

MAINE STATE LEGISLATURE

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September 7, 1973

John K. McIlwain, Assistant Dir.

Maine State Housing Authority

Jon A. Lund, Attorney General

Attorney General

JAL
SYLLABUS:

The Maine Housing Authority may purchase a first mortgage on property which is primarily residential but partially commercial, but only to the extent of the residential portion of the property.

FACTS:

A proposer wants to erect a 120-unit apartment complex through the Auburn Housing Authority. The unit will consist of 100 units of subsidized apartments under a Federal plan and 20 units at market-rate rentals. 20% of the total usable space of the building will be used for commercial purposes.

QUESTIONS:

1. Can the Maine State Housing Authority purchase a mortgage on the property described above, in light of the fact that 20% of the property subject to the mortgage will be used for commercial space?

2. Can the Maine State Housing Authority purchase a mortgage on the above-mentioned property, where the security for the mortgage shall be only that portion of the property used for residential purposes, and where legal title to the 20% of the building used for commercial purposes will not be subject to the mortgage of the Maine State Housing Authority?

ANSWERS:

1. See opinion.

2. See opinion.

OPINION:

The answer to the first question is contained in the language of the Maine statutes relative to the Maine Housing Authority

in Title 30. Generally, the Maine Housing Authority has been organized to provide housing for persons of low income. Such housing may be provided in several ways. The Authority is not primarily a building or construction agency. It is one authorized to provide funds which will eventually filter back to the benefit of low income persons seeking housing. See 30 M.R.S.A. § 4601-A. The powers and duties applicable to this situation are set forth in subsection 1, par. H, subparagraph I: "Purchase and sell first mortgages or notes to carry out the purposes set forth in this Act in order to provide housing for persons of low income;" Also see 30 M.R.S.A. § 4651, subsection 11.

The State Housing Authority may issue revenue bonds "for any of its authorized purposes including the purchase of first mortgage loans . . . for residential housing in the State of Maine" 30 M.R.S.A. § 4760.

A reading of the various sections of the Housing Authority law clearly indicates a legislative intent to have the Authority provide additional residential housing. Although the legislature has not defined the phrase "residential housing", it is obvious what was meant. It covers all types of structures or parts of structures which may house individuals or families. We are aware that a modern trend for new housing is the building of the so-called high rise apartment building with the lower floor or floors to be used for shops and service establishments. This must be recognized.

So long as the primary function of the building is to provide a home for humans, we must consider that portion devoted to housing of humans as eligible for investment for State Housing Authority funds under the state statutes.

We cannot say that the legislature has authorized use of Maine Housing Authority funds for financing commercial ventures. Until the legislature otherwise defines the use of the Authority's funds, we must say that it can purchase only the percentage of a first mortgage that relates to "residential housing." Hence, it may purchase only 80% of the first mortgage on the whole unit.

September 7, 1973

It has been necessary to examine the General Mortgage Purchase Bond Resolution adopted by the Maine State Housing Authority on February 4, 1972, to determine if the Resolution has restricted the use of Bond funds beyond the Housing Act. We find nothing in the Resolution restricting the Authority beyond the restriction in the Act itself. Section 713 of the Resolution allows for a Mortgage Purchase Program "consistent in all respects with the Act" to "purchase Mortgages pursuant to such Act." This does not change our answer to the first question.

Jon A. Lund
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