

MAINE STATE LEGISLATURE

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December 20, 1968

Henry L. Cranshaw, State Controller

Accounts and Control

George C. West, Deputy

Attorney General

Old Orchard Beach Municipal Building Grant

SYLLABUS:

When funds are granted by legislative act, and upon stated conditions, to some entity, the funds may not be paid to the entity except upon compliance with said conditions.

FACTS:

The 102nd Legislature by P. & S.L. 1965, Chapter 189, appropriated the sum of \$100,000 from the Unappropriated Surplus of the General Fund to the Town of Old Orchard Beach. The same Legislature by Chapter 285 appropriated an additional \$100,000 from the General Fund for the same purpose. The language in each chapter is:

"There is appropriated from the Unappropriated Surplus of the General Fund the sum of \$100,000 to the Town of Old Orchard Beach, to aid in the construction of a municipal building, including an auditorium. Such appropriation shall not be available until a like amount has been realized from voluntary subscriptions or land equivalent in value provided by the Town of Old Orchard Beach."

Under date of October 9, 1968 the Town Manager, by letter, requested the State to forward the \$200,000. A copy of the letter is attached and made a part of the FACTS.

Henry L. Cranshaw, State Controller, replied by letter dated November 1, 1968, a copy of which is attached and made a part of the FACTS.

The Town Manager then wrote on November 20, 1968 presenting more information. A copy of that letter is attached and made a part of the FACTS.

QUESTION:

Has the Town of Old Orchard Beach sufficiently complied with the conditions precedent in P. & S.L. 1965, Chapters 189 and 285, so that the Controller may send the town the authorized \$200,000 grant?

ANSWER:

No.

OPINION:

There are two things the Town of Old Orchard Beach must do to be eligible for the sum of \$200,000 from the State of Maine.

The first is to have plans to construct a "municipal building, including an auditorium." The other is one of two alternatives: The Town must either raise \$200,000 "from voluntary subscriptions" or provide "land equivalent in value." If and when the Town has complied with the two conditions, the State must make available \$200,000.

In the Town Manager's letter of October 9, he twice refers to the "auditorium." In the November 20 letter he refers to a proposed "municipal building and auditorium", as well as "auditorium." In the next to the last paragraph he indicates a nonprofit group would "manage and operate the facility."

This latter language seems to indicate that only an auditorium is being proposed. The two pieces of legislation clearly contemplate contribution to a municipal building which would house offices for town officials and including an auditorium.

If the proposal of the Town is to build a municipal building including an auditorium, then the first condition precedent is fulfilled. If the plan is to build only an auditorium, then the grant fails. Additional information is needed.

There are now the two alternatives to be considered. The first is "voluntary subscriptions." As of October 9 there has been realized \$3,950. This is far short of \$200,000. This alternative has not been met.

The second alternative is "land equivalent in value provided by the Town" The appraisals submitted with the Town Manager's letter of October 9 agree on a land value of \$158,000. In the same letter the Town Manager has added to that figure certain items, "Engineering fees"; "Sewer pumping station"; "Feasibility study" and "Promotion expenditures." None of these are land values and hence may not be considered.

In the Town Manager's letter of November 20 he asks to have the sewer pumping station now being installed on the property at a cost of \$30,000 be considered a part of the land value. We cannot understand how this facility will increase the market value of the land. A sewer pumping station would have no value to anyone save a municipality or a Sewer District or Company.

Presently the Public Works Department occupies a section of this land. The building occupied by that Department will have to be moved to a new location at a cost estimated at \$75,000. That cost cannot be added to the appraisal value of the land. Whether or not the land will be more or less valuable when the present building is moved, is a matter of conjecture. Presumably the building is very usable if it is less expensive to pay \$75,000 to move it than it is to build a new one. Hence, it may be possible that the land minus the Public Works building would be worth less than the present appraisal of \$158,000.

The \$39,000 allocated by the Town Council to the building is not to be considered by the State. We have no way of assessing what amount the town was expected to invest in its municipal building over and above a possible \$200,000 in land on which to construct it.

The Town has not provided "land equivalent in value" (\$200,000) hence has not fulfilled the second alternative.

We must conclude that the Town of Old Orchard Beach is not now eligible for the State's grant of \$200,000.

George C. West
Deputy Attorney General

GCW:H

TOWN OF

Old Orchard Beach

THE FINEST, CLEANEST BEACH IN THE WORLD

OLD ORCHARD BEACH, MAINE

LEON F. JONES, TOWN MANAGER

October 9, 1968

Mr. Henry L. Cranshaw
Accounts and Control
State House
Augusta, Maine

Dear Mr. Cranshaw:

We are forwarding herewith three appraisals relative to land owned by the Town of Old Orchard Beach that has been designated as the site for the Old Orchard Beach auditorium.

