

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

LISBON

Years @ 5½%

46% Construction Aid

PRELIMINARY ESTIMATIONS

HIGH SCHOOL ADDITION

MIDDLE SCHOOL

<i>ITEM</i>	<i>M.S.B.A. LEASE</i>	<i>APPLICABLE FOR CONSTRUCTION AID</i>	<i>APPLICABLE FOR CONSTRUCTION AID</i>	<i>APPLICABLE FOR CONSTRUCTION AID</i>
Construction	\$628,115	\$628,115	\$755,154	\$755,154
Site			25,000	25,000
Equipment	76,230	76,230	60,942	60,942
Architect	42,712	42,712	51,500	51,500
Clerk-of-Works			10,000	10,000
Legal	1,000	1,000	1,160	1,160
Insurance	8,000	8,000	8,000	8,000
Adm. Cost	2,500		2,900	
Capitalized Interest	55,000		63,800	
Contingency	66,443	66,443	81,544	81,544
Totals	880,000	822,500	1,060,000	993,300
Local Funds	1,650	x .46	23,082	x .46
State Funds	378,350	378,350	456,918	456,918
Bonds To Be Sold	500,000		580,000	
First Annual Payment	Prin. \$25,000 Int. 27,500 \$52,500		Prin. \$29,000 Int. 31,900 \$60,900	
Total First Payment		\$113,400		
Local Assessed Valuation	26,397,445			
Mil Increase Per \$1,000	4.3			
State Valuation 1971	16,400,000			
Debt Limitation	1,979,808			
Total Debt to Date	264,615			
12½% State Valuation	2,050,000			
Present N.S.B.A. Debt	109,200			

\$13,650 Prin.
8 Yrs. to Retire

February 3, 1972
Economic Development

Richard L. Kelso, Director
Lee M. Schepps, Assistant

Attorney General

Use of public credit by municipality to assist private industrial and manufacturing enterprises.

SYLLABUS:

A municipality may, pursuant to certain express constitutional provisions, issue general obligation notes or bonds, to construct buildings for industrial use to be leased or sold to any responsible industrial firm. There is no legislation implementing those constitutional provisions, but none is required because they are self-executing.

FACTS:

Article IX, Section 8-A, provides that for the purpose of assisting in the physical location, settlement and resettlement of industrial and manufacturing enterprises within its physical boundaries, any municipality may, pursuant to a specified vote, authorize the issuance of notes or bonds in the name of the municipality for the purpose of constructing buildings to be leased or sold to any responsible industrial firm or corporation. No legislation has been enacted implementing or elaborating upon the provisions of Article IX, Section 8-A of the Constitution of Maine, particularly as those provisions pertained to general obligation municipal securities.

QUESTIONS:

1. Does a municipality have legal authority to use public funds for the purpose of constructing a building or buildings to be sold or leased to responsible industrial and manufacturing enterprises within its boundaries?

2. Is enabling legislation required in order for a municipality to exercise this authority?

ANSWERS:

1. Yes.
2. No.

REASONING:

For purposes of this opinion, the use of public credit in the form of a general obligation of a municipality, secured only by the municipality's taxing power, and the use of previously assessed and collected tax revenues, are treated as identical. This approach has been adopted by the Supreme Judicial Court in answering similar inquiries. *Opinion of the Justices*, 58 Me. 590 (1871); *Allen v. Inhabitants of Jay*, 60 Me. 124 (1872). No opinion is expressed with respect to whether or not Article IX, Section 8-A of the Constitution of Maine exceeds limits imposed by the United States Constitution. Cf. *Citizens Sav. & L. Asso. v. Topeka*, 20 Wall. (U.S.) 655, 22 L. Ed. 455 (1875).

Maine tax laws, like other Maine laws, have to meet the constitutional requirement that they be for the "benefit of the people". Me. Const. Article IV, pt. 3, § 1 (hereinafter cited as the "Constitution" or by Article and Section). Prior to the adoption of Article IX, Section 8-A, the courts of this State held that the legislature had no authority under the Constitution to pass laws enabling towns, by gifts of money or loan of bonds, to assist individuals or corporations to establish or carry on manufacturing or similar enterprises within the town. *Opinion of the Justices*, 58 Me. 590 (1871). The exceptions carved out of this rule included the use of tax funds for such "public purposes" as maintaining a fuel yard for sale of fuel at cost to inhabitants of a town, building of a city auditorium and promoting agricultural research. *Laughlin v. City of Portland*, 111 Me. 486, 90 A. 318 (1914), affd. 245 U.S. 217 (1917); *Carlisle v. Bangor Recreation Center*, 150 Me. 33, 103 A.2d 339 (1954); *State v. Vahlsing, Inc.* 147 Me. 417, 88 A.2d 144 (1952).

In November, 1962, Article IX, Section 8-A was added to the Constitution, providing as follows:

Section 8-A. For the purposes of fostering, encouraging and assisting the

physical location, settlement and resettlement of industrial and manufacturing enterprises within the physical boundaries of any municipality, the registered voters of that municipality may, by majority vote, authorize the issuance of notes or bonds in the name of the municipality for the purpose of constructing buildings for industrial use, to be leased or sold by the municipality to any responsible industrial firm or corporation.

The above provision expressly permits the issuance of general obligations of a municipality, for the purposes mentioned therein. *Northeast Shoe Co. v. Industrial and Recreational Finance Approval Board, Me.*, 223 A.2d 423 (1966). In *Northeast, supra*, the Supreme Judicial Court was faced with, among other things, the issue of whether or not *revenue* obligation securities issued by a municipality pursuant to the provisions of the Municipal Industrial and Recreational Obligations Act (hereinafter cited as the "Obligations Act"), 30 M.R.S.A. §§5325, *et seq.*, are *general* obligation securities within the meaning of Article IX, Sections 8-A and 15. The Court held that *revenue* obligation securities issued under the Obligations Act are not *general* obligations of the municipality within the meaning of Article IX, Section 8-A, and that such *revenue* obligation securities are not debts of the municipality for any constitutional purposes, including the debt limitations specified in Article IX, Section 15. *Northeast, supra*, at p. 425.

