

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

QUESTIONS:

1. If the Environmental Improvement Commission grants a license to the applicant, will it be interfering with the rights of downstream riparian owners?

2. Should the Environmental Improvement Commission append a “riparian rights disclaimer statement” to any license issued in this case?

ANSWERS:

1. No.

2. No.

REASONING:

The questions posed may be disposed of without a direct answer by applying the rationale of the Maine Supreme Judicial Court as stated in *Stanton v. Board of Trustees of St. Joseph's College*, 233 A.2d 718 (1967) and 254 A.2d 597 (1969). The facts in the Stanton cases appear to be similar to the facts presented. In those cases, the Environmental Improvement Commission determined that a proposed discharge would meet the statutory criteria assigned to the receiving waters, and issued a license. Downstream riparian owners on a non-navigable stream successfully enjoined this licensed discharge as an interference with their riparian rights.

In rendering its decision, the Law Court specifically discussed the powers of the then Water Improvement Commission. The Court stated that it was the statutory authority of the Commission to determine only whether any proposed discharge would lower the classification of the receiving body of water and hence was in the *public* interest. If such criteria will be met, a license *must* issue. However, the Court went on to state that the Commission:

“. . . was empowered only to determine whether the discharge of the defendant's sewage effluent into the brook would be against the public interest.”

Stanton, 233 A.2d 718, 724-725 (1967).

Thus, the Environmental Improvement Commission does not have the authority to declare the *private* rights of a riparian owner vis-a-vis upstream owners. Nor does the granting or denial of a license in any way act as an adjudication of the respective rights of such riparian owners. In the instant case, should the Commission deny a license because of this “riparian rights doctrine”, the Commission would be going beyond its statutory mandate to insure that the effluent meets certain water quality criteria. Such a decision would be then open to challenge by the rejected applicant.

Since we have disposed of the questions in the above fashion, we need not now go into the question of whether in fact the proposed discharge will be detrimental to downstream riparian owners. Furthermore, since this issue cannot be considered by the Commission, there need be no “disclaimer” in any license issued. Such a “disclaimer” would be meaningless.

JOHN M. R. PATERSON
Assistant Attorney General

October 16, 1970
Industrial Building Authority

Roderic C. O'Connor, Manager

Maine Industrial Building Authority Aid to Existing Firms

SYLLABUS:

The Maine Industrial Building Authority can aid an already existing Maine industrial, manufacturing, fishing or agricultural enterprise, pursuant to 10 M.R.S.A. § 702 as amended, upon its determination that such aid will further expand that enterprise in the State of Maine.

FACTS:

The reported facts bearing on question 1, below, appear to be that a textile plant is about to be liquidated, a member of the present management proposes to form a new corporation and to lease the plant from a newly formed local development corporation after it has acquired the mill from proceeds of a MIBA insured loan. There would be no assurance of either expansion of the plant operation or of increased employment at the plant.

The reported facts bearing on question 2, below, appear to be that the owner of a paper mill and the owner of a textile mill have found that capital funds are tied up in plant facilities, i.e., real estate, machinery and equipment. As a result, each feels that he has insufficient working capital with which to continue operations. In each case, the firm proposes to ask the community to form a local development corporation which would acquire the property with the proceeds of a MIBA insured loan. This money would then be available to the operating firm which would lease the property and would be able to continue operation of the plant, or to resume operation if it were closed, by using the purchase money as working capital.

QUESTIONS:

1. Can the Authority insure a loan to a Local Development Corporation, not involved in a previously insured mortgage loan, for acquisition of an industrial plant, presently in operation, provided it is determined by the Authority that such operation will cease, if the plant is not made available to a new tenant by means of a lease arrangement made possible by such insured borrowing?

2. Can the Authority insure a loan to a Local Development Corporation, the proceeds of which will be used to acquire an existing industrial plant for lease back to the present owner, and in this manner provide working capital for that present owner to enable continued operation of the plant?

ANSWERS:

Yes, to both questions, but see REASONS.

REASONS:

The legislative purpose for the function of the Maine Industrial Building Authority is "to provide enlarged opportunities for gainful employment by the people of Maine. . . ." 10 M.R.S.A. § 702. (P.L. 1957, c. 41, § 1, as amended by P.L. 1965 c. 142, § 1 and P.L. 1967, c. 525, § 1.) Toward that end, the Legislature seeks, through the Maine Industrial Building Authority, ". . . to stimulate a larger flow of private investment funds . . . to help finance expansion of industrial, manufacturing, fishing and agricultural

enterprises.” (Ibid.) The Legislature expressly authorized the Maine Industrial Building Authority to “. . . encourage the making of mortgage loans for the purpose of furthering expansion of such enterprises in the State.” (Ibid.)

It is clear from the legislative language that the Maine Industrial Building Authority is authorized to aid already existing as well as new Maine firms, provided: (1) that the firm is either an industrial, manufacturing, fishing or agricultural enterprise; and (2) that aid by the Maine Industrial Building Authority is for the purpose of providing enlarged opportunities for gainful employment by the people of Maine.

The first criterion is fulfilled in each of the above-stated fact situations in that each activity is a manufacturing enterprise.

The second criterion requires a judgment that enlarged employment opportunities will result by such aid. This judgment must be reached by an assessment of all the available facts in each case. The Legislature has vested the power of making such a judgment solely in the sound discretion of the MIBA.

CHARLES R. LAROUCHE
Assistant Attorney General

November 23, 1970
Maine State Ferry Service

Richard Spear, Manager

Ferry Service to *All* Islands in Casco Bay

SYLLABUS:

The Maine Port Authority may conduct ferry service between the mainland and any island in Casco Bay located within the city limits of Portland and the Town of Cumberland, provided that the Public Utilities Commission has determined that private service to those islands is not feasible.

FACTS:

The Maine Port Authority has been authorized by Special Acts of this State to conduct ferry service from the mainland to certain islands in Casco Bay. The Port Authority wishes to conduct its own ferry service to islands other than those specifically mentioned in the Special Acts of this State.

QUESTION:

Whether the Maine Port Authority may conduct ferry service to islands other than those specifically mentioned in the laws of this State.

ANSWER:

Yes, provided certain conditions are first met.

REASON:

The Maine Port Authority was originally created as the “Port of Portland Authority”