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April 16, 1974

James K. Keefe, Commissioner

Commerce & Industry

Eliot Field, Assistant

Attorney General

Municipalities' powers to deal with development land

This is the second memo on this subject. The first one of March 21, 1974, answered question (1). This one answers questions (2) through (4).

2. Your second question asks whether a municipality can legally sell, lease, or give land for development purposes, if the municipality bought the land with money received from a grant or gift. Before answering this question, it should be noted that the question is couched in general terms and the answer may vary significantly, depending upon the specific facts of each situation. With this in mind, the answer to your general question is that a municipality can sell or lease but not give away land for development.

Municipalities derive their powers from specific enabling laws; so the power to sell, lease, or give development land must be statutorily granted. Squires v. Inhabitants of Augusta, 155 Me. 151 (1959); Opinion of the Justices, 161 Me. 182, at 208. Under 30 M.R.S.A. § 5325(4), municipal officers are authorized ". . . to dispose of any of the foregoing . . .", i.e., property interests acquired "from funds provided under the authority" of chapter 242.

Taken alone, the power to "dispose" of property certainly includes sale, lease, or gift. However, under § 5325 (4) the municipality must dispose of the property "in the exercise of its powers and the performance of its duties under this chapter." And "this chapter" contemplates that the municipality will acquire or construct a project, and then lease or sell the project (sell by installment purchase) to some appropriate lessee or purchaser [see § 5326(6) and (7) on lease and lessee]. Thus, in this context, the power to "dispose" means the power to sell or lease, but not the power to give because that power is not mentioned in the statute. 30 M.R.S.A. § 5325(4) and § 5326 (6,7).

3. Question three asks whether a constitutional amendment is necessary to allow municipalities to buy and sell land for development purposes. If the tax power (or eminent domain power) is involved, as in question (1), the answer is yes, an amendment is necessary. If it is not involved, as in question (2), the answer is no, an amendment is not necessary because in this situation the constitutional public purpose doctrine is inapplicable and the municipality's authority to buy and sell land is determined by the applicable statutes. Northeast Shoe Co. v. Industrial and Recreational Approval Bd., Me., 223 A. 2d 423 (1966).

4. Your fourth question asks: Can the Rural Development Act (RDA) and the Community Industrial Building Act (CIBA) be used concurrently for (1) buying of land, and (2) erection of a building? The answer is yes; the Rural Development Act could be used for the buying of land and the Community Industrial Building Act could be used for the erection of a building. In this situation we see no bar to the simultaneous use of the acts, provided that the activity, for which aid is sought, property qualifies for such aid under the applicable federal and/or state law. Since the interpretation of federal law is not our province, we make no comment on a local development corporation's eligibility for RDA aid.

EF/ mf

AN INFORMAL OPINION