

# MAINE STATE LEGISLATURE

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August 3, 1972

E. L. Walter, Executive Director

Maine State Retirement System

Charles R. Larouche, Assistant

Attorney General

Retirement - Westbrook Housing Authority - Social Security Eligibility

This replies to your memo of July 12, 1972.

You ask whether or not Social Security coverage may be extended to the Housing Authority of the City of Westbrook.

The determining factor on this question is whether or not the Housing Authority of the City of Westbrook is a "political subdivision" within the meaning of Chapter 103 of Title 5, Section 1222 of that Title states:

"Political subdivision. The term 'political subdivision' includes any instrumentality of the State of Maine, of one or more of its political subdivisions, the University of Maine, academies, water, sewer and school districts and associations of municipalities, or an instrumentality of the State and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the State or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the State or subdivision."

30 M.R.S.A. § 4601 states, in pertinent part:

"In each city and in each town there is created a publicbody corporate and politic to be known as the 'Housing Authority' of the city or town. Such authority shall not transact any business or exercise its powers until or unless the governing body of the city or any regular, special or other duly constituted meeting of the town, as the case may be, by proper resolution shall declare that there is need for an authority to function in such city or town. . . ."

"Upon the adoption of a resolution by the governing body of a city or any regular, special or other duly constituted meeting of a town, the mayor of the city or the selectmen of the town, as the case may be, shall proceed to appoint the commissioners of the authority."

It appears that the governing body of the City of Westbrook has adopted the specified resolution which empowers the Authority to function.

NOT A FORMAL OPINION

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Since 30 M.R.S.A. § 4601 expressly provides that this Housing Authority is a "body corporate and politic", it is clear that it is a juristic entity. It also seems clear that this entity is "legally separate and distinct from" the City of Westbrook. For example, 30 M.R.S.A. § 4651 states that:

"An authority shall constitute a public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary to carry out and effectuate the purposes and provisions of this subchapter, but not the power to levy and collect taxes or special assessments, including the following powers in addition to others granted:"

Subsection 1 of that section provides:

"1. General. 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 consistent with this subchapter, to carry into effect the powers and purposes of the authority."

30 M.R.S.A. § 4651, subsection 1 and 30 M.R.S.A. § 4656 confer upon the Authority the power of eminent domain. 30 M.R.S.A. § 4702 authorizes loans by the municipality to the Authority.

Finally, it does not appear that the employees of this Authority are per force of such employment also employees of the City of Westbrook.

Therefore, I am of the opinion that social security coverage can be extended to the Housing Authority of the City of Westbrook.

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CHARLES R. LAROCHE  
Assistant Attorney General

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NOT A FORMAL OPINION