NOT A FORMAL OPINION

June 27, 1973

Honorable Robert L. Browne, Chief Judge
State of Maine District Court
Portland, Maine 04112

Dear Chief Judge Browne:

This will respond to your letter dated June 19, 1973 inquiring whether a municipality may lawfully construct a facility for the sole and express purpose of renting such facility to the District Court for court purposes. For the reasons which follow, it is my opinion that under the present statutory scheme a municipality could not properly undertake the construction of such a facility for such purposes.

The law is well settled that a municipal corporation may purchase and lease property and construct and maintain buildings provided it does so for municipal purposes. The general principles are well summarized in 10 McQuillin, Municipal Corporations § 28.11, pp 25-26, as follows:

> "A municipal corporation may purchase and hold property for purposes authorized by its charter or an applicable statute, and, generally speaking, for no other purposes. It has no power to purchase lands and erect buildings thereon, except for municipal purposes." (Emphasis supplied)

"Municipal purposes" have been defined as those purposes germane to the objects of the creation and existence of the municipality." 10 McQuillin, supra § 28.12, p. 28.

Title 30 §§ 5101-5108 enumerate the purposes for which a municipality may lawfully raise or appropriate money. Nowhere among these provisions is there explicit authority to erect a facility for the sole and exclusive purpose of renting the same to the District Court.

The only language in these statutes which could even remotely be construed to be applicable is 30 M.R.S.A. § 5103(1), which provides that a municipality may appropriate money "providing for public buildings" and 30 M.R.S.A. § 5108, which provides that a municipality may appropriate money for "performing any duties required of it by law" or "providing for any operations authorized by law." The reasons why neither of these provisions empower a municipality to erect a facility of the kind in question shall be discussed in turn.

A District Court Facility is not a "Public Building" Within the Meaning of that Term in § 5103(1)

As noted above, a municipality may only expend funds for municipal purposes. Accordingly, the question becomes whether a District Court facility (or a building to be used solely as a District facility) is a "public building" as that term is used in § 5103(1).

It is generally recognized that the administration of justice is a state affair rather than a municipal affair. 2 McQuillin, Municipal Corporations § 4.95 p. 171. And, at least one court has held that the erection of a courthouse by a municipality is a state and not a municipal affair. City and County of Denver v. Bossie, 83 Col. 329, 266 p. 214, 216 (1928).

Moreover, prior to the adoption of the District Court system, the Legislature had provided a city where a municipal court was to be held "shall have the power and it shall be its duty to raise money to provide a proper place for said court," see e.g. Private and Special Laws of 1895, c. 211, § 11.

However, when the Legislature implemented the District Court system, it repealed the statutes like the one referred to above which imposed the obligation on the cities to erect municipal court buildings. Public Law 1963, c. 402 § 277-A. In place of the municipal courthouses, the Legislature provided for the erection of District Court facilities through the establishment of a "District Court Building Fund", 4 M.R.S.A. § 163(3). That statute provides:

> "After paying such expenses or providing sufficient reserves for their payment, the Treasurer of State shall establish a special "District Court Building Fund" to be used solely for the building, remodelling and furnishing of quarters for

> the District Court, as determined and certified by the Chief Judge. The sum of $3000 per month shall be deposited in this fund until the Chief Judge certifies to the Treasurer of State that physical facilities for the District Court throughout the State are such that further deposits in said special building fund are no longer necessary."

The clear language of the foregoing provision leaves no room for doubt that the Legislature contemplated that the State and not the municipality should build any required District Court facilities.

In view of the foregoing, it would appear that the general phrase "public buildings" as used in § 5103(1) would not embrace District Court facilities.

We note, parenthetically, that strictly speaking the municipality would not be erecting a District Courthouse, but rather a building to be used solely and exclusively as a District Courthouse. I do not believe the distinction escapes the fundamental objections that there is no specific authority for the erection of such buildings, and such a building serves no legitimate municipal purpose. In this connection I would only point out that even if the facility in question is perceived as purely an investment of municipal funds in capital construction which promises a long range return, it would, nevertheless, be prohibited under general principles of the law relating to municipal corporations. As stated in 10 McQuillin, supra § 28.11, p. 26:

> /A municipal corporation/ "cannot engage in the business of dealing generally in real estate . . . . Power to purchase real estate for speculative purposes is not among the usual powers bestowed on municipal corporations nor does such power arise, by implication, from any of the ordinary powers conferred on such corporations."

The Omnibus Language of 30 M.R.S.A. § 5108 Does Not Empower a Municipality to Construct a District Court Facility

As noted above, 30 M.R.S.A. § 5108, sets forth certain residual powers of municipalities to "perform any duties required . . . by law" or providing "any operations authorized by law."

For the reasons set forth above, it is my opinion that the erection of a District Court facility is not either required or authorized by law. In construing similarly broad language appearing in the predecessor to the existing statutes relating to municipal corporations the Justices have said:

> "The words 'other necessary town charges,' do not constitute a new and distinct grant of indefinite and unlimited power to raise money for any purpose whatsoever, at the will and pleasure of the majority. They only embrace all incidental expenses arising directly or indirectly in the due and legitimate exercise of the various power conferred by statute.
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> "While towns may raise money to discharge all liabilities in the performance of their multiplied municipal duties, they cannot (unless new powers are conferred, or an excess of powers receives a subsequent legal ratification) transcend their authority and incur expenses in no way in its exercise." Opinion of the Justices, 52 Me. 595, 598 (1863).

In analyzing the question presented, I am not unmindful of the language of 4 M.R.S.A. § 162, which provides that "the place for holding court shall be located in a state, county or municipal building designated by the Chief Judge, who . . . is empowered to negotiate . . . the leases, contracts and other arrangements he considers necessary . . . to provide suitable quarters, adequately furnished and equipped for the District Court in each division." (Emphasis supplied)

In my opinion, however, the foregoing provision does not authorize the Chief Judge to enter into a contract or lease with a municipality to occupy a building which the municipality does not have the power to and which it may not lawfully erect.

I hope that the foregoing opinion satisfactorily answers your question. Of course, if you have any further questions, please let me know.

Yours very truly,

Jon A. Lund
Attorney General

JAL:H(MLW)