

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

September 27, 1973

James E. Mitchell, Director  
Martin L. Wilk, Assistant

Maine State Housing Authority  
Attorney General

Authority to Borrow Money to Defray Operational Expenses

SYLLABUS:

The Maine State Housing Authority does not have the power or authority to borrow money directly from a bank to finance "start-up" expenses of its Inspection Division (which Division has been established to administer the Industrialized Housing Law) since the legislature has not explicitly authorized such borrowing. It would make no difference whether such a loan would be repaid solely out of fees generated by activities of the Inspection Division, since the legislature has not authorized use of the fees in such manner.

FACTS:

The Maine State Housing Authority ("Authority") has established an Inspection Division pursuant to the Industrialized Housing Law, 30 M.R.S.A. §§ 4771 - 4783. The primary function of the Division is to issue and enforce rules and regulations necessary to carry out the provisions of the Industrialized Housing Law. The Division will, among other things, conduct inspections of the numerous phases of manufacturing, certifying, handling, storing, transporting and assembling industrialized housing units and components, and generally administer the Industrialized Housing Law.

The Authority desires to borrow money from local banking institutions to finance "start-up" expenses for the Inspection Division. It proposes to repay such a loan out of revenues derived from fees which the Authority is empowered to establish in connection with the administration and enforcement of the Industrialized Housing Law, 30 M.R.S.A. § 4777.

While we have not been informed what the amount of the "start-up" expenses would be, we note from a Proposal to New England Regional Commission to Improve the Quality of Housing Construction in New England dated September 6, 1973 (a copy of which was furnished to us by the Maine State Housing Authority together with its request for this opinion) that estimated expenses up to July 1, 1974 will total \$313,000, and potential income from fees will total only \$87,000.

QUESTION 1:

Does the Authority have the power and authority to borrow money to defray operating expenses of the inspection division?

QUESTION 2:

Does the Authority have the power and authority to borrow money for "start-up" costs of its industrialized housing inspection program, when such borrowed funds would be repaid by fees generated under the program?

QUESTION 3:

Would a debt of the Authority created for the purposes outlined in either question 1 or 2 be an obligation of the State of Maine?

ANSWERS:

1. No.
2. No.
3. see opinion.

REASONS:

There is nothing in the Industrialized Housing Law which specifically empowers the Authority to borrow funds directly from a bank for operational expenses or for any other purpose. While 30 M.R.S.A. § 4751 empowers the Authority "to issue bonds from time to time in its discretion for any of its corporate purposes," there is some question whether the power to issue bonds embraces the power to engage in direct borrowing and, in any event, the direct borrowing of money solely to defray operational expenses of the Industrialized Housing Law would not constitute borrowing for a "corporate purpose" contemplated by the statute in question.

As noted by the Justices in an opinion reported at 278 A.2d 699 (1971), the powers of the Authority are set forth in Sections 4651, 4653, 4654 and 4760, among others. Generally speaking, all these provisions relate to the financing of residential housing for persons of low income - not to financing industrialized housing inspection programs. There is nothing in these statutes which explicitly authorizes borrowing solely for operational expenses of any program administered by the Housing Authority, let alone specific authority to borrow funds to defray administrative expenses in connection with the Industrialized Housing Law.

The powers of the Authority with respect to Industrialized Housing include the power to approve industrialized housing and housing components (§ 4774), to issue and enforce rules and regulations (§ 4775) to establish a schedule of fees (§ 4777), to employ state inspectors (§ 4779) and to obtain injunctive relief for violations of the Industrialized Housing Law and the rules and regulations promulgated thereunder (§ 4781). Had the legislature intended the Authority to, in addition, borrow money to defray operating expenses of the program, it could have, and presumably would have, said so.

This conclusion finds further support in § 4777 which provides that the Authority "shall establish a schedule of fees in connection with the administration and enforcement of the Article." The legislature contemplated that administrative expenses would be defrayed by fees, not by a bank loan.

Accordingly, since in our opinion the corporate purposes referred to in § 4751 and § 4760 do not embrace the administration of the Industrialized Housing Law, but rather are limited to the corporate purposes enumerated in §§ 4601 - 4766, any authority which may exist to engage in direct borrowing for the sole and express purpose of financing operating expenses in connection with the "corporate purposes" referred to in §§ 4601 - 4766 (and we have some doubts that any such authority does exist) would not extend to expenses needed to administer the Industrialized Housing Law.

Our opinion is not altered by the proposal that the loan would be repaid by fees generated under the inspection program. While, as we noted above, the Industrialized Housing Law does provide that fees are to be utilized to administer the law, 30 M.R.S.A. § 4777, the statute does not authorize pledging those fees to repay a bank loan. And, since it is our opinion that the act of incurring such an obligation would be impermissible in the absence of explicit legislative authority, it makes no difference what the source of funds for repayment would be.

In view of our answers to questions 1 and 2, we trust that it is not necessary to express an opinion on question 3 at this time.

Martin L. Wilk  
Assistant Attorney General