

MAINE STATE LEGISLATURE

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June 11, 1974

Aneth M. Curtis, Governor

Executive

Don A. Lund, Attorney General

Attorney General

Application of P.L. 91-606 to property owned by Local Development Corporation organized under 13 M.R.S.A. ch. 81.

On May 3, 1974, in high-water conditions, the Kennebec Dam at Augusta suffered a major breach. In your memorandum of May 14, 1974, you ask several questions concerning eligibility of the owner of the dam for federal disaster assistance under P.L. 91-606, in view of the fact that the owner is the Augusta Development Corporation, a private non-stock corporation, organized under 13 M.R.S.A. ch. 81. That corporation holds title by virtue of a quit-claim deed, dated February 9, 1973, from the Maine Industrial Building Authority (now the Maine Guarantee Authority) subject to a mortgage held by Depositors Trust Company and guaranteed by said Authority. Further, the Augusta Development Corporation has leased the dam to Edwards Mfg. Co. Inc., a business corporation organized under the general corporation laws of this State.

Before responding to your several questions, it should be first noted that they ask for an interpretation of federal law which, in the first analysis, is for the federal authorities to determine. Whatever comment I make as to whether the Kennebec dam qualifies as a "public facility" under P.L. 91-606, sec. 252, is therefore not given as a formal opinion, but only to advise you informally of my view of the matter.

Your first question is, "Does the dam qualify as a public facility pursuant to section 252 of P.L. 91-606 by virtue of title in the Augusta Development Corporation?" My answer is no. Section 252(a) of the reference law authorizes the President to make contributions to state or local governments to repair, restore, reconstruct or replace public facilities belonging to such state and local government, and section 252(c) defines "public facility." Assuming the dam to be a public facility under section 252(c), it must, in order to qualify for federal contributions under section 252(a), be a facility belonging to the State or to a local government, not to a private corporation, albeit a non-profit corporation.

Your second question is, "Does the dam qualify as a public facility pursuant to section 252 of P.L. 91-606 by virtue of contingent liability in the Maine Guarantee Authority, the statutory successor to the Maine Industrial Building Authority?" Again my answer is no.

Although the Maine Guarantee Authority would most certainly be considered by federal authorities to be an entity of state government, the nature of its security interest in the dam is not such that the dam would be deemed to presently belong to the Authority within the meaning of section 252(a).

Although, under 10 M.R.S.A. § 806, the Authority may have received an assignment of Depositors Trust's mortgage as a part of the insurance agreement, it may take title by foreclosure only when the insured loan is clearly in default, and such acquisition is deemed necessary to safeguard the Mortgage Insurance Fund. Until the Authority does take title by foreclosure or other conveyance, it has only a conditional interest in the dam, which is not a present property interest.

In the instrument by which the Authority conveyed the dam to Augusta Development Corporation, appears the condition that as long as there exists a mortgage covering the premises, the corporation shall not encumber or transfer its interests, except by a certain mortgage deed of even date to Depositors Trust and by a certain lease of even date to Edwards. If such covenant is breached, the premises shall revert to the Authority. The possibility of such a reversion is not a sufficient interest to qualify the dam as belonging to the State.

Your last question is whether, by any reasonable construction of Maine statutory and case law, the dam can be construed as a public facility pursuant to section 252 of P.L. 91-606. This question is not to be resolved by Maine law. However, I know of no Maine law, under which the Kennebec dam could be construed as a public facility belonging to the state or local government.

JAL/mf

AN INFORMAL OPINION