ordinance-making powers of municipalities are found at 30 M.R.S.A. §§ 2151-2155 (1964).

There are no statutory grants to Maine counties of powers similar to those granted housing authorities under the statute first above cited.

There are no statutory provisions giving Maine counties or municipalities those powers granted to housing authorities under 30 M.R.S.A. § 4651(3) (1964). The power of municipalities to contract generally has been set out above.

There are no statutory provisions giving Maine counties or municipalities the powers, or imposing the conditions, of 30 M.R.S.A. § 4651(4) (1964). The power of municipalities to contract generally has been set out above.

A municipality may appropriate money for the purchase of real and personal property from the Federal Government. 30 M.R.S.A. § 5109 (3) (Supp. 1967). A municipality may also apply for and accept federal grants for any purpose for which federal grants are made available to municipalities either directly or through the State. 30 M.R.S.A. § 5109 (1) (Supp. 1967). Only to such extent does a municipality have powers similar to those given to housing authorities under 30 M.R.S.A. § 4701 (1964). Counties have no such powers.

ANSWER NO. 3:

Since we have, in effect, answered Questions No. 1 and No. 2 in the negative, we therefore consider Question No. 3 moot.

ROBERT G. FULLER, JR.
Assistant Attorney General

July 18, 1968
Economic Development

Stanley Shalek, Adm. Assist.

Trade Discount on a State Publication

SYLLABUS:

A state department cannot sell publications which are the result of the expenditure of public funds absent statutory authority to do so.

FACTS:

In your memorandum submitted to this office under date of June 19, 1968, it is stated that the Department of Economic Development has announced publication of a "Maine Statistical Abstract". To recuperate part of the cost of printing and distribution involved, the Department has established a price of \$3.00 per copy for said publication. A book vendor has requested a trade discount, so that he may realize a profit in offering said state publication for sale. It is stated that all funds received from the sale of the publication will be placed in the General Fund. You have asked two questions relative to the proposed sale of the "Maine Statistical Abstract".