The Obligations Act is therefore not an implementation of or enabling legislation under Article IX, Section 8-A. As a matter of fact, it was not intended to be so, as evidenced by 30 M.R.S.A. § 5331.3 which recites that securities issued under the chapter "shall not constitute any debt or liability of the State or any municipality therein" There is no statute which is an implementation of that constitutional provision. Yet it is clear that Article IX, Section 8-A permits a municipality to use tax funds to assist private industry to an extent not theretofore permitted in Maine.

The issue, therefore, is whether or not Article IX, Section 8-A is self-executing so that municipalities may, without enabling legislation, issue general obligation securities or otherwise use tax funds for the purposes specified therein. The answer is that Article IX, Section 8-A is self-executing and no enabling legislation is necessary to permit municipalities to avail themselves of the rights granted in that section. The modern presumption is that all provisions of a constitution are self-executing. More precisely, a constitutional provision is self-executing when it supplies a sufficient rule by means of which the right which it grants may be enjoyed without the aid of legislative enactment. *Davis v. Burke*, 179 U.S. 399 (1900); *Witman v. National Bank*, 176 U.S. 559 (1899). In other words, a constitutional provision must be regarded as self-executing if the nature and extent of the rights conferred can be determined by an examination and construction of its terms and there is no language indicating that the subject is referred to the Legislature for action. The mere fact that legislation may supplement and add to a self-executing provision of a constitution does not render such a provision ineffective in the absence of such legislation. The conclusion that Article IX, Section 8-A is self-executing seems particularly compelling in this instance where other recent amendments to the Constitution, dealing with powers conferred upon a municipality (Article VIII-A, Municipal Home Rule) and with the use of public credit for industrial and commercial purposes (Article IX, Section 14-A, Increasing Limitation on Authority to Insure Loans to Industry) have made express references to implementation by the Legislature and where Article IX, Section 8-A is silent in this respect. Finally, there is substantial established precedent for the proposition that constitutional authority to

issue municipal debt is self-executing.¹⁾ *State v. Keith*, 179 Okla. 563, 66 P.2d 1059; *Application of City Council of Tahlequah*, 285 P.2d 418; *Ozenne v. Board of Commissioners of Gravity Drainage Dist. No. 1 of Parishes of St. Landry and St. Martin*, 183 La. 465, 164 So. 247; *Harrison v. Roberts*, 264 Ky. 62, 94 S.W.2d 296; *Terry v. Overman*, 194 Ark. 343, 107 S.W.2d 349; *El Dorado v. Jacobs*, 174 Ark. 98, 294 S.W. 411; *City of Middletown v. City Commission of Middletown*, 138 Ohio St. 596, 37 N.E.2d 609.

Of course, there are conditions precedent to the issuance of municipal bonds. The conditions pertain typically to making necessary charter amendments, adopting necessary ordinances and otherwise establishing the authority under which the bonds are issued. These matters are local or municipal in character and can be accomplished by a municipality pursuant to the provisions of Article VIII-A (Home Rule) and the enabling legislation enacted thereunder. 30 M.R.S.A. § 1911, *et seq.* Moreover, such industrial and commercial projects are subject to the equal taxation provisions of Article IX, Section 8 (*Opinion of the Justices*, 161 Me. 182, 210 A.2d 683) and to the debt limitations of Article IX, Section 15. (*Northeast*, *supra*, at p. 425). Nevertheless, within certain limitations, municipalities do have the authority to issue general obligation notes or bonds, and thus to use tax funds, to finance industrial and commercial projects in accordance with Article IX, Section 8-A, and that authority needs no implementation by the Legislature in order to be exercised by municipalities.

LEE M. SCHEPPS
Assistant Attorney General

- 1) A typical example of the rather scant authority which could be cited for a contrary proposition, is the case of *State v. Holman*, (Mo.) 355 S.W.2d 946 which turned upon the wording of the constitutional amendment itself, to the effect that municipalities could construct plants to be leased “*pursuant to law for manufacturing and industrial development*”. (Emphasis in the original, *Holman supra*, at p. 950). To the same or similar effect, see *Petition of Monroe City*, (Mo.), 359 S.W.2d 706 and *Pennsylvania Attorney General’s Opinion, Municipal Indebtedness*, 42 Pa. Co. 428. There is authority in this State for the proposition that “the provisions of our organic law limiting the power of municipalities to incur indebtedness . . . are not self-executing.” *Moore v. Inhabitants of Springfield*, 144 Me. 54, 64, 65 A.2d 569. The case concerned an effort by a municipality to escape liability for an obligation it had incurred allegedly in excess of constitutional limits. The Court’s ruling was that the municipality must be held to a strict burden of proof, which it failed to meet in this case, in order to avoid such liability. In other words, the debt limitation provisions were held not to be self-executing for the purpose of relieving a municipality from being held to strict proof in order to escape liability. Further, the municipality sought a constitutional construction which would affect the rights of third parties without meeting such strict proof and, as such, the case essentially represents a rule demonstrating the burden of proof and presumptions applicable in such situations. This is evident from the lengthy annotation prompted by the case and appearing at 16 A.L.R.2d 515, *et seq.* Finally, of course, the constitutional provision in *Moore, supra*, limits the power of, rather than, as here, grants privileges to municipalities.