# STATE OF MAINE

Inter-Departmental Memorandum Date November 13, 1973

To James K. Keefe, Commissioner (DCI) Dept. Maine Guarantee Authority

From Martin L. Wilk, Assistant Dept. Attorney General

Subject Ambiguities in the Statutes Relating to the Maine Guarantee Authority (Your memo dated November 2, 1973)

In your memorandum dated October 25, 1973, you requested our recommendations regarding changes in the statutes pertaining to the Maine Guarantee Authority. Set forth below are those provisions which, upon a general review of the statutes, we perceive to contain ambiguities, together with some suggestions as to how those ambiguities may be clarified. We will, of course, continue to advise the Authority of any additional areas of potential or actual confusion or difficulty as and when such matters come to our attention.

The most serious ambiguities appear in the statutes relating to the Community Industrial Buildings, namely, 10 M.R.S.A. §§ 671-679 (P.L. 1973, Chap. 633, § 26).

1. There is nothing in the CIB statutes or elsewhere that sets forth the manner in which a CIB local development corporation is to be organized. Section 672(4) defines "local development corporation" as an organization incorporated under Title 13, Chapter 81 "but limited to those created by a municipality as defined by this Chapter. Section 672(5), in turn, defines "municipality" as any "county, city or town in the State."

In order to incorporate under Title 13, Chapter 81, 7 incorporators are required, or in the case of an association of 2 or more municipalities, including a council of government and a regional planning commission, a majority of the municipal officers of each of its charter member municipalities is required. 13 M.R.S.A. § 901 (P.L. 1973, Chap. 534, § 1). Thus, unless a municipality has 7 officials to act as incorporators or the municipality forms an association with another municipality, there is no way for the CIB development corporation to be organized.

It should be noted in this connection that the CIB statutes assume that a municipality, acting alone, has the authority to form a CIB development corporation. In order to avoid an attack against a local development corporation on the ground that the municipality was acting ultra vires, it will be well for the statutes to expressly recite such authority.

2. Since the CIB development corporation is to be formed by a municipality (as opposed to members of the general public), a question arises whether the obligations of the development corporation are also the obligations of the municipality. The Act is silent on the point, and an expression of legislative intent one way or the other is essential.

3. Section 677(5) requires the Authority to determine that plans comply with applicable zoning, planning and sanitary regulations and meets with standards established by the DEP. Unlike 10 M.R.S.A. §§ 803 and 6003, however, DEP certification is not, by the terms of § 677(5) required.

Rather than having itself put in the awkward position of second guessing municipal planning boards or DEP decisions, the Authority may well, as an administrative matter, wish to require certification in any event, or perhaps to have this latter section amended so as to be consistent with the other comprable provisions under the MIBA, MRA and MMSAB statutes.

4. In § 678, there is a reference to some kind of "board." It is not clear what was contemplated by the use of this term (it is the only time the term appears in the Act).

Before leaving the CIB statutes, it is important that the Authority understand that we have not addressed ourselves to any constitutional problems which may exist with these statutes. However, we would be remiss if we did not at least mention that tenable arguments could be made that the statute or portions thereof violate Article IX, § 8 of the Maine Constitution relating to equal taxation. In an opinion relating to a proposed act to authorize municipalities to finance industrial and recreational projects, the Justices expressed the view that a tax exemption provision in that act was unconstitutional because it resulted in an unequal tax burden on property not appropriated to public uses, 161 Me. 182, 210 A.2d 683. The CIB statutes also contain a tax exemption provision (§ 678) and there is substantial question whether the appropriation of funds or real estate by a municipality for CIB purposes would result in a public or private use of such property.

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Additional ambiguities of a less serious nature and unrelated to the CIB statutes are as follows:

5. 10 M.R.S.A. § 751, first paragraph

(a) For purposes of clarity, the words "Title 10" should be inserted after the phrase "conferred by this chapter" and before the phrase "chapter 701."*

(b) This section provides that "A vacancy in the office of an appointive member shall be filled in a like manner as an original appointment for a full term." (Emphasis added) Read literally, this language would suggest that a person appointed to replace a member whose term was 2 years, would also serve 2 full years. In view of

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* A similar change should be made in the last paragraph of this section.

the staggered terms of office that result does not appear to be what the Legislature had in mind. Rather, it makes more sense that the Legislature intended that vacancies be filled for the remainder of the term, and the quoted language should therefore be amended accordingly.

6. 10 M.R.S.A. § 751(c)

This section provides that it is the duty of the manager to appoint such employees as the Authority may require. However, at the same time 10 M.R.S.A. § 752(5) recites that the Authority is "authorized and empowered" to employ employees as may be necessary or desirable for its purposes. This apparent overlap in authority could possible lead to conflicts and should be amended so that ultimate authority in any overlapping area clearly resides in either the manager or the Authority (or in one subject to the approval of the other).

7. 10 M.R.S.A. § 753-A

For purposes of consistency, the term "industrial" should be deleted and the word "eligible" inserted in its place.

8. 10 M.R.S.A. § 803(2)

The clause "and not to exceed the sum of 90% of the costs of project related to real estate and 75% of the cost of project related to machinery and equipment" appearing at the very end of the first paragraph is redundant and should be deleted.

9. 30 M.R.S.A. § 5327(3)

This should be amended to read as follows:

> To approve or disapprove projects and issue certificates of approval upon application of municipalities proposing to issue revenue obligation securities under this chapter. In any event no project shall be approved and no certificate of approval shall be issued until the Department of Environmental Protection has certified to the authority that all licenses required from ~~authority~~ Department of Environmental Protection with respect to the project have been issued or that none are required. This requirement of certification by the ~~authority~~ Department of Environmental Protection shall likewise apply to any subsequent enlargement of or addition to such project, for which approval is sought from the authority.

If you or the other members of the Authority have any questions concerning the foregoing, please let me know.

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