We trust that this will be in compliance with the intent of the 102nd Legislature which provided an "in kind" grant in the amount of \$200,000.00 to the town of Old Orchard Beach to aid in the construction of the Old Orchard Beach auditorium.

Our "in kind matching funds and values" are as follows:

Land appraisal	\$158,000.00
Engineering fees (William O. Armitage)	25,425.00
Sewer pumping station	15,000.00
Feasibility study (Metcalf & Eddy)	1,500.00
Promotion expenditures (telephone, stationary, postage, bank charges, New York meeting with HUD, pledge cards, secretarial and recording fees)	5,300.00
Cash on hand	<u>3,950.00</u>
Total	\$209,175.00

In late summer, a drive was organized to collect funds and/or pledges to aid in the construction costs of this auditorium. To date we have \$3,950.00 on hand as indicated, and pledges totalling \$41,000.00.

Sincerely,


Leon F. Jones
Town Manager

LFJ/eh
Enc: 3

*158,000 is Double
Assessment Value*

November 1, 1963

Leon F. Jones, Town Manager
Old Orchard Beach, Maine

Dear Mr. Jones:

This is in answer to your letter of October 9, 1963 relative to the amounts appropriated by the state legislature in connection with the construction of a municipal building by the Town of Old Orchard Beach.

CHAPTER 189, Private and Special Laws 1963 reads as follows:

"There is appropriated from the Unappropriated Surplus of the General Fund the sum of \$100,000 to the Town of Old Orchard Beach, to aid in the construction of a municipal building, including an auditorium. Such appropriation shall not be available until a like amount has been realized from voluntary subscriptions or land equivalent in value provided by the Town of Old Orchard Beach."

CHAPTER 285 appropriated an additional \$100,000 with the same language as above.

It appears that it would be improper to send you the Legislative Appropriation of \$200,000, at this time, for the following reasons:

1. The law, quoted above, indicates that -

"Such appropriation shall not be made available until a like amount has been realized from voluntary subscriptions or land equivalent in value - - - ."

It appears that you have not met these conditions inasmuch as the land is appraised at \$158,000 and cash on hand is \$3,950.

2. It would seem only right and proper to assume that when the law refers to a municipal building it necessarily means a building owned by the municipality. You sent me a letter signed by C. RUSSELL DURANT, that indicates the TOWN proposes to deed the land to the "Old Orchard Beach Convention Auditorium Corporation".

Leon F. Jones, Town Manager
Old Orchard Beach, Maine

This matter has informally been discussed with representatives of the Attorney General's Office here in Augusta and it is their opinion that based on information presently available it would be improper to grant your request for payment of the \$200,000.

It appears, then, that the major obstacles are the lack of sufficient cash in the form of paid pledges and that the building would not be owned by the municipality.

Payment can and will be made just as soon as it is legally proper to do so.

Very truly yours,

HC:e

Henry L. Cranchaw
State Controller

November 20, 1968

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STATE OF MAINE
BUREAU OF ACCOUNTS & CONTROL

Mr. Henry L. Cranshaw
State Controller
Dept. of Finance & Administration
Bureau of Accounts and Control
Augusta, Maine

Dear Mr. Cranshaw:

We thank you for your letter of November 1st relative to the Legislative Appropriations of \$200,000.00 for our proposed municipal building and auditorium.


Relative to your sub-paragraph I, the land appraisal figure of \$158,000.00 does not include the sewer pumping station that is now being installed on this property with final costs nearing \$30,000.00. This pumping station will service businesses and homes in the area, plus the auditorium when constructed. Also, our Public Works Department occupies a section of this land and when the auditorium is built they will have to be moved to a new location at an estimated cost of \$75,000.00.

In addition, our Town Council has authorized a \$200,000.00 bond issue for capital improvements, \$39,000.00 of which is allocated to the municipal building and auditorium.

Relative to your sub-paragraph II, it appears that Mr. C. Russell Durant was presuming something that has not occurred. To the best of my knowledge, the Town would retain title to the land and building but would have the Old Orchard Beach Convention Auditorium Corporation, a non-profit group made up of town officials and business men, manage and operate the facility in the best interests of the Town.

We trust that you will now find our request in order and that payment can be made.

Very truly yours,


Leon F. Jones
Town Manager

LFJ/eh
Enc 1

cc: Mr. Leo F. Laroche