

# MAINE STATE LEGISLATURE

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March 21, 1974

James K. Keefe, Commissioner

Commerce & Industry

Eliot Field, Assistant

Attorney General

Municipalities powers to purchase land for Industrial Development Purposes

You asked for an opinion on four questions concerning the acquisition and disposal of land by municipalities for industrial development purposes. Only the first question is answered in this initial memo; answers to the remaining questions will follow soon.

1. The first question asks whether or not a municipality can buy land for industrial development purposes with its tax money. We answer it in the negative. It is fundamental that the taxing power, delegated by the legislature to municipalities, may only be used for "public purposes" unless the Constitution otherwise provides. Opinion of the Justices, 152 Me. 440 (1957); Crommett v. City of Portland, 150 Me. 217 (1954). The Opinion of the Justices, supra, held that a city could not, under the Constitution as it read then, be empowered to purchase or lease sites or improvements for industrial development because the taxing power might eventually be used to fund these purchases or leases which were for a private, not a public purpose.

However, in 1962 the Constitution was amended to enable the registered voters of a municipality to ". . . authorize the issuance of notes or bonds in the name of the municipality for the purpose of constructing buildings for industrial use . . ." (emphasis added). Art. VIII, Pt. second § 2. The "notes or bonds" contemplated here would be general obligation securities (i.e. backed by the municipal taxing power). Northeast Shoe Co. v. Industrial and Recreational Finance Approval Bd., Me., 223 A.2d 423 (1966). Thus it is clear that now the tax power may be used to back securities which are issued ". . . for the purpose of constructing buildings for industrial use . . . ."

The question here is whether the amendment may be read to include the use of the tax power to back the financing of land acquisitions for industrial use. We think not. The amendment speaks only of the issuance of securities for the purpose of constructing buildings for industrial use, and it makes no mention of land acquisition. The words of the amendment should be given their plain and ordinary meaning which, here, would not include the authority to use the tax power to finance land acquisitions for industrial use. Therefore, while the Opinion of the Justices has been abrogated with respect to "constructing buildings for industrial use", it still bars the use of the municipal tax power (and, a fortiori, tax monies) in the financing of land acquisitions for industrial development purposes.

EF/mf

AN INFORMAL OPINION