

MAINE STATE LEGISLATURE

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October 5, 1973

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State Housing Authority
Attorney General

This is in response to your letter of September 20, 1973, requesting an opinion on whether the State Housing Authority may purchase the mortgage on a residential nursing home if at least a reasonable number of its tenants will be assisted by payments from the Health and Welfare Department.

Regarding the question of whether a residential nursing home ^{1/} is housing for Housing Authority purposes, 22 M.R.S.A. § 1812-A, defining a nursing home, suggests that it is not. There are several types of institutions or homes which have different, though often overlapping, purposes such as boarding houses, rest homes, convalescent homes, nursing homes, sanatoriums, and hospitals. The statute concerning the Licensing of Hospitals and Institutions (22 M.R.S.A. § 1811, et al.) distinguishes health service related facilities from those that provide simply room and board. A nursing home, in its statutory sense, provides health care and services in addition to the room and board necessary during treatment, as the following definition shows:

" § 1812-A. Nursing home defined

A nursing home shall be defined as a facility which is operated in connection with a hospital, or in which nursing care and medical services are prescribed by or performed under the general direction of persons licensed to practice medicine or surgery in the State, for the accommodation of convalescent or other persons who are not acutely ill and not in need of hospital care, but who do require skilled nursing care and related medical services. The term "nursing home" shall be restricted to those facilities, the purpose of which is to provide skilled nursing care and related medical services for a period of not less than 24 hours per day to individuals admitted because of illness, disease or physical or mental infirmity and which provides a community service."

^{1/} The term "residential nursing home" is not defined in the request for an opinion, nor is there a definition in the statutes.

Thus, even a "residential nursing home" is a facility licensed by the Health and Welfare Department and primarily engaged in rendering health care and services, though incidentally, it must of course provide room and board. The primary function of the building in question is the determining factor on the question of whether it is housing for Housing Authority purposes. Here the quoted definition (second sentence) restricts the meaning of nursing home to a medical and nursing facility.

Is such a facility within the scope of the Housing Act? The policy of the Housing Act is set out in 30 M.R.S.A. § 4553. This section and the Act as a whole use terms such as dwelling house, dwellings, apartments, living accommodations (§ 4552.12B), residential housing (§ 4760), one-family or multi-family units (§ 4756) and the like to describe the type of building over which the Housing Authority may exercise its powers including purchasing first mortgages. These terms in their ordinary meaning all describe buildings whose primary function is to provide a place for human habitation, a residence, not primarily medical and nursing services.

It is conceivable that some nursing homes may, at times, become in effect more akin to a boarding house; however, so long as they are inspected and licensed by the Health and Welfare Department as nursing homes and found to be such, then they are by statute primarily health care facilities not residences and thus are not housing for Housing Authority purposes. The legislature, had it intended to encompass nursing homes within housing, would have been more explicit in reaching beyond residential housing. Presently, the Act does not grant the power to purchase first mortgages on nursing homes, residential or otherwise.

The question of the scope of housing being decided as it is, the questions on the tenants' status as "persons of low income" and what a "reasonable number of tenants" is, become academic.

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NOT A FORMAL OPINION